

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2008-431

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

FEBRUARY TERM, 2009

FEB 4 2009

In re C.E. and N.E., Juveniles

} APPEALED FROM:  
}  
} Chittenden Family Court  
}  
} DOCKET NO. 279/280-6-07 Cnfv

Trial Judge: Linda Levitt

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

Mother appeals from a family court order terminating her residual parental rights to the minors C.E. and N.E. Mother contends: (1) the court's conclusion that she could not resume parental responsibilities within a reasonable time both lacked supporting findings and was based on unsupported findings; and (2) the court's findings concerning the parent-child relationship were unsupported or irrelevant to the termination decision. We affirm.

The material facts may be summarized as follows. In June 2007, C.E. and N.E. were taken into custody by the Department for Children and Families based on reports that the children had been left unattended on the street for hours. C.E. was five and N.E. was two years old at the time. Mother was addicted to drugs and unable to care for the children. The family lived with little or no food in a filthy apartment surrounded by drug paraphernalia. They had previously resided in a series of motel rooms with men who were also drug addicts. Mother had engaged in multiple thefts to support her drug habit. The children survived through the assistance of a grandparent and great-grandparent, although C.E.'s therapist later observed that C.E. had also taken on the role of caregiver for his younger brother. The children's father, also a drug addict, had not had any contact with the children since December 2006, and later voluntarily relinquished his parental rights.

After several weeks with their grandmother, the children were placed with a foster family, where they have remained to this date. In September 2007, the children were adjudicated CHINS. The following month, the court approved a case plan with the goal of reunification that included recommendations that mother engage in services including substance-abuse counseling and assessments, parent education, and individual counseling. Mother failed to participate in any of these programs through the end of 2007, when she was incarcerated. Mother had previously missed a number of scheduled visits with the children in June and July 2007, including missing two visits in a row, which resulted in a suspension of visitation. She had also failed to respond to a social worker's letters and phone calls to reschedule future visits, missed a number of court hearings, and failed to attend her final scheduled visit in September 2007.

In late January 2008, mother was released from prison to Valley Vista, a residential drug treatment center. Mother tested positive for drugs in late February or early March 2008, but

eventually completed the drug treatment program and was released from Valley Vista in late May 2008. After leaving Valley Vista, mother entered an aftercare program, which included outpatient treatment, counseling, and frequent drug-testing, during which time she remained sober. Mother also requested resumption of supervised visits with her children upon her release from Valley Vista; however, the State had already filed a petition to terminate parental rights in early May 2008, and mother's request was denied. Following an evidentiary hearing on the State's petition in August 2008, the court issued a written decision granting the TPR petition. Despite mother's recent sobriety, the court found a material change of circumstances based on her failure over time to participate in services or attend case-planning and court hearings.

With regard to the best interests of the children, the court found that mother continued to confront a myriad of serious problems that she had not adequately addressed and that would not allow her to safely resume parenting within a reasonable time. In addition to mother's drug addiction, the court noted related issues involving her relationships with violent and drug-addicted men, poor parenting skills, and lack of housing and employment. The court further found that mother had practically no positive relationship with the children, having ignored their needs for years, subjected them to a violent, frightening, and unstable home environment, and failed to follow through on supervised visitation, parent education, and counseling. When the children came into foster care the court noted that C.E. exhibited serious behavioral and emotional problems; he was fearful and insecure, had tantrums and nightmares, was stressed from caring for his younger brother, and aggressive at school. After months in the secure and loving home of his foster parents, as well as therapy and special education, C.E. had shown significant improvement; he was able to play with other children, exhibit affection for his foster family, felt more secure, and was better able to focus in school. N.E. had similarly exhibited serious problems when placed in foster care; he was weak and unable to walk, having been kept in a car seat most of his life, slept poorly, was still in diapers, and was a loner. Since his placement, he had developed into a healthy young child, looked to his foster mother rather than N.E. for care and security, slept regularly, and enjoyed other people. Based on these findings, the court concluded that termination of parental rights was in the best interests of the children, and transferred custody to DCF without limitation as to adoption. This appeal followed.

Mother contends that the evidence and findings fail to support the conclusion that she could not resume parental responsibilities within a reasonable period of time. She argues in this regard that her drug addiction was the sole cause that brought the children into DCF custody, that the court found that she had "addressed" her addiction, and therefore predicating the conclusion that she could not resume parental responsibilities on other problems was unsupported by the findings and contradictory. Mother's premises are mistaken. While termination of parental rights may not be appropriate if a reasonable possibility exists that the "causes and conditions" that led to state intervention can be remedied within a reasonable time, In re B.M., 165 Vt. 194, 199 (1996) (quotation omitted), we have never held that the court is confined to those "causes" when analyzing the best interests of the child. Furthermore, the evidence and findings here make clear that the children were not taken into custody simply because of mother's drug addiction, but rather because of the severe neglect and dangerous environment to which it led. Nor did the court find that mother's drug addiction problem, or any of the other related problems that interfered with her ability to resume parental responsibilities, had resolved; she remained less than forthcoming about her drug treatment program, and more significantly had failed over time to establish a constructive relationship with the children, address her lack of parenting skills, obtain housing and employment, or demonstrate an ability to place her children's needs over her own. The evidence amply supports these findings, which in turn reasonably support the court's conclusion that mother would not be able to resume parental responsibilities within a reasonable

time. See In re A.F., 160 Vt. 175, 178 (1993) (in reviewing a termination decision, we will defer to the court's findings unless clearly erroneous, and uphold its conclusions if supported by the findings).

Mother also contends that the court's finding that she remained "secretive about her drug treatment" was unsupported by the evidence. Although mother's case worker acknowledged that she had not specifically asked mother to sign releases for information from Valley Vista, she also testified that mother had provided her with virtually no information about her time in Valley Vista, no substance-abuse assessments, and no information about her aftercare recommendations. This was sufficient to support the court's finding.

Mother argues that several findings relating to her relationship with the children were unsupported or misleading. First, she claims that the finding that C.E. "does not want to live with" mother distorts the facts. C.E.'s therapist testified plainly that C.E. had expressed a wish not to return home to mother, and his school psychologist testified that C.E. referred to his foster parents as mom and dad, and hoped to be adopted by them. Although mother notes that C.E.'s therapist believed his desires were influenced by a lack of understanding of mother's history, this does not undermine the court's finding or demonstrate that it was misleading.

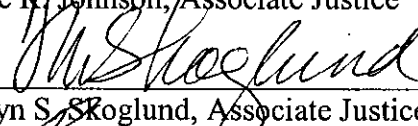
Mother suggests that the court failed to account for her expressed interest in resuming visitation after her release from Valley Vista in May 2008. The court, in fact, acknowledged her request and desire to be reunited with the children, but found essentially that it was too little, too late. This was a judgment squarely within the court's discretion to balance the evidence and determine whether parental rights could be resumed within a reasonable time measured from the child's perspective and need for stability, and we discern no basis to second guess its decision. See In re S.B., 174 Vt. 427, 429 (2002) (mem.) (observing that "[o]ur role is not to second-guess the family court or to reweigh the evidence" in reviewing termination of parental rights); In re B.S., 166 Vt. 345, 353 (1997) (reasonable time must be measured "from the perspective of the needs of the child").

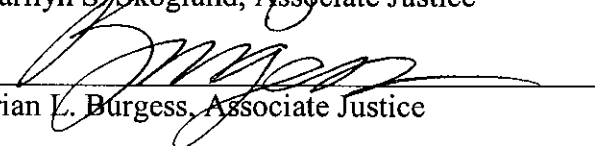
Finally, mother contends the court improperly considered the children's relationships with their foster family. While we have held that "parental rights cannot be terminated simply because a child might be better off in another home," In re E.B., 158 Vt. 8, 12 (1992), it is plainly appropriate for the court to consider the children's "interaction and interrelationship . . . with . . . [their] foster parents," 33 V.S.A. § 5540(1), as the court here properly did. Accordingly, we find no error, and no basis to disturb the judgment.

Affirmed.

BY THE COURT:

  
Denise R. Johnson, Associate Justice

  
Marilyn S. Skoglund, Associate Justice

  
Brian L. Burgess, Associate Justice