

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-145

SEPTEMBER TERM, 2005

In re C.L., Juvenile

} APPEALED FROM:  
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} Franklin Family Court  
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} DOCKET NO. 47-3-03 Frjv

Trial Judge: Brian L. Burgess

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

Mother and father separately appeal from an order terminating their parental rights in their son, C.L. We affirm.

C.L. was born on May 5, 2001. The Department for Children and Families (DCF) took custody of C.L. in 2003 after C.L. was seen in a hospital emergency room with multiple fractures and bruising. At the time, C.L. was only twenty-two months old. Just one month prior, C.L. was treated for a broken leg, but no other bruising, fractures, or other injuries were present. The injuries noted during C.L.'s second visit were extensive:

three fingernail sized bruises on the left lower thorax, another bruise on the left upper thorax, several bruises on his right back area of the shoulder blade, six small bruises under his right armpit, one bruise on the left front rib cage, swelling over the right clavicle, swelling on the lower portion of his left upper arm with small degree of motion allowed, multiple petechia\* on the back of his neck, hemorrhage in left eye, bruises on left upper forehead, scratches on the back of neck, swollen and red right-hand finger, bruise on the tip of the penis, bruised left ear, left elbow fracture, fractures to right and left clavicle and fractured left fifth finger.

Some of the injuries were older than others, but the fractured elbow and clavicles and the broken finger occurred within the month between C.L.'s two hospital visits. However the injuries occurred, mother agreed that she had neglected C.L. The child's injuries were readily apparent, and the court found that Any casually observant parent would have noticed [the] injuries, and would have notic[ed] their spread, in the ordinary course of parental interaction with the child over the course of a month's time.@

Before entering DCF custody, C.L. lived in a home with mother, mother's boyfriend, and the boyfriend's ten-year-old daughter. Neither the juvenile court nor DCF could determine which member (or members) of C.L.'s household caused the child's injuries. It was clear that the injuries were the result of abuse, however, which mother claimed to know nothing about. The boyfriend's ten-year-old daughter, who babysat for C.L., explained that some of the injuries occurred as a result of accidents when she was babysitting C.L. To ensure that C.L. was protected in the future, the case plan DCF prepared required mother to move to another residence where mother's boyfriend and his daughter were not living. DCF also directed mother to engage in counseling, take parenting classes, Acknowledge her role in the abuse@ of C.L., and demonstrate that she could supervise and care for C.L. in a safe environment free of any abuse.

After roughly six months of DCF intervention, mother had not secured alternative housing and she failed to engage in counseling consistently. For an extended period of time, mother knowingly misled a DCF social worker about her living arrangements by claiming she no longer lived with her boyfriend and his daughter, when in fact she did. Rather than move out, mother suggested that the juvenile court return C.L. to the home she shared with her boyfriend and his daughter. Mother explained that she had Achild proofed@ the home and that she and her boyfriend had obtained counseling for the ten-year-old girl.

When DCF removed C.L. from mother=s care, C.L.=s father was incarcerated. C.L. does not know his father and has not seen him since August 2002. Father has tried to maintain contact with the child by sending him hand-drawn cartoon greeting cards from time to time. Father has a long criminal history with twenty convictions, and he has other children with whom he also lacks a meaningful relationship. Father acknowledges that he needs instruction on parenting before he would be able to provide a home for C.L. after his release from prison.

Given the unlikelihood that either mother or father could assume a parenting role in C.L.=s life within a reasonable amount of time, the juvenile court terminated their parental rights and freed C.L. for adoption. Mother and father challenge that decision on different grounds. We address mother=s appeal first.

Mother claims that the juvenile court erred by failing to identify the causes and conditions that led the State to remove C.L. from her care. Mother=s argument can be reduced to a single point: unless and until the juvenile court determines the identity of C.L.=s abuser, mother=s parental rights should remain intact notwithstanding her acknowledged neglect of C.L.=s obvious injuries. We disagree. The juvenile court=s duty in termination-of-parental-rights cases is to determine how to meet the affected child=s best interests in light of four statutory criteria. In re K.F., 2004 VT 40, & 10, 176 Vt. 636 (mem.). The most important criterion is whether the parent will be able to resume his or her parental duties within a reasonable amount of time. Id. Termination is not appropriate if the parent is likely to remedy the problems that led to the child=s removal from the home within a reasonable amount of time after DCF=s intervention. See In re B.M., 165 Vt. 194, 199 (1996) (explaining that termination may not be ordered if a reasonable possibility exists that causes for state intervention can be remedied and the family reunited in a reasonable period of time). In this case, the Acauses and conditions@ that led to custody were mother=s failure to protect C.L. from abuse, irrespective of the abuser=s identity. The court found that the child=s injuries were obvious to any Acasually observant@ parent, and the record fully supports that finding. The court was presented with pictures of C.L. that show the child=s small body covered in bruises and other injuries. As DCF points out in its brief, A[d]ue to [mother=s] unwillingness or inability to provide a safe physical and nurturing environment for [C.L.], the mother is no further ahead than when the initial case plan was approved.@ Mother has not demonstrated any error in the court=s decision to terminate her rights under the circumstances.

Father=s claim on appeal is similarly unavailing. Father contends that termination is not appropriate because DCF never offered him reunification services. Moreover, father argues, DCF failed to consider placing C.L. with his paternal grandmother until father was released from prison and gained proper parenting skills. DCF=s efforts to help parents overcome the reasons for state intervention are relevant to whether the parents will be able to resume their parental duties within a reasonable time period. In re J.M., 170 Vt. 587, 589 (2000) (mem.). The agency=s efforts are not, however, dispositive of the issue. Ultimately, the juvenile court here was obligated to determine whether DCF met its burden to prove that father will not be able to resume his parental duties within a reasonable period of time. Id.

The juvenile court properly determined that the State met its burden as to father=s present and prospective inability to parent C.L. C.L. and father are estranged due to father=s repeated criminal offenses and consequent incarceration. The services DCF could offer were undisputably not available to father because he was imprisoned. Father admits that he needs education and training to become a reliable parent to C.L. When (and if) father will successfully complete the parenting education he needs remains uncertain. Moreover, the court was convinced by father=s lack of a relationship with his other children that father is unlikely Ato follow through with establishing a long-term and meaningful relationship with [C.L.]@ Considering those facts, the child=s tender age and his need for permanency and stability, the juvenile court concluded that C.L.=s best interests were served by freeing him for adoption. No reversible error appears.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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<sup>\*</sup> According to the evidence, Apetechia@ are tiny broken blood vessels associated with trauma.