

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-051

JUNE TERM, 2007

In re C.M., Juvenile

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APPEALED FROM:

Chittenden Family Court

DOCKET NO. F288-6-04 CnJv

Trial Judge: David A. Jenkins

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

Mother appeals an order of the family court terminating her parental rights. Father's rights were also terminated, but he does not appeal. We affirm.

A significant aspect of the background of this case is that mother has previously had her parental rights terminated with respect to two of her other children. See In re T.C. and B.I., No. 2001-449 (slip op.) (January 30, 2002). In that case, the family court noted that mother had affection for her children, but further concluded that (1) mother had a clear and substantial need for counseling and services to improve her parenting skills, (2) nonetheless, mother refused to acknowledge her need for assistance, and (3) she also refused to accept the services offered to her. These factors—allegedly unchanged in the intervening years—also form the basis for the family court's decision to terminate mother's rights with respect to her youngest child, C.M.

C.M. was born on April 24, 2004. He was taken into custody by the Department for Families and Children (DCF) on June 1, 2004, when DCF filed a petition seeking to find C.M. a child in need of care and supervision (CHINS) based on mother's alleged inability to properly care for C.M. A merits hearing was held on September 1, 2004, at which C.M. was determined to be CHINS. After one failed attempt at foster care placement, C.M. was placed with the foster family with whom he still lived at the time of the proceedings below. The CHINS determination was based on the fact that mother had a demonstrated inability to care for C.M.; to the extent she had received services, they had not improved her parenting skills; and she did not believe she required any services. In October 2004, DCF issued a disposition report recommending termination of parental rights, although the report also recommended service for mother and couples counseling for mother and father together. The family court proceedings for a period of time after this date focused on visitation issues. The disposition hearing was held on January 2, 2006. On January 10, 2006, the family court issued its decision terminating mother's parental rights to C.M. The court based its decision on the following:

(1) mother had not meaningfully participated in the services called for in the case plan; (2) she was unlikely to be able to resume parental duties in a reasonable period of time, which, according to the court, had already passed; (3) C.M. could not wait any longer for stability and permanency in his life; and (4) mother had played no constructive role in C.M.'s life up until that point.

Mother filed a timely appeal. In reviewing the family court's decision, "[o]ur role is not to second-guess the family court or to reweigh the evidence, but rather to determine whether the court abused its discretion in terminating mother's parental rights." In re S.B., 174 Vt. 427, 429 (2002) (mem.). We will uphold the family court's termination order if clear and convincing evidence supports its findings, which, in turn, support the court's conclusions. Id.

Mother first argues that the family court erred in concluding that a reasonable period of time for her to demonstrate her parenting abilities had already passed by the time of the termination hearing. Under 33 V.S.A. § 5540(3), the family court must consider "the likelihood that the parent will be able to resume parental duties in a reasonable period of time." We have held that this factor is the most important of the factors in the statutory analysis. Id. Whether a period of time is "reasonable" must be determined from the perspective of the child. In re C.L., 2005 VT 34, ¶ 17, 178 Vt. 558 (mem.).

Citing In re B.M., 165 Vt. 331, 337 (1996), mother contends that this factor must be assessed prospectively, in terms of mother's ability to parent in the future, rather than retrospectively, that is, based on mother's parenting difficulties in the past. In fact, the family court did consider whether mother would be able to develop sufficient parenting skills in the future, although the court's determination that she would not be able to develop such skills was properly based on its observation that mother had failed to develop those skills in the time already allowed her. Further, while the father in B.M. had made "substantial" progress in parenting skills by the time of the termination hearing—although not within the confines of the DCF case plan—here there is no indication that mother's parenting abilities were tending to improve. In addition, in B.M., termination was sought after a modification of the original DCF disposition report. Here, termination was the recommendation in the original disposition report. Mother had some fifteen months following the filing of the termination petition in which to demonstrate improved parenting skills, or even a recognition of her deficiencies in that area. Thus, mother's situation here did not beg the question of whether she had been afforded a reasonable period of time to demonstrate parenting ability.

In a related vein, mother contends that, on a factual level, there was some evidence that she participated in services, albeit services different than those recommended by DCF, and without informing DCF that she was doing so. Despite the existence of this evidence, however, there is still ample evidence in the record supporting the family court's finding that mother's spotty engagement with services was insufficient to demonstrate either a recognition of or commitment to addressing her substantial and persistent parenting deficits. The family court's findings are adequately supported.

Mother also contends that, because C.M. was already experiencing permanency in his foster home, termination of mother's parental rights was not necessary to meet C.M.'s needs. This is not the inquiry, however. Where a parent will not be able to resume a parental role in a reasonable period of time, it does not serve the interests of permanency and stability to avoid the termination decision.

Finally, mother also argues that the family court erred in concluding that mother played no constructive role in C.M.'s life. Again, mother cites evidence of positive visitation experiences with C.M., but this does not negate the substantial evidence that mother did not possess the ability to assume an appropriate parental role.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice