

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-210

SEPTEMBER TERM, 2005

In re N.B., III, Juvenile

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APPEALED FROM:

Bennington Family Court

DOCKET NO. 219-12-02 Bnjv

Trial Judge: Nancy Corsones

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

Father appeals the termination of his parental rights (TPR) in his twelve-year old son N.B. Father contends that the trial court Aerroneously focused on whether [father] was deserving of parent-child contact@ rather than on N.B.=s best interests. We find no error and affirm.

N.B. came into State custody in 2002 after his mother dropped him off at the Bennington Police Department complaining that he was unmanageable. At the time, father was serving a prison sentence of six to fifteen years for aggravated domestic assault. After reunification efforts with mother failed, the Department for Children and Families filed a petition to terminate both mother and father=s parental rights. The court took evidence on the petition over two days in early 2005.

In its order granting DCF=s petition, the court found that father was physically and emotionally abusive to mother in N.B.=s presence. By 2001, N.B.=s behavior, at school and at home, was violent and aggressive. In 2003, DCF placed him in a residential facility for evaluation. The evaluation noted N.B.=s impulsiveness and defiance to authority and concluded that N.B. was not stable enough to return to a regular public school classroom. The evaluation further noted that N.B. believed that Ato have power as a male was always coupled with aggression and /or violence.@

Violence and aggression were the reasons N.B.=s father was virtually absent from N.B.=s life. Father has numerous convictions for domestic-violence-related offenses, and from 1996 through at least early 2005, father was incarcerated more often than he was free. At the time of the TPR hearings, father=s latest release date from prison was 2012. The court found that father could be released as early as 2011 if he received all of the good-time credits allowable by law and Department of Corrections regulations. By 2011, however, N.B. will be an adult. When asked during the TPR hearing how long N.B. should have to wait for father to Aget [his] life together,@ father responded, AI can=t answer that question.@ Although father recognizes that his poor choices have led to his trouble with the law, he still blames DCF and DOC officials for not having contact with N.B.

Father=s appeal of the TPR order centers on his belief that the trial court focused too much on whether father deserved contact with N.B. and not enough on what is best for the child. We disagree. When granting a petition to terminate a parent=s rights, the juvenile court must conclude that termination is in the child=s best interests. In re A.F., 160 Vt. 175, 177 (1993); see 33 V.S.A. ' 5540 (requiring the juvenile court to determine whether termination of parental rights is in child=s best interests). We will uphold the court=s findings if based on the evidence, and we will affirm its conclusions if supported by the findings. In re A.F., 160 Vt. at 178. When analyzing the child=s best interests, the Amost critical factor@ is whether the parent will be able to resume his parental duties within a reasonable time period as viewed from the child=s perspective. Id. at 177; 33 V.S.A. ' 5540(3).

In this case, the juvenile court found that father was not a viable resource for N.B. because of father=s repeated incarcerations since the child was roughly three years old. Even when father was released from prison for five months, Ahe failed to pursue, even minimally, the requirements of the case plan.@ The court did not focus on whether father Adeserved@ contact with his son, but on whether father could reasonable be expected to care appropriately for the child given father=s demonstrated inability to stay out of jail. The overwhelming evidence establishes that father will not be able to resume his parental duties within a reasonable time period.

Notwithstanding the juvenile court=s findings on father=s inability to parent N.B. within a reasonable time period,

father complains that the court failed to address whether parent-child contact was therapeutic for N.B. Father correctly cites the testimony of N.B.'s therapist that some contact with father could help N.B. work out his emotional and psychological issues. How much weight to give the therapist's testimony was, however, a matter for the trial court alone to decide. In re A.F., 160 Vt. at 178. Even if the court found that contact would have been therapeutic, termination of father's parental rights was proper if the court determined that the child's best interests required it—precisely what the court found in this case. Consequently, we discern no basis to overturn the termination order considering that the court applied the proper standard to the evidence, which supports the court's findings and conclusions.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice