

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-140

AUGUST TERM, 2008

In re D.G. and I.G., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Franklin Family Court
	}	
	}	
	}	DOCKET NO. 37/38-3-05 FrJv

Trial Judge: Howard E. VanBenthuisen

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

Father appeals the family court's order terminating his parental rights with respect to his two sons, D.G. and L.G. We affirm.

D.G. and L.G. were born in October 1999 and May 2001, respectively. The Department For Children and Families (DCF) first became involved with the family in 2002. Father was incarcerated throughout 2003 and into 2004. Later in 2004, the family went to Virginia so that father could avoid further incarceration. Mother returned to Vermont with the boys in June 2005, two months after the family court issued a pick-up order for the children. On her return, mother stipulated to the boys being children in need of care and supervision (CHINS). The ensuing disposition order continued DCF custody and adopted a case-plan goal of reunification with mother. Meanwhile, father remained on the run until 2006, when he was arrested in Virginia and eventually returned to Vermont for prosecution. He is currently serving a three-to-five-year sentence, with a minimum release date of October 2009 and a maximum release date of October 2014.

In April 2007, DCF filed separate petitions to terminate father's and mother's parental rights. A hearing was held in January 2008 on the petition to terminate father's parental rights. Following the hearing, the family court granted the petition, concluding that father's ability to parent the boys had stagnated, and that the best interests of the children warranted termination because father had played no constructive role in the boys' lives and would be unable to resume parental duties within a reasonable period of time. Shortly after the family court issued its termination decision, the court held a permanency-planning hearing at which it approved a case plan that transferred custody of the boys to mother.

On appeal, father argues that the family court improperly focused on whether he would be able to resume his parental duties within a reasonable period of time. According to father, this factor makes little sense, given that he would have only a noncustodial role with the children in the future. In father's view, the court should have focused on other statutory factors concerning the boys' relationship with him and other persons. Father suggests that the termination order was inappropriate absent specific evidence that the children would be harmed by his serving a noncustodial role in the children's lives in the future.

We find no merit to this argument. First, the fact that father would most likely be relegated to a noncustodial role, if any, in the future, does not insulate him from the criteria set forth in 33 V.S.A. § 5540. See *In re M.B.*, 162 Vt. 229, 239 (1994) (noting that termination of parental rights applies to all parental rights, including visitation). Nothing in the statute or our case law requires the family court to speculate on the type of role that a parent might have in a child's life in the future. Second, even if the court had been obligated to focus exclusively on the factors in § 5540 concerning the boys' relationship with father and others, father would not have fared any better. The court examined each of the statutory factors, including those that father would have the court stress. See *In re T.T.*, 2005 VT 30, ¶ 5, 178 Vt. 496 (mem.) (noting that the court is required to weigh best-interest factors contained in § 5540 to determine whether termination of parental rights is warranted). The court's review of those factors revealed that father had played no constructive role in the children's lives, had had virtually no communication with the children since May 2005, and had done nothing to address his tendencies toward violence and criminal activity. On the other hand, the court found that the children had a close and loving relationship with their mother, who had made significant strides in cooperating with service providers and in providing an environment in which the boys could thrive. In short, there was overwhelming evidence supporting the court's termination order.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice