

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-223

OCTOBER TERM, 2006

In re C.W. and C.W., Juveniles

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APPEALED FROM:

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Addison Family Court

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DOCKET NO. 41/42-5-05 AnJv

Trial Judge: Matthew I. Katz

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

Mother appeals the family court=s order terminating her parental rights with respect to her twin sons. We affirm.

Mother gave birth to the twins on February 7, 2005, when she was seventeen years old. The infants were born premature and kept at the hospital the first three weeks of their lives. From early March until late April 2005, mother and father lived at the maternal grandmother=s apartment. The couple moved into their own

apartment in late April 2005. The family court placed the twins in the custody of the Department for Children and Families (DCF) on May 26, 2005 after medical testing revealed that the infants had suffered multiple fractures indicative of physical abuse. Mother contested the allegations, but the family court determined that the children were in need of care and supervision (CHINS) after finding that their injuries were consistent with multiple incidents of abuse over a period of weeks or months. In November 2005, DCF filed a petition to terminate parental rights based on the parents' failure to take responsibility for the children's numerous and unexplained injuries. Father voluntarily relinquished his parental rights, and, following four days of hearings in February 2006, the family court terminated mother's parental rights. On appeal, mother argues that the court erred by focusing on irrelevant considerations and by making unsupported findings. The children join the State's brief asking this Court to affirm the family court's decision.

Mother first argues that in making its termination decision, the family court impermissibly focused on irrelevant factors, such as comparing the foster mother's superior parenting credentials with mother's inexperience, youth, lack of schooling, unstable housing situation, and failure to obtain a driver's license. According to mother, because none of these factors were a condition or cause of the original CHINS petition, they are irrelevant. Mother contends that the court should have limited its inquiry to her fitness as a parent and to the conditions that led to the children being removed from her custody.

We find no merit to this argument, which is based on court statements taken out of context. The family court had already determined by clear and convincing evidence at the merits hearing that one or both of the parents had inflicted numerous injuries on their children over a period of weeks or months, and that neither parent took appropriate action to protect the children. At the disposition hearing in which DCF was seeking termination of parental rights, the relevant question for the court was whether it was in the children's best interests, considering the criteria set forth in 33 V.S.A. ' 5540, to terminate mother's residual parental rights. The court carefully examined each of the statutory criteria, including (1) what kind of interaction and relationship the children had with their natural and foster parents; (2) whether mother played a constructive role in the children's lives; and (3) whether mother was likely to be able to resume her parental duties within a reasonable period of time. In considering these factors, the court properly examined various circumstances related to

whether mother would be able to resume her parenting duties, such as the children=s extraordinary needs resulting from having been abused in the past, the progress the children had made in the foster mother=s care, and mother=s lack of experience or disinterest in dealing with the children=s needs. See In re M.M., 159 Vt. 517, 524 (1993) (family court did not err in considering child=s positive relationship with her foster family). The court=s findings concerning the foster mother=s parental care demonstrated the level of commitment required to address the children=s significant needs, and its findings regarding mother=s shortcomings demonstrated mother=s failure or inability to meet the case plan goals or the children=s health and safety needs. These findings were entirely relevant to address the questions raised in the termination proceeding.

Mother also argues that the evidence does not support the family court=s findings that (1) she should have recognized that the twins were being abused and should have protected them; (2) she neglected the twins= medical needs; and (3) she cannot be trusted to protect the twins in the future because she did not accept that the infants had been abused. Again, we find no merit to this argument. Regarding the court=s finding that mother should have recognized the abuse, there was evidence that (1) the infants suffered multiple fractures over a period of weeks or months; (2) mother was the infants= primary care giver and was rarely away from the twins; (3) any caretaker would have been able to discern the infants= distress at having suffered the abuse that caused the fractures; (4) the bones of infants are flexible and difficult to break; substantial force is needed to break them; and (5) a reasonably alert parent would have known that the children were being abused. The fact that two different doctors did not suspect abuse when the infants were brought in for regular medical checkups does not demonstrate that the primary care provider could not have been expected to be aware of the numerous and serious incidents of abuse that these children suffered while in her care.

Regarding the court=s finding of medical neglect, the evidence indicated that mother did not take the children to the doctor except for their regular medical checkups, even though they suffered multiple fractures over a significant period of time and daycare providers gave her notice that the children were experiencing pain. Finally, regarding the last challenged finding, the evidence indicated that mother continued to blame others and had not taken any responsibility at the time of the termination hearing for the abuse that the children suffered while under her care. In short, the evidence supported the challenged findings, as well as the court=s order

terminating mother=s residual parental rights. See In re S.B., 174 Vt. 427, 429 (2002) (appellate court=s role is not to second-guess family court or reweigh evidence, but rather to determine whether court abused its discretion in terminating parental rights).

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice