

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-123

AUGUST TERM, 2010

In re J.H., Juvenile	}	APPEALED FROM:
	}	
	}	
	}	Chittenden Family Court
	}	
	}	
	}	DOCKET NO. F310-7-07 Cnjv
		Trial Judge: Matthew I. Katz

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

Father appeals the termination of his parental rights with respect to his son, J.H. We affirm.

The mother, who is not appealing the family court’s termination of her parental rights, has a history of mental illness and substance abuse. She has two adult daughters who were raised primarily by other family members as the result of her problems and the intervention of the Department for Children and Families (DCF). Father also has a history of depression and substance abuse. The mother and father met in 2005 at a residential alcohol program and married thereafter. J.H. was born in August 2006. When the child was three months old, the mother and father went to the emergency room with the child, reporting that the mother had fallen down stairs a few days earlier and was experiencing abdominal pain. The treating doctor notified DCF that both parents were intoxicated. DCF substantiated the parents for “risk of harm” to the child and initiated a CHINS (child in need of care or supervision) proceeding. The family court issued a protective order, which was dismissed in June 2007. One month later, however, in July 2007, the parents had an altercation, and the mother called the state police to report that she was concerned about J.H.’s safety because father had taken the child into the woods for a “spiritual ritual.” Police arrived to find both parents intoxicated and accusing each other of domestic violence. Father was incarcerated for ninety days for violating a parole condition. Mother went into a residential treatment center, but left prematurely. After being arrested for driving while intoxicated (DWI), mother eventually wound up in a Massachusetts psychiatric facility, which she again left prematurely.

Meanwhile, DCF filed a CHINS petition, and the family court transferred custody of the child to DCF. At an August 2007 merits hearing, the court found J.H. be in need of care or supervision based upon the parties’ stipulation. At the disposition hearing in December 2007, the court accepted a modified case plan with a goal of reunification. Custody remained with DCF, and J.H. was placed with the foster family with whom he still resides. In January 2009, DCF filed a petition to terminate both parents’ residual parental rights with respect to J.H. In early 2009, the parents had a second child, who is not a subject of these proceedings. The termination hearing was held over four days in the fall of 2009. Following the hearing, the

family court entered an order granting DCF's petition and terminating the parental rights of both parents. Only father appeals.

On appeal, father argues that the family court made unsupported or irrelevant findings regarding his alleged inability to parent and failed to consider fully all the statutory best-interests factors. Regarding his first argument, father takes issue with the following court findings: (1) father minimizes the mother's mental health problems and is very defensive on her behalf; and (2) father has a tendency to refuse help from others and instead tries to do things on his own. Father contends that the first finding is irrelevant to J.H.'s best interests. According to father, although he may not fully recognize the cause of the mother's mental-health problems, he knows when she is incapacitated to the point where he needs to assume parental care, as he did in June 2009 when the mother was hospitalized after overdosing on alcohol and lithium. We find no merit to this argument. The fact that father minimizes the mother's serious and untreated mental-health and substance-abuse problems is plainly relevant to J.H.'s best interests, particularly because the parents anticipate that they will remain together and that the mother will assume primary care of the children if and when father finds work.

Father also argues that even if the court correctly characterized him as someone who tries to go it alone rather than seek help from others, there is no evidence that he ever declined help to the detriment of his children. Again, we find no merit to this argument. The record contains many incidents of father's tendency not to seek help even when such help would potentially be in the best interests of his children. For example, he has resisted seeing a therapist to treat his own ongoing mental-health issues and he refused to comply with a recommendation that he and the mother participate in further parent education. He also was unable or unwilling to obtain assistance for the mother when her mental-health problems led to her drug overdose in June 2009. The court indicated that his "go it alone" attitude resulted in him coping rather than being treated for his problems. This portrayal of father is supported by the evidence and is plainly relevant in terms of assessing the best interests of J.H.

Finally, father argues that the court failed to fully consider J.H.'s interaction and interrelationship with all persons "who may significantly affect the child's best interests," 33 V.S.A. § 5114(a)(1), particularly J.H.'s oldest step-sister and his maternal grandparents, who expressed an interest in promoting his welfare and supporting the parents. We find no basis to overturn the court's decision on this point. The court discussed J.H.'s interaction and interrelationship with the persons who most significantly have affected, and may affect, his best interests—principally his parents and his foster family. Although J.H.'s step-sister and grandparents expressed a heartfelt interest in J.H., their testimony demonstrated that they had not had any significant relationship with him in the past. Apparently, the grandparents had little or no contact with J.H. while he lived with his parents and visited him only once after custody was transferred to DCF. Given this history, their offer of support should J.H. remain with his parents was too vague and uncertain to compel the court to make findings and conclusions in this regard.

In the end, although the court recognized that father had made significant strides in achieving sobriety and that he was apparently doing an adequate job in caring for the parents' younger child, J.H.'s best interests warranted terminating both the mother's and father's parental rights. The court noted that father was unemployed and living with the mother in a remote area without transportation because his license had been taken away due to multiple DWI convictions. The hope was for father to find work, in which case the mother would be the primary caregiver. The court found this possibility unsettling, given the mother's demonstrated problems and father's minimization of those problems. The court concluded that, in light of J.H.'s lack of a bond with the parents and his significant bond with his foster family, with whom he had spent

two-thirds of his young life, removing him from the foster family and placing him with father and the mother would likely cause him substantial harm. The evidence and the court's findings and conclusions support this decision. See In re S.B., 174 Vt. 427, 429 (2002) (mem.) (noting that appellate court's role is not to second-guess family court or reweigh evidence but rather to determine whether court abused its discretion in terminating parental rights).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice