

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

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

ENTRY ORDER

FEB 25 2010

SUPREME COURT DOCKET NO. 2009-437

FEBRUARY TERM, 2010

In re I.G., Juvenile

} APPEALED FROM:
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}
} Washington Family Court
}
}
} DOCKET NO. 165-12-08 Wnjv

Trial Judge: Stephen B. Martin

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

Mother appeals the family court's order terminating her parental rights with respect to her daughter, I.G. We affirm.

I.G. was born in April 2007. When I.G. was approximately one year old, mother had the maternal grandmother come to the State of Georgia, where mother was living, and take the child to Vermont to care for her because mother was facing criminal charges and anticipated being incarcerated. In November 2008, the Vermont Department for Children and Families (DCF) took physical custody of I.G. when the grandmother was hospitalized after overdosing on alcohol and medication. At this point, mother had been incarcerated in Georgia for four months on a five-year sentence for possession of methamphetamine, and the father was in Mexico avoiding an arrest warrant based on drug charges. DCF placed I.G. with her current foster parents, who want to adopt her.

In February 2009, mother admitted that I.G. was a child in need of care or supervision (CHINS). In late March 2009, DCF filed petitions to terminate the parents' respective parental rights. The disposition/termination hearing spanned two days in July and October 2009. The father did not appear. Following the hearing, the family court terminated both the father's and mother's parental rights, concluding that neither parent would be able to resume parental duties within a reasonable period of time.

On appeal, mother argues that the family court, by stating that mother was unable to demonstrate when she would be freed from incarceration, improperly imposed upon her the burden of demonstrating that she would be able to resume parental duties within a reasonable period of time. Mother also argues that the uncertainty over whether a pending charge against her would result in further incarceration was too speculative to support the court's conclusion that she would not be able to resume her parental duties within a reasonable period of time.

According to mother, the court's termination order must be reversed because there was no specific evidence on when a reasonable period of time would expire or whether holding off on terminating her parental rights would have a negative impact on I.G.

We conclude that the evidence and the family court's findings support its conclusion that mother will not be able to resume her parental duties within a reasonable period of time. Given the state of the evidence, the family court did not improperly transfer the burden of proof onto mother when it stated: "The mother has not seen her daughter for 19 months, and she is not able to show with any certainty when she will be freed from incarceration." The State's evidence, provided by mother's prison caseworker, indicated that mother's maximum release date was April 24, 2011. The evidence further demonstrated that there was another pending felony drug charge against mother for distribution of methamphetamine (while she was on probation for the earlier conviction), which created the potential for further future incarceration. Mother testified at the CHINS hearing in February 2009 and at the termination hearing in July 2009 that she would be paroled in August 2009. That did not come to pass, however, and mother remained incarcerated at the time of the final day of the termination hearing in October 2009. In this context, the family court's challenged statement did not suggest that it was mother's burden to demonstrate that she would be able to resume parental duties within a reasonable time, but rather was a comment on mother's inability to refute the State's evidence indicating that mother's availability to parent I.G. in the near future was in considerable doubt. We find no improper shifting of the State's burden of proof.

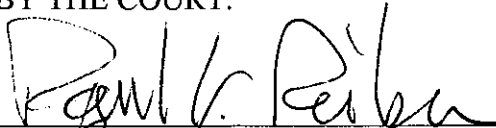
Nor do we find any merit in mother's argument that the evidence and findings do not support the family court's conclusion that mother is unlikely to be able to resume her parental duties within a reasonable period of time. The unchallenged evidence, as found by the court, indicated that (1) mother had a significant, longstanding drug problem; (2) I.G. had spent the first year of her life in an unstable environment with several caregivers; (3) mother was incarcerated with a maximum release date of April 2011 and was possibly facing further incarceration based on a still-pending drug charge; (4) mother had not seen I.G., who was only two-and-one-half years old, in over nineteen months—two-thirds of the child's life; (5) the child did not appear to recognize mother's voice or pictures of her biological family; and (6) I.G. had spend the past year, more than one-third of her young life, in the same stable foster home. This evidence was sufficient for the court to conclude that mother would not be able to resume parental duties within a reasonable period of time from the perspective of the child. Cf. In re J.S. & S.S., 168 Vt. 572, 574 (1998) (mem.) (upholding termination order based on parent's lack of progress and child's tender age and exceptional needs).

Notwithstanding mother's suggestion to the contrary, the family court was not required to make findings on what amount of delay in mother resuming her parental duties would be harmful to I.G. or whether I.G. would be harmed in the event termination of parental rights was put off to see if mother would be able to avoid further incarceration, overcome her drug addiction, and resume parental duties. Indeed, while the family court is required to make findings on the four statutory factors listed in 33 V.S.A. § 5114(a), other findings are not required. See In re J.T. & C.T., 166 Vt. 173, 180 (1997) (stating that family court is required to make specific findings on statutory criteria, which do not include whether DCF made reasonable effort to assist parents).

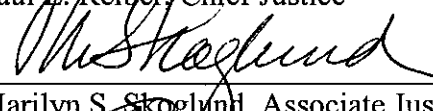
The court's decision not to postpone permanency for a young child who has spent a good deal of her life with a stable foster family willing to adopt her while mother's future availability as a parent continued to face significant hurdles was supported by clear and convincing evidence.

Affirmed.

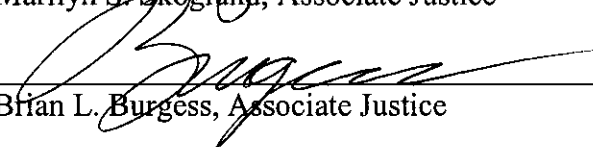
BY THE COURT:



Paul L. Reiber, Chief Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice