

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-392

DECEMBER TERM, 2002

	}	APPEALED FROM:
	}	
	}	Windham Family Court
	}	
In re R.A., Juvenile	}	
	}	DOCKET NO. 185-11-98 Wmjv
	}	
	}	Trial Judge: Robert Grussing III
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Mother and father appeal the termination of their residual parental rights in their son, R.A. Mother claims the court gave excessive weight to the child's relationship with his foster parents in deciding that termination was in R.A.'s best interests. Father asserts the court's findings were not based on clear and convincing evidence. We affirm.

Mother gave birth to R.A. on August 9, 1997, but father's paternity of the child was not established at that time. On November 1, 1998, the juvenile court placed the child in the custody of the Commissioner of the Department of Social and Rehabilitation Services (SRS) after mother's arrest for marijuana possession, disorderly conduct, and violations of her conditions of release. At the conclusion of the merits hearing in June 1999, the court found R.A. to be a child in need of care and supervision. SRS prepared a disposition report which recommended reunification of mother and R.A. At disposition, the court ordered a forensic family evaluation at SRS's request, and continued the hearing until the evaluation was complete.

The forensic evaluation was finished in January 2000. In the months preceding the evaluation's completion, mother resisted SRS's efforts to arrange visits between her and R.A., and she failed to comply with the terms of her probation. In March 2000, SRS moved to terminate mother's parental rights. The court held hearings on the termination petition in November and December that year. Near the end of hearings, father's paternity of R.A. was finally established. Following the court's January 5, 2001 order denying SRS's termination request, father began visiting with R.A., and he cooperated with a plan of services for him relative to the child.

Father's visits with R.A. went well for several months. In July 2001, father's wife left him for another person. Consequently, father did not visit with R.A. that month. In September 2001, father notified SRS that he would no longer make efforts to unify with R.A, and since that time, father has not seen R.A. or expressed any desire to continue being a part of the child's life.

In October 2001, SRS filed another termination petition, which the court granted on August 12, 2002. Father did not participate in the proceeding. The court found, among other things, that father's departure from R.A.'s life was traumatic to the child. As to mother, the court found that since the court's January 2001 order, she had made no progress in dealing with her mental health problems, anger management issues, and criminal conduct. The court found that mother "has continued to engage in angry, inappropriate outbursts with service providers and authority figures, has engaged in violent and disorderly conduct, and continues to appear to be at war with the world." Mother's lifestyle and her mental health issues "seriously interfere[]" with her ability to properly parent R.A. by creating chaos and turmoil in

her life that places the child at serious risk of harm.

The court also found that although mother visited regularly with R.A. beginning in April 2001, she refused to cooperate with SRS' s efforts to conduct visits in mother' s home. Mother engaged in appropriate activities during visits and demonstrated love and affection for R.A. But the court also found that R.A. does not look to mother for security or nurturing. Instead, the child views mother as more of a playmate during visits.

The court also addressed R.A' s interaction with his foster family, with whom he had been living for over three years, and his need for permanency. The court found that RA has bonded with his foster family and has continued to thrive in their care. It observed that R.A. has demonstrated divided loyalty between the foster family, his mother, and his father because he does not know where he belongs. He does not seem to be able to understand the lack of finality in his case, and has expressed frustration at the delay in adoption. The court interpreted those facts as demonstrations of R.A' s increasing need for permanency. The court ultimately concluded that R.A' s best interests would be served by terminating his parents' residual parental rights. Mother and father subsequently appealed the decision to this Court.

On appeal, we will uphold the court' s conclusions regarding termination if the factual findings support them. In re A.F., 160 Vt. 175, 178 (1993). We will let the findings stand if they are not clearly erroneous and are supported by credible evidence. Id. When assessing the merits of a petition to terminate parental rights, the court must find that termination is in the child' s best interests by considering the four statutory factors set forth in 33 V.S.A. § 5540.\* In re J.B., 167 Vt. 637, 639 (1998) (mem.).

We first address mother' s sole argument that the juvenile court relied too heavily on the advantages of the foster home as an adoptive placement in deciding that termination of mother' s rights was necessary. In support of her argument, mother mischaracterizes the order by claiming that it states that the child' s positive interaction with the foster family and his excellent adjustment to the foster home " ' weigh[] heavily in favor of termination.' " In fact, the court analyzed its factual findings in light of all the statutory criteria under § 5540. On the first criterion, the court concluded that on balance, the child' s interaction and relationship with mother and father have been negative, while his interaction with the foster parents and their children has been positive. That factor, not the child' s relationship with the foster family alone as mother suggests, " weigh[ed] heavily in favor of termination." Similarly, under the second criterion, the court concluded that R.A' s adjustment to the foster home and the surrounding community has been excellent, and neither parent had the ability to provide those benefits at that time. As to the role R.A' s parents have played in his life, the court concluded that neither parent has played a constructive role. Father abandoned the child, and mother' s conduct has been destructive to R.A' s best interests. Finally, the court concluded that neither mother nor father could become a parent to R.A. within a reasonable time in light of the child' s present need for permanency. The order reflects that the court carefully considered all of the statutory factors without placing any undue reliance on the child' s positive relationship with the foster family. Cf. In re J.B., 167 Vt. at 640-41 (rejecting mother' s argument that juvenile court relied too heavily on foster parents' role as child' s psychological parent where court considered evidence related to all statutory factors, including lodestar factor that natural parent would not be able to resume her parental duties within a reasonable time). We find no error in the court' s decision to terminate mother' s rights.

In his appeal, father argues that the court' s findings are not based on clear and convincing evidence because the court stated only that its conclusions were supported by clear and convincing evidence. In order to implement the mandate of Santosky v. Kramer, 455 U.S. 745, 747-48 (1982), we have required that findings supporting termination of parental rights be based on clear and convincing evidence. See In re H.A., 153 Vt. 504, 515 (1990). We have not, however, required those words to be in every decision. We have instead examined the words used by the trial court to determine whether the proper standard was applied. For example, in response to a similar challenge, we affirmed in In re C.L., 151 Vt. 480, 488-89 (1989), where the court concluded that it was convinced that the mother would be unable to resume parental duties within a reasonable time period, and in In re D.P., 147 Vt. 26, 31-32 (1986), where the court concluded that it was convinced beyond any reasonable doubt that the father was an unfit parent and a threat to his children' s physical well-being. In each case, the findings and conclusions had the alleged defect raised here - that is, that the clear and convincing evidence standard was applied to the conclusions, and not the findings. We believe that the father has raised a difference without a meaningful distinction. Because conclusions are based on findings of fact, which in turn are based on the evidence before the court, conclusions can be based on clear and convincing evidence only if findings are so based.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice