

ENTRY ORDER

**VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE**

SUPREME COURT DOCKET NO. 2009-070

MAY 29 2009

MAY TERM, 2009

In re D.T.-S., Juvenile

} APPEALED FROM:
}
} Bennington Family Court
}
} DOCKET NO. 18-2-06 Bnjv

Trial Judge: David A. Howard

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

Father appeals from the family court's order terminating his residual parental rights in son D.T.-S. He argues that the court erred in concluding that he would not be able to parent within a reasonable period of time. We affirm.

D.T.-S. was born in May 1999. He was placed in foster care for eight months during 2005. In February 2006, he was taken into the custody of the Department for Children and Families (DCF) due to a lack of proper parental care. He was adjudicated as a child in need of care or supervision (CHINS) later that month. In 2008, DCF moved to terminate parents' rights. Mother voluntarily relinquished her rights, and following a hearing, the court issued an order terminating father's rights.

In reaching its conclusion, the court made the following findings. Mother and father have been engaged in an on-again, off-again romantic relationship since 1984, when mother was eighteen and father was approximately sixteen. Father has also been romantically involved with mother's aunt, mother's cousin, and mother's sister. Father has a criminal record, including convictions for aggravated stalking and domestic assault, numerous violations of relief-from-abuse (RFA) orders, disorderly conduct, unlawful trespass, and unlawful mischief.

D.T.-S. exhibited emotional and behavioral problems, but his behavior began to improve after he was placed with a foster family in 2005. He regressed, however, after being returned to mother's care in December 2005. By mid-2006, it was apparent that mother could not parent D.T.-S. within a reasonable period of time and DCF altered its goal from reunification with mother to reunification with father. In December 2006, D.T.-S. was placed with father on a trial basis. D.T.-S. did well in this placement; his behavior improved and he became excited about living with father permanently. In March 2007, however, father had a serious altercation with his girlfriend. He was charged with felony domestic assault and cruelty to animals and he was held without bail. D.T.-S. was at home during the altercation and the court found that he heard the verbal portion of the fight and observed at least some of the conduct underlying the cruelty-to-animals charge. Father pled guilty to the charges in August 2007, and he was sentenced to 1-5 years on the first count and 29-30 days on the second, to be served.

Father expected to be released in late 2007, but in August 2007, he was charged with violating an RFA order by attempting to contact his girlfriend through third parties. Father pled guilty to two counts of violating the RFA order and he was sentenced to six to twelve months on each count, consecutive to his existing sentence. His earliest release date moved to September 2009, and his maximum is February 2013. The court found that father would have numerous restrictions imposed upon him when released, including mandatory participation in Department of Corrections programs that would take precedence over any child care obligations.

Following father's arrest, D.T.-S. returned to his foster placement. By June 2007, his behavior had again regressed, and he was, as before, out of control, depressed, fragile, confused, and failing in his efforts at school. All of the progress that he made, and his newfound sense of security, disappeared. At one point, DCF explored the possibility of placing D.T.-S. with father's relatives in North Carolina. D.T.-S. went to North Carolina for an extended visit, but the relatives decided that they could not take him long-term. This was a very troubling time for D.T.-S. He believed that his placement with father's relatives would be permanent, and he became sad and depressed when it did not work out. Once he returned to Vermont, father's relatives no longer contacted him, which made D.T.-S. feel worse.

In July 2008, D.T.-S. was placed with another relative, an aunt on mother's side. His aunt is committed to providing a home for D.T.-S. and she would like to adopt D.T.-S. if possible. D.T.-S. has adjusted well to his aunt's home and he has had fewer behavioral problems at school. The court found that D.T.-S. had identified his aunt and her home as a stable place for him to live, and that stability and a sense of security were the highest priorities for D.T.-S. at this point in his life. D.T.-S. had also expressed some fear of father, especially of father hurting his aunt and coming to take him away from her. D.T.-S's counselor indicated that D.T.-S. could not suffer further displacements and instability without probable harm to his mental health.

Based on these and other findings, the court concluded that father would not be able to parent D.T.-S. within a reasonable period of time. It recounted the child's tumultuous relationship with father, explaining that father's inability to control his own behavior caused a traumatic change in the child's situation and well-being, and demonstrated that father was not able to place his love for his son above his own interests. The court found that while father might emerge from prison and make the same strong effort as before, D.T.-S. had a great need for stability and he could not afford to wait for father to change. The court noted, moreover, that father's past behavior did not show that he would necessarily succeed in obtaining parenting skills upon his release from jail. The court explained that D.T.-S. had been in DCF custody since early 2006 with a period of foster care before that date, and it concluded that the time for experimenting with plans that had a high risk of failure had passed. The court noted that D.T.-S. had adjusted well to his present community, school, and home. His home situation was stable and loving, and had a family connection. The court thus concluded that termination of father's rights was in the child's best interests. Father appealed.

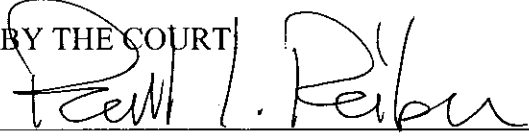
Father argues that the court erred in finding that he would not be able to parent D.T.-S. within a reasonable period of time. According to father, the family court erred in describing D.T.-S's present living situation as stable. He asserts that the court overlooked the fact that DCF will decide whether the foster mother can adopt D.T.-S., and while DCF was hopeful that the placement would succeed, it had not yet initiated adoption proceedings. Father maintains that,

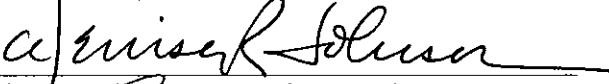
given this, as well as his ongoing incarceration and the suspension of his contact with D.T.-S., he poses no threat of undermining his son's potential achievement of stability in foster placement.

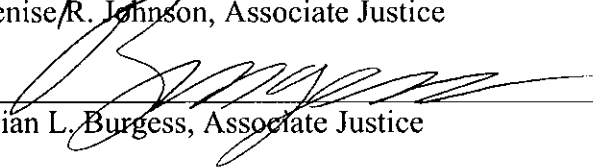
These arguments are without merit. The court applied the appropriate statutory standard in reaching its decision, its findings are well-supported by the record, and the findings in turn support the court's conclusions. See In re B.M., 165 Vt. 331, 336 (1996) (to determine child's best interests, family court must consider four statutory factors, the most important of which is likelihood that "natural parent will be able to resume parental duties within a reasonable period of time"); In re G.S., 153 Vt. 651, 652 (1990) (mem.) (as long as family court applied the proper standard, Supreme Court will not disturb its findings on appeal unless they are clearly erroneous, and will affirm its conclusions if supported by the findings). While father suggests that D.T.-S. would not be harmed by further delay, the court specifically concluded otherwise. It found that D.T.-S. had a great need for security and stability, and his best interests would not be served by waiting for father to be released from prison and possibly acquire parenting skills. The court explained that D.T.-S. could not risk another devastating failure just because father made one very good effort at regaining his parental status and had tried to make positive efforts while incarcerated. It rejected the notion that father was entitled to a continuous series of plans allowing him to regain custody when the child would suffer greatly during such repeated efforts, and especially if they were to fail again. It is for the family court, not this Court, to weigh the evidence, and we will not disturb the family court's assessment of the evidence on appeal. See Kanaan v. Kanaan, 163 Vt. 402, 405 (1995) (trial court's findings entitled to wide deference on review because it is in unique position to assess the credibility of witnesses and weigh the evidence presented).

Certainly, the court did not err in describing D.T.-S.'s current living situation as stable, particularly given the prior disruptions that had occurred in his life. D.T.-S. is living with a woman who loves him, is committed to meeting his needs, and wants to adopt him. The question of whether D.T.-S. will ultimately be adopted by his aunt is immaterial in this termination proceeding, and it is irrelevant to the court's determination that father is unable to parent D.T.-S. within a reasonable period of time as measured from the child's perspective. Father fails to show that the court erred in concluding that termination of his rights was in D.T.-S's best interests.

Affirmed.

BY THE COURT

Paul L. Reiber, Chief Justice


Denise R. Johnson, Associate Justice


Brian L. Burgess, Associate Justice