

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-139

AUGUST TERM, 2010

In re M.R., D.R. and I.R., Juveniles	}	APPEALED FROM:
	}	
	}	Caledonia Family Court
	}	
	}	DOCKET NO. 80/81/82-11-08 Cajv
		Trial Judge: Alan W. Cook

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

Mother appeals from the trial court's denial of her request for an extension of time in which to file a notice of appeal. She also challenges the family court's underlying decision to terminate her parental rights. We affirm.

Mother's residual parental rights in three of her nine children, M.R., D.R., and I.R., were terminated by court order on February 8, 2010. The court made numerous findings, which we do not repeat here. Essentially, the court found that mother's inadequate parenting over a long period of time had caused her children to live in a chronically chaotic, unstable, and dangerous environment. Mother has a long history of severe drug and alcohol abuse. Among other shortcomings, mother repeatedly allowed convicted sexual offenders to have contact with the children. Despite over twenty years of involvement with public child welfare agencies, mother showed no real improvement in her parenting skills, and she lacked any insight into how her actions affected the children's mental, emotional, and physical well-being. The court found that mother had not played a constructive role in the children's lives on a sustained basis, and that the children were desperately in need of permanency and stability. The court noted that the children were thriving in their foster home. The court evaluated the statutory best-interest factors, and found that mother would not be able to parent the children effectively or develop the insight necessary to keep them safe. Based on these and numerous other findings, the court concluded that termination of mother's parental rights was in the children's best interests.

On April 7, 2010, two months after the decision was filed, mother's attorney filed a motion for extension of time to file the notice of appeal, claiming excusable neglect. Counsel recounted that she received the termination order on February 9, and she called mother on February 10 and spoke to her about the order. Counsel mailed a copy of the order to mother on February 10, but inadvertently used mother's former address. The order was returned to counsel on February 16. Counsel spoke to mother again on February 16 and informed her about the thirty-day deadline for filing an appeal. She told mother that she would be out of the office on vacation after February 19. Counsel mailed the order to mother on February 16, and mother received it on February 17. On March 17, mother called counsel and stated that she wanted to

appeal. According to counsel, mother stated that she had been unsure when counsel was returning from vacation.

After hearing argument from the parties, the court denied mother's request to extend the appeal period. It found mother's attorney had acted diligently in informing mother of the appeal period and providing her a copy of the order. Counsel also informed mother that she would be leaving on vacation. Despite being provided this information, mother did not make the decision to appeal or contact her attorney until March 17, well beyond the appeal period. The court found that during this period, mother simply had been trying to make up her mind whether to take an appeal, which did not constitute excusable neglect. In reaching its decision, the court reviewed relevant case law and evaluated factors set forth in those cases. It found that there was a danger of prejudice in allowing the untimely appeal to proceed because it would extend the period of uncertainty for the children. It also found that the ability to appeal had been entirely within mother's control throughout the appeal period. The court reiterated that on at least two occasions during the appeal period, mother had been informed that the appeal period was thirty days; that if an appeal was going to be taken, it need to be filed within this period; and that she needed to make up her mind about the appeal during this period. Mother failed to do so, and her inability to make a decision did not justify allowing the untimely appeal to proceed. The court thus denied the motion, and mother appealed from this order.

Mother argues that her attorney was responsible for the delayed filing because she went on vacation during the appeal period, leaving mother only a few days in which to decide whether to file an appeal. She also suggests that, while the children might be harmed by allowing an untimely appeal to proceed, they might also be harmed by an erroneous, unreviewed termination order. Should the Court reach the merits of the termination order, mother argues that the court erred in evaluating her bond with the children.

The trial court's decision appears to have been well within its discretion, but even assuming that the motion to extend time to file an appeal should have been granted, mother's challenge to the underlying termination order is wholly without merit. Mother argues that she shared a significant bond with the children, and that the court erred in stating that the children viewed her as a "friend." She also states that the foster mother and the Department for Children and Families saw a positive value in maintaining some contact between mother and the children while the children were living with their foster mother.

As we have often repeated, the family court must consider four factors in deciding if termination of a parent's rights is in the children's best interests. See 33 V.S.A. § 5114. 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. See 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.).

The family court applied the appropriate statutory standard, and its findings in this case about mother's inability to parent the children are overwhelming and essentially unchallenged. As to the most important factor, the court found that despite over twenty years of parenting assistance, mother showed no insight into her parental shortcomings and no ability to place the

children's needs before her own or to ensure that the children were healthy and safe. While mother might love the children, the court found that she played no constructive role in their lives. It found mother's relationship with the children neither healthy, nor motherly. That the foster mother supported the children having contact with mother in no way undermines the court's finding. Among other things, the court found that mother intentionally exposed her thirteen-year old daughter to pornography depicting bestiality; she openly discussed sodomy with her eleven-year-old son; she provided cigarettes to the children; she failed to provide information regarding her daughter's medication to the foster mother; she allowed dangerous people into the children's home; and she failed to provide the children with a nutritious diet and exercise or even knowledge of the benefits of such. The court found that the children's relationship with mother had resulted in their poor education, poor behavior, poor nutrition, and poor mental health. It also observed that the children rarely mentioned mother and saw her more as a friend than a parent. This latter finding is supported by testimony from the children's foster mother, notwithstanding mother's attempt to characterize it otherwise. The court's decision that termination of mother's rights was in the children's best interests is amply supported by its findings, which are in turn supported by the record. We find no error.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice