

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2004-429

APRIL TERM, 2005

In re T.B. and T.B., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Caledonia Family Court
	}	
	}	
	}	DOCKET NO. 63/64-9-03 Cajv
	}	
	}	Trial Judge: Stephen B. Martin

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

Mother appeals from the family court's order terminating her residual parental rights over T.B. and T.B. She argues that, although she agreed to relinquish her residual rights, she did not do so knowingly, intelligently, and voluntarily. We affirm.

Mother is the biological parent of T.B., born in March 1998, and T.B., born in March 2002. In August 2003, the children were adjudicated as children in need of care and supervision. The disposition report recommended that the children continue in State custody with the goal of reunification with mother if no termination petition was filed. In March 2004, the Department for Children and Families filed a motion to terminate mother's residual parental rights. At the hearing on the motion, mother, represented by counsel, agreed to relinquish her residual parental rights. She executed an agreement to this effect, as well as a supporting affidavit and waiver. These documents were introduced into evidence, without objection, and accepted by the family court.

In August 2004, the court issued an order, based on her agreement and affidavit, terminating mother's residual parental rights. The court found that mother had executed the agreement voluntarily and without threat or promise. It found that mother had understood that by her agreement, and the court's order terminating her rights, she would have no further legal right to visitation or contact with the children. The court further found that mother understood that she could oppose the termination of her parental rights, have a court hearing concerning the State's petition, and have the court make a decision as to whether her rights should be terminated. The court stated that mother had given considerable thought to her decision to agree to termination of her rights, and she had done so because of her belief that termination was in the children's best interests. The court found that mother was not under the influence of any mood or mind-altering drugs that could have affect her decision-making at the time that she signed the agreement and affidavit. Given mother's voluntary relinquishment of her rights, the court explained that there was no likelihood that she would be able to resume her parental responsibilities within a reasonable period of time. The court also found that the children were doing well in their foster home, and the foster parents intended to adopt the children if they were freed for adoption. Based on its findings, the court concluded that there had been a substantial change in material circumstances, and after analyzing the factors set forth in 33 V.S.A. § 5540, it concluded that termination was in the children's best interests.

In September 2004, more than thirty-days after the court's order was entered, mother filed a pro se letter with the family court, asserting that at the time she signed the agreement, affidavit, and waiver, she was scared and confused, and

she didn't know what she was doing. She stated that she did not have a good lawyer, and she had been taken advantage of by the State. She concluded her letter by stating, "I need to appeal this decision," and the family court treated the letter as a notice of appeal. After the notice was forwarded to this Court, an attorney for mother asked that the letter be treated as a motion to vacate or set aside the family court's order, and he requested that the matter be transferred to the family court so that it could consider the motion. As mother's attorney explained, the letter raised "issues that only can be dealt with effectively by the family court." We granted mother's request, and transferred the matter to the family court. The family court scheduled a hearing on the motion, and provided mother with notice. Mother failed to appear at the hearing, however, and the family court dismissed her motion. Mother then indicated that she intended to pursue her appeal with this Court.

Mother now argues that the court erred by accepting her agreement to relinquish her residual parental rights because she did not knowingly, intelligently, and voluntarily waive her constitutional right to family integrity. In support of this argument, mother maintains that: (1) the record does not show that mother knew that she had a constitutional right at stake and that DCF had the burden of proving its case by clear and convincing evidence; (2) the record is ambiguous as to whether mother had adequate legal counsel, and had learned of her rights and DCF's burden; (3) there is no evidence that mother was informed that the children's foster parents did not have authority over contact between mother and the children, and they might never have that authority; and (4) the requirements of the Vermont Adoption Act, 15A V.S.A. § 1-101 et seq., apply to termination proceedings, and the requirements of that act were not followed.

Putting aside that mother did not file a timely notice of appeal, she failed to preserve her arguments by failing to adequately raise them below. Bull v. Pinkham Eng'g Assocs., 170 Vt. 450, 459 (2000) ("Contentions not raised or fairly presented to the trial court are not preserved for appeal."). Mother did not object to the family court's acceptance of her agreement at the termination hearing, nor did she ever indicate that her decision was not knowingly, intelligently, or voluntarily made. Indeed, she testified to the opposite—she stated that she agreed to give up her rights because she believed that it was in the children's best interests, she testified that she was not under the influence of any drugs that might affect her decision-making abilities, and she stated that she was "sure" that she wanted to give up her rights. These sentiments are clearly set forth in the agreement, affidavit, and waiver, which mother signed, and which were accepted into evidence without objection. Moreover, by transferring this matter back to the family court, mother was provided with an opportunity to challenge the validity of her agreement, and raise specific arguments to the family court. She failed to do so, and she cannot pursue them now for the first time on appeal. We note that the arguments that mother offers in support of her primary claim were similarly not raised below. Because mother waived her right to raise these arguments, we do not address them on appeal.

Notwithstanding the discussion above, we note that the record amply supports the family court's finding that mother voluntarily agreed to give up her residual parental rights, with a full understanding of the ramifications of her decision. In addition to the clear statements to this effect contained in the documents signed by mother, mother testified that she understood that by signing the affidavit in support of the agreement to relinquish her rights, she was making a final decision, and could not change her mind. She stated that she was confident that she had made the right decision. Mother acknowledged signing a waiver giving up her right to further notice and appearance with regard to hearings involving the children, and she testified that she understood that by signing the waiver, she would not receive any additional notices about hearings involving the children. She stated that this was the decision that she wanted to make. Mother indicated that she had seen a document from the children's foster parents, indicating that they intended to allow her to continue to see the children. Mother stated that she understood that this document was not legally enforceable. Mother indicated that she was satisfied with her attorney, a statement that is also reflected in her signed affidavit. The family court asked mother if she was making her decision of her own free will and whether she believed her decision was in the children's best interests. Mother responded affirmatively. The court specifically asked mother if she was satisfied that her action was in the children's best interests, and mother replied that it was. The family court did not err in accepting mother's agreement to relinquish her residual parental rights, and its decision that termination was in the children's best interests is supported by the evidence.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.),  
Specially Assigned