

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

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-082

JUL 20 2009

JULY TERM, 2009

In re K.B., S.B. and H.B., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Rutland Family Court
	}	
	}	DOCKET NO. 200/201/203-11-07 Rd
	}	
	}	Trial Judge: Nancy Corsones

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

Mother appeals from a family court order terminating her parental rights to the minors K.B., S.B., and H.B. She contends the evidence and findings fail to support the court's conclusion that she could not resume parental responsibilities within a reasonable period of time. We affirm.

The family court's findings, which are largely unchallenged on appeal, may be summarized as follows. Mother has a long history of involvement with DCF, beginning with her two older children who are not involved in this proceeding. K.B.'s father committed suicide in 1995. Mother's subsequent relationship with another man led to the births of S.B. and H.B. in 1999 and 2000. The father, a convicted sex offender, subsequently relinquished his parental rights. The children were first taken into DCF custody in 2004, based on mother's substance abuse, mental health issues, and overall neglect. They transitioned back into the home in 2006. This proceeding commenced in November 2007, when the children were again taken into custody following reports by one of the older children that mother was using crack cocaine and neglecting the children. Following a contested hearing, they were adjudicated CHINS based upon findings that mother was abusing drugs, behaving erratically, allowing an untreated sex offender (the younger children's father) into the home, and chronically leaving the children to fend for themselves and care for each other. This Court affirmed. In re K.B., S.B., J.C. & H.B., No. 2008-108 (Vt. June 19, 2008) (unreported mem.).

The initial six-month case plan called for mother to refrain from using illegal substances, obtain a mental health assessment, and engage in parenting and substance abuse services. DCF moved to terminate parental rights at the initial disposition proceeding. Following an evidentiary hearing in January 2008, the court issued a written decision, granting the petition and ordering the termination of mother's parental rights to the minors. The court's findings reviewed the extensive evidence showing that mother had exposed the children to domestic violence, drug abuse, violent individuals and a convicted sex offender. She had chronically neglected the children, requiring them to care for themselves and each other, and inflicted physical abuse. All three children exhibited severe emotional strain and trauma as result, but all were showing significant improvement since their removal from the home. K.B. and H.B. were in foster homes and individual counseling, and were adjusting well to their new communities. S.B. had initially

been placed in foster care but his violent, sexualized behavior had forced his removal to a residential care facility, where he was diagnosed with post-traumatic stress and other emotional disorders, but was also showing progress. Since the merits hearing, mother moved to Arizona, and had not seen the children except for one monitored visit with K.B. Based upon these and other findings, the court concluded that mother could not resume parental responsibilities within a reasonable period of time, and granted the State's petition. This appeal followed.

Mother posits that the principal basis for the court's finding that she could not resume parental responsibilities within a reasonable time was her mental and emotional instability. Mother contends, however, that the evidence and findings show that DCF neither recognized nor addressed this issue until recently. Therefore, she argues, the evidence was insufficient to demonstrate that she had failed to comply with the case plan or was unable to resume parental responsibilities within a reasonable time.

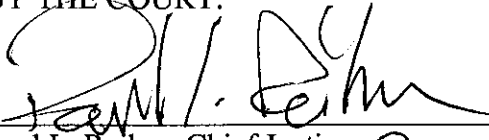
The argument is unpersuasive. Mother is correct that the court found her substance abuse was "not the only reason, or even the most important reason" for the termination petition. The record does not support mother's claim, however, that her untreated mental health issues formed the principal basis for the court's decision to terminate parental rights. As the court explained, it was mother's physical and emotional abuse of the children over a long period of time, and her demonstrated inability to keep them safe from the violence associated with drug use, that formed the principal basis for its holding. As the court wrote, "[t]he overall picture clearly shows that [K.B.] was subject to physical and emotional abuse by [mother], and that [mother] neglected all of her children as a result of her association with violent people." The court summarized much of that abuse and neglect, noting the extensive periods when mother was absent from the home or abusing drugs, thereby forcing K.B., at the age of twelve, to care for her younger siblings, to neglect her school work and suffer emotional stress; the extremely aggressive, often sexualized behaviors exhibited by S.B., consistent with children exposed to trauma and violence; and the stunted development of H.B., the youngest, who had since shown tremendous progress in foster care. The court noted the physical abuse suffered by the children as well, finding that mother had "kept them in unheated, locked closets for punishment," exposed them to a convicted sexual offender, and destroyed their personal belongings. The court thus found that the children had been severely damaged as a result of years of neglect, had been in and out of custody at least three times, and desperately needed stability and permanence.

In addition to the emotional and physical abuse endured by the children, the court cited several additional factors militating strongly in favor of termination, including its finding "that [mother] does not have the skills or aptitude necessary to provide the necessary home life" for the children; that two of the children had bonded with their foster families and were adjusting well to their new schools and community; and that S.B. had achieved a stable placement in a residential care facility where he was also making progress in dealing with severe emotional problems caused by years of neglect and abuse. Finally, the court took note of the fact that mother had moved to Arizona after the merits hearing and had since maintained minimal contact with the children. As the court explained, mother's "total failure to make any effort to reunify with her children is a critical factor in the court's determination that she will not be able to reassume her parental role within any reasonable timeframe."

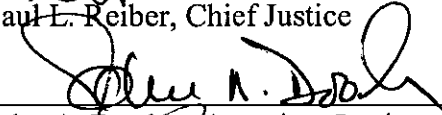
To be sure, the court recognized the substantial evidence of mother's mental instability as well as her failure to undergo a mental health evaluation, and found that her mental health issues "contributed to her neglect and mistreatment of the children." The record does not, however, show that these findings lay at the heart of its decision, which, as noted, turned on a myriad of factors, including mother's substance abuse, failure to protect the children from sex offenders

and drug users, extreme neglect, physical abuse, minimal parenting skills, and removal to another state. All of these findings are supported by the evidence, and together amply support the court's conclusion that mother could not resume parental responsibilities within a reasonable time. See In re M.B., 162 Vt. 229, 238 (1994) (in reviewing a termination of parental rights, this Court will not disturb the trial court's findings unless clearly erroneous, nor its conclusions if reasonably supported by the findings). Accordingly, we find no merit to mother's claim, and no basis to disturb the judgment.

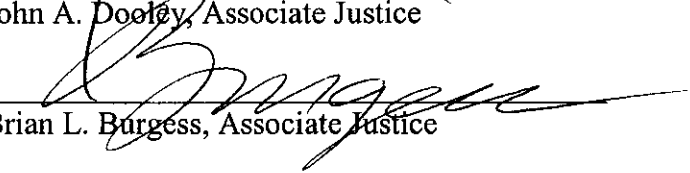
BY THE COURT:



Paul L. Reiber, Chief Justice



John A. Dooley, Associate Justice



Brian L. Burgess, Associate Justice