

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-137

AUGUST TERM, 2008

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| In re E.D. and J.D., Juveniles | } | APPEALED FROM: |
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| | } | Lamoille Family Court |
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| | } | DOCKET NO. F35/36-8-05 LeJv |
| | | |
| | | Trial Judge: Brian J. Grearson |

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

Mother appeals the family court's order terminating her parental rights with respect to her children E.D., born in October 1996, and J.D., born in November 1998. We affirm.

In August 2005, the Department for Children and Families (DCF) filed a petition alleging that E.D. and J.D. were children in need of care and supervision (CHINS). The petition alleged that father had sexually abused E.D., that mother had failed to protect E.D. from father, and that mother had refused to take J.D., who is autistic, to his medical appointments. In November 2005, the parents stipulated to the court's finding of CHINS, and the following month the court issued a disposition order providing for continued DCF custody and guardianship for both children. The order adopted, and the parties stipulated to, a disposition report requiring, among other things, that mother maintain safe and suitable housing, engage in individual counseling relating to her own childhood trauma, participate in parent education, maintain employment, and participate in regular visits with the children. The report warned that DCF would file a termination petition if the parents did not make significant progress in the following six months.

In June 2007, DCF filed petitions to terminate the parents' residual rights, noting that mother had failed to comply with the case plan goals and was living with a man substantiated for physical abuse. Father voluntarily relinquished his parental rights during the termination hearing, which took place over two days in February 2008. Following the hearing, the family court granted DCF's petition based on its conclusion that mother's ability to care for the children had deteriorated and that termination of her parental rights was in the children's best interests.

On appeal, mother argues that the court's decision has no rational basis with respect to J.D. because the goal for J.D. is long-term foster care and her continued contact with J.D. is in the child's best interests. Mother further argues that the court's decision to terminate her parental rights to E.D. was based, in part, on its mistaken belief that E.D.'s foster family was planning to adopt E.D. and that E.D. did not want any more contact with mother.

Neither argument has merit. As for mother's argument concerning J.D., the family court did not find that the goal for the child was long-term foster care or that continued contact with mother was in the child's best interests. Rather, the court stated that J.D.'s foster family would be willing to adopt J.D. if comprehensive services remained available, but acknowledged that J.D.'s need for significant services presented an obstacle to adoption. The court further found that although mother loved her children and continued to play an active role in some aspects of their lives, her failure to engage in services and to recognize the negative impact of her conduct on the children outweighed any benefits of continued contact. The court was not required to find that the children were likely to be adopted following termination. See *In re E.B.*, 158 Vt. 8, 15 (1992) (noting that rejection of foster family as adoptive parents did not undermine court's termination order). Rather, the court was required only to apply the statutory factors contained in 33 V.S.A. § 5540 to the evidence. See *In re T.T.*, 2005 VT 30, ¶ 7, 178 Vt. 496 (“[O]nce the family court applies the criteria in § 5540 and determines that the child's best interests warrant giving the State custody of the child without limitation as to adoption, the court need not revisit the permanency hearing options contained in 33 V.S.A. § 5531(d) and explain why it is choosing termination over other options enumerated therein.”). Here, mother does not challenge the family court's numerous findings and conclusions demonstrating that each of the § 5540 factors support its termination order and that mother is incapable of caring for her children, who have substantial needs.*

Mother's arguments regarding E.D. fare no better. At various points in its decision, the court found that mother had had minimal contact with E.D. in the previous six months, that E.D. had not requested telephone contact with mother, and that the plan was to seek adoption for E.D. The record supports these findings. Nothing in the record indicates that the court decided to terminate mother's rights based on the assumption that adoption was imminent or imperative. Plainly, the court's termination order was based on mother's failure over a significant period of time to address longstanding problems that made her incapable, now and in the foreseeable future, of taking care of children who required substantial services.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

* We note that 33 V.S.A. §§ 5531 and 5540 were repealed effective June 2008, subsequent to the court's February 2008 order. 2007, No. 185 (Adj. Sess.), § 12.