

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-126

JULY TERM, 2010

In re B.K., S.C. and K.C., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Essex Family Court
	}	
	}	
	}	DOCKET NO. 9/10/11-7-07 Exjv
		Trial Judge: Alan W. Cook

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

Mother appeals the termination of her parental rights with respect to her three daughters, B.K., S.C., and K.C. We affirm.

B.K. was born in 1992 and her half-sisters, K.C. and S.C., were born in 1996 and 2001, respectively. As the family court stated, this case has a complicated and highly contested history involving the courts and various law enforcement and social service agencies of several states. Mother, who suffers from post-traumatic stress and bipolar disorders, has been involved in lengthy custody disputes in which she has filed unsubstantiated claims of abuse and been found in contempt for defying court orders pertaining to parental rights and responsibilities. The children have been the subject of court proceedings as far back as the early 1990's, when B.K. was an infant. B.K. lived in Maine with her father from 1996 to 2003 and later with mother until June 2005, when mother took the children to Vermont shortly before criminal charges were filed against her in Maine.

In July 2007, the Department for Children and Families (DCF) filed a petition alleging that all three children were in need of care and supervision (CHINS) because mother had abandoned and/or abused them and because she had withdrawn them from school. At the CHINS hearing, the family court rejected the allegations of abandonment but found that mother had physically abused B.K. and S.C. and had exhibited a lack of parental care by removing B.K. and K.C. from school. At the disposition hearing, the court maintained DCF custody and adopted a plan of reunification with mother or the children's respective fathers. The case plan required mother to maintain stable employment, establish a safe living situation, demonstrate parenting skills, engage in anger management counseling, acknowledge her mental health needs through counseling, maintain weekly contact with the DCF social worker, set up a visitation schedule, sign all necessary releases so that DCF could monitor her progress in Florida where she had moved, and cooperate with a home study in Florida. This Court affirmed the CHINS and disposition orders in April 2009. In re B.K., S.C. & K.C., Nos. 2008-271 & 2008-414, 2009 WL 2410831 (Apr. Term 2009) (unpub. mem.).

In December 2008, DCF petitioned for termination of mother's parental rights. DCF did not seek termination of either of the fathers' parental rights because the children were doing well in their care and the plan continued to be reunification with the fathers. Termination hearings were held over three days in the fall of 2009. Following the hearings, the court granted DCF's petition, concluding that

mother had failed to cooperate with DCF in implementing the court-approved case plan and had failed to make any significant progress in achieving the case plan goals. The court concluded that mother's failure to make any progress in addressing the conditions that had led to state intervention amounted to a material change in circumstances and that each of the four statutory factors concerning the children's best interests militated in favor of terminating mother's parental rights.

On appeal, mother argues that the family court failed to make a rational decision based on the individual circumstances of the children. Specifically, with respect to B.K., mother asserts that there was no evidence that B.K. needed mother to be a fit parent in the eight months before the child turned eighteen. According to mother, because B.K. was being properly cared for by her father and did not want mother's rights terminated in the short interim before she turned eighteen, whether mother would be able to resume her parental duties within a reasonable period of time was not of critical import, and thus the court's termination order was irrational. We disagree. The family court found that B.K. still feared her mother, who continued to have a corrosive influence on B.K., and that despite B.K.'s professed wish to preserve mother's parental rights, continued contact with mother would not be beneficial to B.K. Before making its decision, the court carefully considered B.K.'s individual circumstances, including her long-troubled relationship with mother, her current placement with her father, her own wishes, and the limited time remaining before she turned eighteen. Given mother's history of disruptive and manipulative behavior toward B.K., we find no basis for overturning the family court's termination decision with respect to B.K.

Mother also argues that the circumstances of K.C. and S.C. were too distinct for the family court to assume that the psychological maladies B.K. developed under her mother's care would manifest themselves with the other two children if mother were to gain custody of them. Again, we disagree. The family court expressly acknowledged that most of the evidence presented at the termination hearing focused on B.K. But the court also took judicial notice of all of the prior judicial proceedings concerning the children and determined that mother's negative behavior toward B.K. and her noncompliant and confrontational attitude toward DCF adversely affected the well-being of K.C. and S.C. The record supports this determination. Mother's well-documented history of parental dysfunction, abusive behavior, and defiance toward authorities applies with equal weight in considering whether she will be able to resume parental duties with each of the children. The record also left no doubt that mother's behavior instilled fear in all of the children and that she continued to be a threat to destabilize the children's lives in the future. Given this record, the family court did not need expert testimony to support its finding of emotional risk to the younger two children. Cf. *In re C.L.*, 2005 VT 34, ¶ 20, 178 Vt. 558 (rejecting argument that psychological evaluation was necessary to support court's finding that change of custody would cause lasting emotional damage to child).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Brian L. Burgess, Associate Justice