

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2016-431

APRIL TERM, 2017

In re G.M., Juvenile

} APPEALED FROM:
}
} Superior Court, Rutland Unit,
} Family Division
}
} DOCKET NO. 87-6-13 Rdjv

Trial Judge: Nancy Corsones

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

Mother appeals the superior court's order terminating her parental rights with respect to her son, G.M.* We affirm.

The facts as found by the superior court are undisputed. Mother has a long history of substance-abuse and mental-health problems. G.M. was born premature in May 2009 and tested positive for Tetrahydrocannabinol (THC), methadone, and methadone metabolite. He developed neonatal-abstinence syndrome, necessitating morphine treatment at the hospital before his release. Because he engaged in disturbing behaviors such as banging his head on the floor, mother was concerned that the child was autistic. Fearing that normal childhood immunizations had resulted in G.M. developing autism, mother stopped taking him to well-child visits when he was nine months old. An occupational therapy evaluation of G.M. when he was nineteen months old revealed that the child had motor incoordination and decreased sustained attention that interfered with his self-care needs.

A number of incidents in the spring of 2013, when G.M. was four years old, led to the child being placed in the custody of the Department for Children and Families (DCF). In March 2013, a police officer conducting a welfare check on G.M. observed drug paraphernalia strewn throughout mother's home within G.M.'s reach. In April 2013, a social worker from the Brattleboro Retreat informed DCF that mother had reported "shooting" heroin while G.M. was in her care. In May 2013, on two separate occasions, neighbors called police concerning G.M., the first reporting G.M. was left alone outside and the other reporting wounds on the child's leg that appeared infected. In June 2013, police were called again when G.M. was found wandering alone a half block from mother's home. Finally, G.M. was placed into protective custody when he was found wandering alone on Main Street (Route 7) in Rutland after eleven o'clock at night wearing only underpants. Police observed two small burns on the child's right forearm, a quarter-sized scab on the top of his head, and another fresh-looking mark on his left ankle.

* G.M.'s father has never been involved in G.M.'s life or the case plan. He relinquished his parental rights to G.M. on the first day of the termination hearing.

After G.M. was placed into protective custody in mid-June 2013, DCF filed a petition alleging that he was a child in need of care or supervision (CHINS). Following a relatively brief initial foster care placement, G.M. was transitioned into his current foster home. In October 2013, G.M. was adjudicated CHINS based on a stipulation that mother had failed to provide him with adequate supervision, safety, and security. In December 2013, the superior court entered a disposition order continuing DCF custody and adopting a case plan that called for reunification with mother. The expectation was that mother would obtain needed substance-abuse treatment, commit to a substance-free lifestyle, and engage in mental-health therapy. Mother was also provided with parenting classes and visits with family time coaching.

After G.M. was placed into state custody, he was seen by a pediatrician who tentatively ruled out autism as a cause of the child's unusual behaviors, instead suspecting that G.M.'s developmental issues were due to an adverse living environment. G.M.'s foster parents noted that G.M. was very anxious and would bang his head against objects and would have nightmares that caused him to scream out. G.M. attended a Head Start program from the summer of 2013 through the summer of 2014. Mother attended only one of four team meetings during that year.

The foster parents supported the case plan goal of reunification and encouraged contact with mother. For the most part, supervised visits occurred at a visitation center or in the community. From the time G.M. came into state custody until the termination hearing, he had a total of two overnights with mother. Visits stopped for a period after December 2013 when mother suddenly became unreachable. Given mother's unreliability at that time, the foster parents stopped telling G.M. in advance of the scheduled visits. When the visits resumed, G.M. would sometimes express frustration at having to visit mother.

In December 2013, the Child Development Clinic evaluated G.M., concluding that he was not autistic and noting his remarkable developmental growth since he had been placed in foster care. In 2014, G.M. began a specially designed program in the Mill River School District. The school retained a consultant, who made recommendations in a report that was admitted at the termination hearing. Mother was dismissive of the report's recommendations.

While G.M. was making strides in foster care and at school, mother sought treatment for substance abuse. It was not clear how much progress she was making in treatment, however, because she would sign only partial or conditional releases to DCF, or would revoke them entirely. During the spring of 2016, DCF received multiple reports from different people that mother appeared "high" at a visit with G.M. When confronted with this allegation, mother refused to take a drug test. In the last few months of visits before the termination hearing, she showed some progress in addressing G.M.'s challenging behaviors, although she continued to discuss her DCF case with him.

Mother underwent two psychological evaluations, one in the fall of 2015 and one in the summer and fall of 2016. Following the first evaluation, the evaluator was not optimistic about mother's ability to timely reunify with G.M. She made several recommendations that mother would need to implement in the next three or four months to achieve that goal, including that she attend G.M.'s medical and educational appointments, participate in psychotherapy to address her triggers for anxiety and depression and to assist her in coping skills, communicate effectively with the foster parents to learn strategies to deal with G.M.'s needs, reach the point where she was able to transition to unsupervised visits, and learn to assess the safety of her home. The court found that mother did not make any significant progress on any of these goals.

In January 2016, DCF filed a petition to terminate mother's parental rights. A two-day termination hearing was held in November 2016. In a December 16, 2016 decision, the superior court granted DCF's petition, concluding by clear and convincing evidence that mother's ability to parent G.M. had stagnated and that termination of her parental rights was in G.M.'s best interests. See In re B.M., 165 Vt. 331, 335 (1996) (stating that court may modify existing disposition order only upon finding that changed circumstances compelled modification to address best interests of child); see also In re J.G., 2010 VT 61, ¶ 10, 188 Vt. 562 (mem.) (stating that change of circumstances is most often found where ability to parent has deteriorated or stagnated, which can be shown by passage of time with little or no improvement in that ability). In finding stagnation, the court concluded that since June 2013 mother had not made any significant progress in her connection with G.M.'s many treatment providers, that she had made only limited progress in demonstrating an ability to parent G.M., and that she had not been able to maintain safe and stable housing. As for G.M.'s best interests, the court concluded that: (1) G.M.'s interactions with mother were mixed, but mother had never been able to progress beyond seeing G.M. for a few hours a week in a controlled setting; (2) severing G.M.'s deep bond with his foster parents, with whom he had lived for half of his life, would be quite harmful to him; (3) mother would not be able to resume her parenting duties within a reasonable period of time from G.M.'s perspective, given that in the three and one-half years that G.M. had been in foster care, she still not had adequately addressed her substance-abuse and mental-health problems and had not reached a point where she could care for him; and (4) although mother loves G.M., her role in his life could not be considered constructive when weighed against G.M.'s significant needs. See 33 V.S.A. § 5114 (requiring court to consider child's best interests according to: (1) child's relationships with persons significantly affecting those interests; (2) child's adjustments to home, community, and school; (3) likelihood parent will be able to resume parental duties within reasonable period of time; and (4) whether parent has played and continues to play constructive role in child's welfare).

On appeal, mother does not dispute the superior court's ultimate conclusions that she is not prepared to play a custodial role in G.M.'s life at this time and that the foster parents are providing G.M. with an excellent home. She acknowledges that her relationship with G.M. has had ups and downs, including G.M.'s reluctance at times to engage and his troubling behaviors following visits. She contends, however, that the evidence indicated a clear trend of substantial improvement in their relationship. With respect to the first statutory best-interest factor, she cites to testimony by the foster mother, the DCF caseworker, and the operations manager of the visitation center that visits between her and G.M. had recently improved. With respect to the fourth statutory factor, she argues that the court improperly focused on her ability to be G.M.'s caregiver rather than whether her continued contact with G.M. was important to him. She suggests that this is a case where these two statutory factors override the fact that she will not be able to resume her parental duties within a reasonable period of time from the perspective of the child. See In re J.F., 2006 VT 45, ¶ 13, 180 Vt. 583 (noting that "in some cases a loving parental bond will override other factors in determining whether termination of parental rights is the appropriate remedy").

The record demonstrates that this is not such a case. As mother acknowledges, she is still not in a position to parent G.M., even after he has spent three and one-half years, half of his life, in foster care. The court found that G.M. had a deep bond with his foster parents and that it would be quite harmful to sever that connection, not only because of the loss of the connection but because his foster parents, unlike mother, had established a vital communication between themselves and service providers. The fact that mother loves G.M., that sometimes he is happy to see her, and that visits had improved in the months before the termination hearing cannot override G.M.'s need for permanency, as revealed in the record and the superior court's findings. Cf. In re B.M., 165 Vt. at 341-42 (upholding termination of father's parental rights where despite, father's

obvious concern and love for his daughter, father would not be able to resume parental duties within reasonable period of time because daughter's relationship with him was weak and fraught with anxiety, in contrast to strong relationship she had with foster parents).

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Superior Judge,
Specially Assigned