

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2007-053

OCTOBER TERM, 2007

In re M.K. & J.K., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Chittenden Family Court
	}	
	}	
	}	DOCKET NO. F455/456-10-02 CnJv

Trial Judge: Thomas J. Devine

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

Mother and father appeal from the family court’s order terminating their residual parental rights in M.K. and J.K. Mother argues that the court’s conclusion that termination was in the children’s best interests is not supported by the evidence or the court’s findings. Father argues that the court misapprehended the evidence regarding the benefits of parent-child contact. We affirm.

Mother and father are the parents of M.K., born in May 1992, and J.K., born in July 1993. Mother also has three older children from prior relationships. Parents have a lengthy history of drug abuse and criminal activity. The Department for Children and Families (DCF) first became involved with the family due to a series of issues involving mother’s older children, including an allegation, substantiated by DCF, that father sexually assaulted mother’s oldest daughter. Also, mother and her oldest daughter were physically assaulted by mother’s oldest sons in the presence of M.K. and J.K. In August 2002, DCF interviewed M.K. and J.K. in connection with a report that mother was using and mixing drugs. J.K. indicated that mother slept all day and that individuals in their home used to smoke pot and crack. Mother acknowledged using marijuana and agreed to take a drug test, but DCF had difficulty finding mother so that the test could be administered.

In early October 2002, DCF filed a petition alleging that M.K. and J.K. were children in need of care or supervision (CHINS). The court issued a protective order, which included a requirement that mother remain drug-free. Mother continued to use drugs, however, and she was also charged with a crime shortly after the protective order was issued. Less than a week thereafter, a fire marshal discovered mother in her apartment in a highly intoxicated state. The apartment had no heat and M.K. was wrapped in blankets, trying to stay warm. Not long thereafter, the court granted DCF’s request for temporary custody. At a merits hearing in

November 2002, parents admitted that the children were CHINS. The court ordered that the children continue to be in DCF custody but allowed them to remain at home with mother under protective supervision. Mother continued to use cocaine, and she failed each drug test she was given. At a hearing in January 2003, the court adopted DCF's disposition report and allowed the children to remain in mother's custody under protective supervision. No services were mandated for father because, according to mother, he was no longer part of the family. Almost immediately after the disposition order was issued, mother failed to comply with its requirements. She refused to engage in substance abuse treatment, or to submit to random urine tests. In March 2003, DCF sought a modification of the disposition order, and mother stipulated that she failed to comply with the original plan of services. The children were removed from mother's care and placed with foster parents.

In September 2004, DCF moved to terminate parents' residual rights, and after numerous days of hearings, the court issued its order granting DCF's request. As relevant to this appeal, the court found that the children had a complex relationship with parents. They loved mother, and M.K. clearly loved father; parents in turn loved the children. Yet the parent-child bond was in many ways skewed. J.K. wanted to be with mother because she was worried about her and wanted to take care of her. M.K. had similarly assumed an adult role in dealing with father. The court concluded that while the parent-child bond was powerful, it was ultimately destructive because it skewed the children's sense of self, subjected the children to stress, and forced them to become caregivers for adults in their world.

Turning to the most important factor in the best-interest analysis, the court concluded that neither parent would be able to resume parental duties within a reasonable period of time. It found that mother's repeated relapses with cocaine raised great concern about her long-term ability to remain drug-free. Father's refusal to abstain from marijuana use despite treatment recommendations was also a tremendous problem, as was his refusal to engage with the case plan beyond the initial substance-abuse assessment. The court found that parents' drug use interfered with their ability to assume basic care responsibilities for the children, let alone meet the special needs of J.K. and M.K., who had complex psychological and emotional needs that required a high degree of involvement, insight, patience and sensitivity. Parents' housing situation was also unstable. Mother was in and out of jail and father's addresses were well-known to police as locations for nuisance calls and domestic disturbances. The court also found that father had serious anger and self-control issues. It concluded that neither parent had yet demonstrated the level of insight and personal commitment that the children's emotional and physical needs required, and it found little likelihood that either parent could resume parental duties within any reasonable time.

The court also concluded that, although parents loved the children, they had not played a constructive role in the children's lives. It explained that while the children lived with parents, parents engaged in rampant drug use, and they appeared unable to live law-abiding lives. After the children were removed, parents had some positive visits with children but the children also witnessed mother incarcerated repeatedly for furlough violations related to drug use, and they witnessed father's rages. Finally, the court rejected parents' assertion that termination of their rights was unnecessary given the option of long-term foster care. This appeal followed.

On appeal, mother argues that the court erred in concluding that the termination of her rights was in the children's best interests. She maintains that while certain aspects of the parent-child relationship may have been skewed, the overwhelming evidence fell far short of supporting a conclusion that the bond between mother and children was destructive. She points to testimony from J.K.'s therapist that J.K. was connected to parents, and especially mother. She also cites testimony from M.K.'s therapist that continued contact between M.K. and his parents was desirable and that cutting off contact would not serve his best interests. Mother appears to suggest that long-term foster care was appropriate because the children were bonded with mother, strongly bonded with one another, and because they would greatly benefit from continued contact with one another. Mother also argues that the court's analysis of her ability to parent was not forward-looking, and that the court's own findings support a conclusion that she could resume her parental duties within a reasonable period of time. She points to evidence that she was making progress in remaining drug-free and developing job skills, and notes that the children were having difficulty in adjusting to their foster placements. Finally, mother asserts that the court erred in finding that she had not been a constructive force in the children's lives because the evidence shows that she continued to have meaningful and appropriate contact with the children and it was undisputed that there was much love and affection between the parents and children.

To determine if termination of parental rights is in a child's best interests, the court must consider four statutory factors. See 33 V.S.A. § 5540. The most important factor in the court's analysis is the likelihood that the natural parent will be able to resume his or her parental duties within a reasonable period of time. In re B.M., 165 Vt. 331, 336 (1996). As long as the court applied the proper standard, we will not disturb its findings on appeal unless they are clearly erroneous; we will affirm its conclusions if they are supported by the findings. In re G.S., 153 Vt. 651, 652 (1990) (mem.).

We find no basis to disturb the court's decision. Its conclusion is well-supported by its findings, which are in turn supported by the evidence. While mother cites evidence that she believes supports findings opposite to those made by the family court, she fails to demonstrate that any of the court's findings are clearly erroneous. Her arguments go to the weight of the evidence, a matter exclusively within the province of the family court. As we have repeatedly stated, our role on appeal is not to "second-guess the family court or to reweigh the evidence" on appeal, "but rather to determine whether the court abused its discretion" in terminating parental rights. In re S.B., 174 Vt. 427, 429 (2002) (mem.). Mother fails to demonstrate that the court abused its discretion here.

As set forth above, the court recognized the strong bond between mother and children but ultimately concluded that the bond was destructive, serving parents' needs rather than the best interests of the children. It found that while mother loved the children, she could not meet their needs due to her drug use and frequent incarcerations. See In re M.B., 162 Vt. 229, 237 (1994) (evidence of parent's love for child and desire to have custody did not controvert evidence that termination was appropriate based on other statutory best-interest factors). Although mother had ample opportunity to change her behavior during the years that the children were in DCF custody, she failed to do so, and the court found little reason to believe that more time would produce markedly different results. The court's analysis was plainly forward-looking, and its

findings amply support its conclusion that termination of mother's rights was in the children's best interests.

We similarly reject mother's suggestion that termination of her rights was unnecessary because long-term foster care was appropriate. The family court acted well within its discretion in rejecting this option. See 33 V.S.A. § 5531(d)(4) (long-term foster care may be appropriate where commissioner of DCF has demonstrated to satisfaction of the family court a compelling reason why it is not in child's best interests to return home, to have residual parental rights terminated and be released for adoption, or to be placed with a fit and willing relative or legal guardian). Applying the standard found in § 5531(d)(4), the court found no compelling reason why parents' rights should not be terminated or why the children should not be freed for adoption, and it was not persuaded that the children necessarily benefited from contact with parents. The court also found that neither parent had advocated a kinship placement nor had any relative come forward to pursue a guardianship. It thus concluded that any uncertainties as to whether the children would be adopted in the future did not provide grounds to override all of the other overwhelming evidence that supported termination of parents' rights as being in the children's best interests. Mother fails to demonstrate that the court erred in reaching this conclusion.

Father's arguments on appeal are equally unavailing. Father argues that the court seriously misapprehended the record. He states that while the court found the testimony of M.K.'s therapist credible, its summary of that testimony was woefully incomplete. According to father, the court's failure to specifically discuss the therapist's testimony that the father-child bond was beneficial and that its severance would be detrimental to M.K. conveyed the impression that the court overlooked this evidence in reaching its conclusion. Father also asserts that the court provided an incomplete summary of the testimony of J.K.'s therapist, and it confused the testimony of J.K.'s therapist with that of M.K.'s therapist when discussing the parent-child bond as being skewed. Finally, he maintains that the court's finding that M.K. assumed an adult role in dealing with father is unsupported by the record, and more importantly, that there was no evidence that the father-son bond skewed the son's sense of self, subjected him to stress, and forced the child to be a care giver for the adults in his world.

These arguments are without merit. The family court's decision reflects its careful and thorough analysis of the evidence, and there is no support for father's suggestion that the court failed to consider key testimony. See In re M.B., 162 Vt. at 239 (rejecting parent's claim that family court failed to carefully examine evidence, and finding that parent's "vague and conclusory allegation of error . . . falls far short of demonstrating clear error"). To the extent that M.K.'s therapist testified that the parent-child bond was beneficial and its severance would be detrimental to M.K., such testimony is not inconsistent with the court's ultimate conclusion, based on extensive findings, that termination of father's residual rights was in the children's best interests.

Moreover, contrary to father's assertion, the court's finding that M.K. had assumed an adult role in dealing with father is supported by the evidence. The example cited by the court, where M.K. apologized to a DCF employee when father launched into a tirade in M.K.'s presence, supports this finding. Indeed, the court found that father would frequently burst into tirades about various DCF workers in the children's presence, and he engaged in age-

inappropriate conversations with the children. This and other behavior demonstrated father's lack of insight into and sensitivity to the children's emotional needs. There was ample evidence in this case to show that the parent-child bond was skewed and destructive. The fact that the court may have relied on language used by J.K.'s therapist to describe elements of a destructive parent-child bond is of no moment. We note that in addition to finding the parent-child bond destructive, the court also found that father had not played a constructive role in the children's lives and that he would not be able to parent within a reasonable period of time. Father does not challenge any of these findings on appeal. We find no error in the court's conclusion that termination of father's rights was in the children's best interests.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice