

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-485

APRIL TERM, 2008

In re S.G. and A.G., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Caledonia Family Court
	}	
	}	DOCKET NO. 102/103-9-06 CaJv
		Trial Judge: Harold E. Eaton, Jr.

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

Mother appeals termination of her parental rights to her two children, S.G. and A.G. On appeal, mother argues that the trial court did not properly weigh the statutory best-interests factors. We affirm.

The court found the following facts. Mother's two children, S.G. and A.G., were taken into the custody of the Department for Children and Families (DCF) in September 2006 after A.G. suffered a fractured arm caused by blunt force trauma by an adult. In November 2006, both parents stipulated that the two were children in need of care or supervision (CHINS) based on abuse. The parents did not stipulate as to who caused A.G.'s broken arm, although they did admit that they were the sole caretakers of A.G. and that a medical expert had concluded that the parents were responsible for the injury. The disposition order contained concurrent goals of reunification and adoption. It also set goals for the parents to attain including accepting responsibility for A.G.'s broken arm, working on safety issues, and increasing their understanding of the children's developmental needs. In addition, mother's individual goals required her to participate in therapy and parent education, to maintain parent visitation, and to participate in treatment team meetings. Mother was also scheduled to have a forensic evaluation.

DCF changed the goal to termination of parental rights in July 2007. The family court held a termination hearing on November 15, 2007. At the close of the hearing, mother's attorney suggested that the court should wait on issuing an order until mother's forensic evaluation was completed. The court declined to postpone the hearing, and issued a written order. In its decision, the court found that although mother had made an effort to meet the goals of the disposition order, she had made little progress on her plan of services and that her stagnation was a substantial change in material circumstances. The court explained that although mother attended counseling sporadically and participated in parent education, she had not demonstrated any significant progress in improving her parenting skills. In assessing the best interests of the children, the court noted that mother had regularly attended visits with the children, but that these visits "cause them distress, as evidenced by their acting out behavior in the days following the visitation." The court

further found that the children were doing well in their foster home and their developmental abilities had improved in the time they were in foster care. The court concluded that mother would not be able to resume parenting within a reasonable period of time because she had not improved her parenting skills, nor had she recognized the risk of harm posed by father to the children or shown a willingness to take steps to address this concern. The court concluded that termination was in the children's best interests. Mother appeals.

To terminate residual parental rights, the family court must undergo a two-step process. In re H.A., 153 Vt. 504, 514 (1990). First, "[t]he State must prove by clear and convincing evidence that there has been a material change in circumstances." In re J.R., 164 Vt. 267, 270 (1995). Next, the court must determine whether the best interests of the child require that all parental rights and responsibilities be terminated. In re H.A., 153 Vt. at 514. In determining the best interests of the child, the statute directs the court to consider four factors: the child's relationship with his parents and foster parents; the child's adjustment to his environment; "[t]he likelihood that the natural parent will be able to resume parental duties within a reasonable period of time"; and whether the natural parent plays a constructive role in the child's welfare. 33 V.S.A. § 5540. The most important factor is whether the parent will be able to resume parenting within a reasonable period of time. In re E.B., 158 Vt. 8, 12 (1992). On appeal, we will affirm the court's conclusions if supported by the findings, and we will uphold the findings unless they are clearly erroneous. In re C.H., 170 Vt. 603, 605 (2000) (mem.).

Mother does not challenge the family court's conclusion that DCF met its burden of demonstrating by clear and convincing evidence a substantial change in material circumstances due to stagnation. Mother argues that the family court's analysis of the children's best interests was erroneous on three factors: (1) the children's relationship with mother; (2) the children's adjustment to their foster home; and (3) mother's ability to resume parental duties. See 33 V.S.A. § 5540. We address each of these claims in turn.

First, mother claims that the family court's findings pertaining to her relationship with the children is erroneous because the evidence does not support the court's finding that her visits caused the children distress. See 33 V.S.A. § 5540(1) (directing the court to consider the child's relationship with his or her natural parents). Mother contends that the court's finding is inconsistent with its observation that the children's behavior improved when father stopped participating in the visits, and the foster mother's testimony that she saw an improvement in the children's behavior after father stopped attending visits. We conclude that the family court's finding that mother's visits caused the children distress is supported by the evidence. Although the children's behavior may have improved after father ceased participating in the visits, there was no evidence that the children's acting-out behavior disappeared. The children's foster mother testified that the children still exhibited aggressive and angry behavior after father stopped attending, but that it was not as pronounced.

Next, mother argues that the court erred in finding that the children's adjustment to their foster home was a positive aspect that would lead to stability because there was no indication that the foster parents wanted to adopt the children. The statute requires the court to evaluate a child's adjustment to his home, school and community. 33 V.S.A. § 5540(2). On this factor, the court found that the children were happy in their foster home and had a "right to a stable home life." Mother argues that without adoption the children will be subject to long-term foster care, and will not have such stability. While we recognize that a permanent, stable placement is in the children's best interests, and that long-term foster care is not the ideal outcome for children, when

considering the children's best interests, the family court is not required to find that the children are likely to be adopted following termination. See In re E.B., 158 Vt. 8, 15 (1992) (“[T]ermination of residual parental rights does not depend on the existence of an alternative placement.”). The court's findings that both children had improved in the time they spent with their foster parents and had a loving relationship with them are supported by the evidence.

Finally, mother contends that the court's analysis of mother's ability to resume parenting within a reasonable time was erroneous because the court issued its decision before mother completed a forensic evaluation. Mother was scheduled to complete a psychological evaluation. She attended a first visit in May or June 2007. Her second visit was not until November because she missed an appointment during the summer. A third and final visit was scheduled after the termination hearing. Mother argues that the court abused its discretion in declining to postpone the termination hearing until the evaluation was completed. The trial court found that the delay in completing the evaluation was due to mother's failure to attend the scheduled summer appointment. The court further explained that the six-month delay, from the standpoint of the children, “is enormous,” and mother's failure to schedule and attend the visits demonstrates “a lack of appreciation by mother of the importance of this evaluation in mother's efforts to regain custody of her children.”

We conclude that the court did not abuse its discretion in declining to postpone the termination hearing. Mother had ample time to complete the evaluation and the trial court was not required to wait until mother followed through on her obligation to complete a forensic evaluation. See In re J.F., 2006 VT 45, ¶ 11, 180 Vt. 583 (mem.) (noting that parents' failure to follow through on a court-ordered forensic evaluation, among other things, demonstrated the parents had not made progress in addressing the issues that brought their children into DCF custody). Moreover, the trial court's finding that mother would not be able to resume parenting the children within a reasonable time is supported by the evidence. The court found that although mother attended parent education, she “could not follow through on an on-going basis,” and “has not been able to sustain any gains she has made in parenting classes.” The court concluded that “[m]other has made little, if any, progress on her plan of services, despite the passage of an adequate time to do so.” The court properly assessed the statutory best-interests factors and its findings are supported by the evidence.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice