

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-205

OCTOBER TERM, 2008

In re D.L. and W.L.S., Juveniles	}	APPEALED FROM:
	}	
	}	
	}	Essex Family Court
	}	
	}	
	}	DOCKET NOS. 10-9-05 & 4-6-06 Exjv

Trial Judge: Thomas J. Devine

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

Mother appeals from the termination of her parental rights to D.L. and W.L.S., born in January 2005 and June 2006, respectively. On appeal, mother argues that the court lacked adequate evidence to support its decision. We affirm.

When D.L. was seven months old, in September 2005, the Department for Children and Families (DCF) received an emergency detention order for D.L. after the child suffered serious non-accidental injuries. The parents stipulated that D.L. was a child in need of care or supervision (CHINS), but did not acknowledge the source of the injuries. Parents' older child, J.S., had previously been removed from their home after J.S. suffered unexplained bruises. DCF set concurrent goals of reunification and termination. Part of the case plan required the parents to acknowledge how D.L. was injured and to receive parent education.

In May 2006, DCF filed petitions to terminate parental rights due to lack of progress. One month later, W.L.S. was born and almost immediately taken into DCF custody. Following a contested hearing, the court concluded that W.L.S. was CHINS. In its initial disposition, DCF recommended termination and also filed petitions to terminate parental rights to W.L.S. Prior to the hearing, father voluntarily relinquished his rights. The court held a two-day hearing on termination of mother's rights and the following evidence was presented. Mother has cognitive deficits and has limited reading, writing and verbal skills. Although mother has always denied that father was ever abusive to their children, at the hearing, mother testified that father has a bad temper and she believed father injured J.S. and may have abused D.L. As part of the case plan, mother began counseling sessions with the goal of giving mother some insight into the risk situations that might have led to D.L.'s abuse. After five sessions, the social worker terminated the counseling because the social worker explained that mother's lack of concern over the past treatment of her children and denial that father could have been involved prevented any

improvement. Although mother regularly attended visits with the children, the supervisor repeatedly had to instruct mother on basic parenting skills, such as reminding mother to check the children's diapers. The visit supervisor was also concerned about mother's lack of personal hygiene and inappropriate dress. To assist with her parenting skills, mother was provided with an initial parent education course, but she did not complete it. Following an evaluation in October 2006, the psychologist recommended that, given mother's learning style, mother should receive practical, hands-on parent education. In September 2007, mother began new "hands-on" parent education. At the time of the hearing, mother had received only six sessions in the new program and the educator reported "some results," explaining that mother was inconsistent in applying what she had been taught. The psychologist testified that mother had the capability to learn parenting, but it would take six months of the hands-on approach to determine mother's learning pace, and it was impossible to determine whether mother would be able to gain the ability to parent her children. Mother urged the court to wait for six months to determine whether she would progress. Mother contended that she has the capacity to be a good mother and learn the necessary skills, but required more time to demonstrate this.

The court granted the petitions to terminate. As to D.L., the court found there was a substantial change in material circumstances due to mother's stagnation. See *In re S.R.*, 157 Vt. 417, 421 (1991) (explaining that a change in material circumstances occurs when there is no improvement in a parent's ability to care for a child). For both D.L. and W.L.S., the court considered the statutory best-interests factors, 33 V.S.A. § 5540, and concluded that termination was in the children's best interests. While the court acknowledged that mother loves her children, the court concluded that mother has not been able to put the children's needs first. The court found that the children had adjusted well in their foster home—the only place they had lived for most of their lives, and had bonded with the foster family. The court further found that on the key issue of whether mother would be able to resume parenting within a reasonable period of time, the evidence was "equivocal at best." The court explained that mother had made little progress in her parenting skills and may still need years of education, and that given the children's young age and need for stability, this was an unreasonable amount of time. See *In re J.S.*, 168 Vt. 572, 574 (1998) (mem.) (considering age of children, length of time children were separated from parents, and children's need for stability in measuring a reasonable period of time). Furthermore, the court was concerned about mother's parenting abilities in other respects. The court found that mother lacked insight into the dynamics of abuse and the risk to children, noting that it took mother two years to concede that father has a bad temper and was a danger around the young children. The court also found that mother is dependent on family for housing and transportation, is in denial about her own father's sex offenses and fails to address her own personal hygiene. Based on all of the factors, the court concluded that termination was in the children's best interests.

On appeal, mother argues that the court lacked adequate evidence and therefore a reasonable basis to conclude that she would not be able to resume parenting within a reasonable period of time. Mother contends that there was insufficient evidence to gauge whether she would be successful in the new parenting class, and that the court should have denied DCF's termination request until at least six months of mother's new parenting class had elapsed to see what type of progress mother was able to make.

The court's conclusion that mother will not be able to resume parenting within a reasonable period of time must be supported by clear and convincing evidence. In re A.F., 160 Vt. 175, 178-79 (1993). In reviewing a termination decision, we defer to the family court's findings of fact unless clearly erroneous and will uphold the court's conclusions if supported by the findings. Id. at 179.

Despite mother's assertions otherwise, we conclude that the court had a sufficient basis to conclude that mother will not be able to resume parenting within a reasonable period of time. After a year and a half, mother still lacked basic parenting skills. While mother asserts that she could have demonstrated some progress in her new hands-on program, even accepting this, the court was within its discretion to conclude that the additional time necessary for her to possibly attain those skills is beyond reasonable for these young children. See id. The six-month period mother requested was only to determine if mother was making progress; mother would require even more time to learn all the skills necessary to parent the children on her own and, as the court found, both children are very young, have lived in their foster home for most of their lives and critically need stability. See In re J.S., 168 Vt. at 574 (explaining that a reasonable period of time is measured from the perspective of the child). In addition, the court's other findings support its conclusion that mother will not be able to parent her children in a reasonable period of time. The court outlined other concerns about mother's preparedness to parent her children including: her inability until the final hearing to acknowledge father's physical abuse; her inability to understand that her own father is a sex offender who presents a risk to her children; her lack of stable housing; and her inability to address her own basic personal hygiene. Considering all of these findings, the court did not abuse its discretion in concluding that mother would not be able to resume parenting within a reasonable period of time.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice