

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. 2009-412

MAY 21 2010

MAY TERM, 2010

In re A.G.-K., Juvenile

} APPEALED FROM:
}
} Chittenden Family Court
}
} DOCKET NO. F186-4-07 Cnjv

Trial Judge: Ben W. Joseph

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

Mother and father appeal from the termination of their parental rights in minor daughter A.G.-K. Mother argues that the Department for Children and Families (DCF) failed to provide reasonable accommodations for her disabilities, and the court therefore erred in finding that she would not be able to parent A.G.-K. within a reasonable period of time. Father argues that the court erred in finding him unfit and denying his request that the child be placed with father's mother. We affirm the court's decisions on both.

A.G.-K. was born in April 2007, and on that date a petition was filed alleging that she was a child in need of care or supervision (CHINS). Parents stipulated that the child was CHINS, and the court so found. A disposition report, recommending termination of parents' rights (TPR), was filed in July 2008. That same month, mother moved to transfer custody to herself; father moved to transfer custody to his mother; and DCF filed a TPR petition. Following a thirteen-day disposition hearing, the court granted DCF's motion to terminate parents' rights. It made extensive findings, most of which are not challenged by parents on appeal.

The court found the following facts by clear and convincing evidence. Mother has a mild form of dystonia, which is a physical disability that manifests itself as a weakening of her arms and extremities and which can result in tremors and trembling in her arms and hands. Mother's IQ is above 70, and while she is a Fragile X carrier, she does not suffer from mental retardation, and she does not qualify as having a cognitive disability. Father has several physical disabilities, including a hearing impairment, a club foot, and a cleft palate.

Mother received pre- and post-natal assistance from a highly experienced registered nurse between October 2006 and July 2008. The registered nurse demonstrated basic parenting techniques to mother, such as bathing, feeding, and changing diapers, using a doll, DVDs, and regular repetition of ongoing instructions. Mother also accessed numerous other services, including Care Net, which provided videos demonstrating infant care using dolls. Nonetheless, after six months of such services, mother still had not mastered basic infant care. The registered nurse testified that father was focused solely on himself during her visits. He tried to monopolize her time and sought medical services for himself. He told the nurse that he could not stand the sound of crying, and he would turn off his hearing aid if the baby cried. Mother reported that father became very upset with her during

her pregnancy. He was controlling, threw things at her, and spanked her when he was angry. Father denied that any of the problems were his fault.

In April 2007, A.G.-K. was placed in parents' custody subject to a protective order that required father's mother, Marina King, to "be present with the child at all times that a service provider" was not present. King was the child's primary caregiver for four weeks during which time there was a significant amount of friction in the home. Father did very little to care for the child during this period. King became "burnt out" and returned to New York in mid-May 2007. One week later, father also left Vermont, returning one week later to remove many of the belongings in the parties' apartment, including the baby's crib and all of her toys. He threw away many of mother's belongings. The court found that father abandoned A.G.-K. in May 2007. Since that date, he had seen her only briefly on four occasions. Father provided no financial or emotional support for A.G.-K., had no significant contact with her, had not engaged in any meaningful way in any services, and did not recognize a need for such services. The court found that father had no relationship with A.G.-K., and that he had never played a constructive role in her life.

Despite the fact that father treated mother very badly during the course of their relationship, mother nonetheless asked the court to award custody to King if mother herself could not have custody. The court found that King had no relationship with A.G.-K. Since May 2007, she had seen the child only on the same four occasions as father. Like father, she made no significant effort to visit the child or to contact DCF about visitation. In fact, she made no effort at all to request visitation between May 2007 and the fall of 2008. The court made numerous additional findings regarding King, which we do not reiterate here. Essentially, the court found that it would be harmful to A.G.-K. to move to King's home.

After father and King left Vermont in May 2007, mother lived with a series of friends who acted as good Samaritans. These individuals took mother into their home and tried to help her care for A.G.-K. In each case, friction developed as mother lacked basic parenting skills, repeatedly placed the child in danger, and was not receptive to advice. Mother could not master breast feeding, could not regulate the water temperature for the child's bath, and had difficulty regulating the temperature of the child's bottle. Mother could not soothe the child when she was upset. Mother engaged in unhygienic behavior and often failed to respond to the crying child. The individuals with whom mother resided made extensive and ongoing efforts to help mother but to no avail. Mother became resentful to these individuals. Service providers were also present during this period attempting to help mother.

Mother conceded in September 2007 that she had difficulties providing safe care for A.G.-K. That same month, mother moved in with another acquaintance who offered to assist her. This living arrangement lasted for three months. Mother continued to receive extensive hands-on services through DCF as well as from her friend. Mother was resistant to the assistance and became resentful about being supervised. The court found that there was an ongoing need for an adult to be present with mother due to the numerous safety issues for the child. In one incident, for example, mother had A.G.-K. outside in her stroller and tied a dog to the stroller. Mother then left the child alone while she went inside the house. A neighbor found the child on the ground with a red spot on her head after the stroller overturned. There were similar other examples where mother's inattention or poor judgment placed the child at serious risk of harm. Despite intensive intervention and support, the same problems arose again and again. Throughout this time, moreover, mother was also often angry and easily agitated.

Mother and A.G.-K. moved out-of-state in December 2007 to live with another friend, who acted as a co-guardian. The same problems arose in this living situation. In April 2008, the friend asked mother to leave and informed her that she would no longer act as co-guardian. A Virginia court rejected mother's request for yet another co-guardianship with a stranger who had stopped mother on the street after observing her struggling with carrying A.G.-K. The Virginia court found, and the Vermont family court agreed, that the child was subject to an imminent risk of harm to her life or health if she was allowed to remain in mother's custody. The child was returned to Vermont and placed in DCF custody in April 2008. Mother returned to Vermont not long thereafter. The child was placed with her current foster parents. Mother consistently visited the child, but her inability to parent A.G.-K. was evident during visitation. Numerous individuals testified as to mother's parental shortcomings and the ongoing safety issues for the child during these visits. The court found that mother showed no improvement in her parenting skills, and in fact, her ability to parent worsened. Mother threw tantrums during the visits, pulling her own hair and hitting her head against the wall. At one point, she threw a toy truck at a service provider. She also screamed and cried, once for over an hour.

Dr. Susan Yuan, who has a doctorate in psychology, conducted two parenting assessments in this case. Dr. Yuan has a specialty in and was qualified as an expert in the area of parents with disabilities. Dr. Yuan recognized that mother did not have a cognitive disability. The court found that between May 2007 and December 2007 the majority of Dr. Yuan's recommendations were put into place. These included accommodations for mother's dystonia. Dr. Yuan updated her parenting assessment in October 2008. Dr. Yuan opined that mother could still parent on her own if a number of protections and services were put in place. The court rejected this recommendation. It found that Dr. Yuan's assessment did not take into account the fact that A.G.-K. had been in custody for the past two years, nor had Dr. Yuan considered how A.G.-K. would react to leaving the only stable home that she had ever known. The court found that removing A.G.-K. from her current home was not in the child's best interest. The court also noted that Dr. Yuan's report relied heavily on facts related by mother, who had proven herself to be an unreliable reporter. In fact, a review of Dr. Yuan's report reflected mother's continued denial of her inappropriate behavior and demonstrated that she would not be able to make positive changes in the future.

The court also rejected Dr. Yuan's conclusion that the child's prior placements with mother and her various friends had failed because a certain parenting manual had not been provided to mother or because the other caregivers had not been trained in dealing with parents with cognitive challenges. The court explained that the service providers had used charts to help mother, as well as concrete, in-the-moment teaching methods. It noted that Dr. Yuan herself testified that the DCF social worker covered the material in the parenting manual with mother. The court reiterated that mother was not cognitively disabled, and specifically found that whatever limitations mother had, they were adequately accounted for by the service providers and caregivers. It found that the co-parenting arrangements were extraordinary efforts made to help her parent A.G.-K., and they had failed. To the child's detriment, mother had been afforded over two years to address her parenting deficits. For these and numerous additional reasons, the court rejected Dr. Yuan's recommendation that mother could parent A.G.-K. if she were provided an extensive array of services.

Dr. Yuan had also proposed that mother and the child enter into a supported-living program in Massachusetts called the Turner Falls program. In this program, qualified families with defined disabilities lived in apartments and were served by one host family. The court found this program inappropriate because it did not afford constant supervision, and the evidence in this case conclusively established that mother needed twenty-four hour supervision to safely care for A.G.-K.

Additionally, there were no openings in this program, nor had there been since October 2008. The court also explained that the proposed plan did not take the child's best interest into account nor did it consider the relationship the child had formed with her foster parents. The court found that A.G.-K. had been waiting for over two years for permanency and further delay was not in her best interest.

In reaching its conclusion, the court relied upon expert testimony provided by a highly experienced licensed psychologist, Dr. Sharon Lamb. Dr. Lamb opined, and the court found, that A.G.-K. had a minimal attachment to mother and that she was much more significantly attached to her foster parents. Dr. Lamb also observed mother's behavioral issues and the safety issues that her behavior caused for A.G.-K. She found that mother was not attuned to the child's needs, did not engage with A.G.-K., spoke loudly to the child, and had difficulty calming down which had a negative impact on her ability to soothe the child. Mother had no comprehension that her behavior might have a negative impact on the child. Dr. Lamb concluded, and the court agreed, that removing A.G.-K. from her foster parents was not in the child's best interests. It found this conclusion further supported by mother's abject failure in the several co-parenting experiments described above as well as mother's demonstrated current inability to care for the child. Mother had an ongoing need for intensive, lengthy, and substantial parent education program that would have to be completed and tested over a long period of time before she could safely parent a child on her own. Mother also failed to recognize the danger that father presented to her and to children in her care. Mother's desire to have A.G.-K. live with King was yet another demonstration of her poor judgment and her lack of awareness of the child's need for safe and consistent caregivers. The court found that A.G.-K. had a great need for a safe, loving and permanent environment with capable caretakers who could consistently meet her needs.

Based on these and numerous other findings, the court concluded that neither mother nor father could parent A.K.-G. within a reasonable period of time and that all of the remaining statutory factors weighed in favor of termination. It thus found termination of parents' rights in the child's best interests. This appeal followed.

Mother argues that DCF failed to adequately accommodate her disabilities. She states that DCF should have purchased the parenting manual recommended by Dr. Yuan, and it should have sent her to the Turner Falls program with A.G.-K. According to mother, the failure to take these steps shows that DCF did not use reasonable efforts to assist her in improving her parenting skills. She thus maintains that the State could not show by clear and convincing evidence that she was unable to resume her parental duties within a reasonable period of time.

As we have often stated, the court must consider four statutory factors in determining if termination of parental rights is in a child's best interests. See 33 V.S.A. § 5114 (previously codified at 33 V.S.A. § 5540). The most important factor in the court's analysis is the likelihood that the natural parent will be able to resume his or her parental duties within a reasonable period of time. In re B.M., 165 Vt. 331, 336 (1996). As long as the court applied the proper standard, we will not disturb its findings on appeal unless they are clearly erroneous; we will affirm its conclusions if they are supported by the findings. In re G.S., 153 Vt. 651, 652 (1990) (mem.).

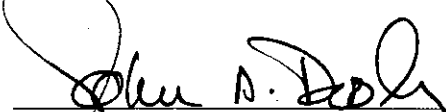
Mother's arguments are without merit. As an initial matter, we note that her disability was a physical one. The court specifically found that mother did not have a cognitive disability, and the evidence supports this finding. Even more importantly, the evidence amply supports the court's finding that whatever mother's limitations, they were adequately taken into account by the service providers and caregivers. The ongoing, hands-on, parenting assistance provided to mother is detailed

above. Additionally, as the court found, DCF allowed for co-parenting arrangements to assist mother, and these too failed. The record plainly shows that DCF made reasonable efforts to assist mother in developing parenting skills and that, despite these efforts over a lengthy period of time, mother remained unable to parent A.G.-K. safely. The court explained why the Turner Falls program was not a viable option for mother, and its findings in this regard are also supported by the evidence. While mother may disagree with the court's conclusion, she fails to show any abuse of discretion. In re S.B., 174 Vt. 427, 429 (2002) (mem.) (exclusively role of family court to weigh evidence and to assess credibility of witnesses). The court did not err in concluding that mother was unable to resume her parenting abilities within a reasonable period of time, and that termination of her rights was in A.G.-K.'s best interests.

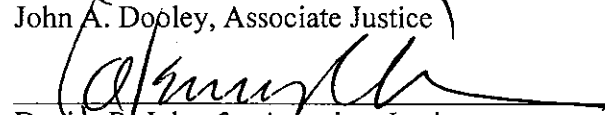
Father's claim of error is equally without merit. He asserts that he is a fit parent, pointing to the four weeks he spent with the child after her birth. Given this, he argues that the court should have followed his recommendation that custody of the child be transferred to King. Far from being a fit parent, the court found that father abandoned A.G.-K. in May 2007, taking the child's toys and her crib with him. Father had no significant contact with A.G.-K. after moving to New York, and he had no relationship with her whatsoever. The court found that father failed to address any of his parental shortcomings, and in fact, he refused to acknowledge that he had such shortcomings. The record amply supports these findings, which in turn support the court's conclusion that termination of his rights was in the A.G.-K.'s best interest. The court explained in detail the reasons why placement with King was inappropriate, and we find no grounds to disturb its decision. The court was not obligated to follow father's recommendation, particularly given that he had abandoned his child. The court engaged in the appropriate statutory analysis, and its conclusion is well-supported by its findings, which are in turn supported by the evidence. We find no error.

Affirmed.

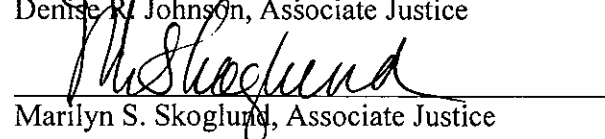
BY THE COURT:



John A. Dopley, Associate Justice



Denise R. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice