

SUPREME COURT OF VERMONT

In re E.A.

183 Vt. 527 (2007) · Decided November 15, 2007

SUMMARY

The Vermont Supreme Court held that the Vermont Adoption Act’s twenty-one-day revocation provision does not apply to parental-rights terminations entered in a juvenile CHINS proceeding. Because the parents voluntarily and knowingly agreed to terminate their parental rights under the juvenile statutes, and those statutes provide no parallel revocation right, the court affirmed the termination orders.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Manley, J.; Johnson; Manley
JURISDICTION	Vermont
DECIDED	November 15, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Parents appealed family court orders terminating their parental rights to two children after they voluntarily agreed to termination in a juvenile CHINS proceeding.
STANDARD OF REVIEW	De novo review applies to the legal question whether the parents could revoke their termination decisions, including construction of the Vermont Adoption Act and juvenile-proceeding statutes.
PRECEDENTIAL VALUE	precedential
PARTIES	Mother, Father v. State of Vermont

TOPICS

- termination of parental rights
- family law procedure
- statutory interpretation
- appellate procedure
- preservation of error

PRACTICE AREAS

- family law
- termination of parental rights
- adoption

QUESTIONS PRESENTED

1. Whether the Vermont Adoption Act's twenty-one-day revocation provision applies to parental-rights termination agreements entered in a juvenile CHINS proceeding.
2. Whether the parents' pro se petitions constituted revocations of voluntary relinquishments under the Vermont Adoption Act.
3. Whether the Vermont Adoption Act's revocation period should be tolled because the parents allegedly were advised that their relinquishments were irrevocable.

HOLDINGS

1. The Vermont Adoption Act does not apply to parental-rights termination proceedings arising under the protective juvenile statutes in chapter 55 of Title 33.
2. The parents had no statutory basis to revoke the termination orders because the Vermont Adoption Act did not apply and the juvenile statutes contain no parallel revocation provision.

KEY QUOTATIONS

"We conclude that the VAA is not applicable to this juvenile proceeding, and affirm the termination orders."
(183 Vt. at 527)

"Thus, the YAA's provision allowing a parent who is releasing a child for adoption a period in which to revoke his or her decision does not apply, and there is no parallel provision in the juvenile statutes for revoking a termination decision." (183 Vt. at 529)

FACTUAL BACKGROUND

The family court found the children were CHINS based on the father's history of domestic violence and substance abuse and the mother's parenting deficits. After the children were returned to foster care following an incident in which the father physically abused an older son, the Department for Children and Families changed the case plan to adoption and petitioned to terminate parental rights. At the termination hearing, both parents knowingly and voluntarily agreed to termination after questioning by the court, but later claimed they had been pressured or misled and sought to revoke their agreements.

PROCEDURAL HISTORY

The family court found the children to be children in need of care or supervision, granted the Department for Children and Families custody, and later changed the case plan to adoption. At a scheduled termination hearing, both parents voluntarily signed agreements terminating their parental rights, and the family court entered termination orders. The parents subsequently filed pro se petitions seeking to invalidate or revoke the termination decisions; the family court treated the petitions as notices of appeal, and the Supreme Court of Vermont affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Margaret Susan P., 169 Vt. 252, 262, 733 A.2d 38, 46 (1999)

OPINION

MANLEY, J.

Manley, J. ¶ 1. November 15, 2007. Mother and father both appeal family court orders terminating their parental rights to two children, E.A. and E.A. The family court orders were based on the parents' agreements to terminate residual parental rights. Thereafter, both parents filed pro se petitions, endeavoring to retract the relinquishment of their parental rights.

The family court considered the petitions notices of appeal. On appeal, parents contend that they are entitled to retract their termination agreements pursuant to the terms of the Vermont Adoption Act (VAA). We conclude that the VAA is not applicable to this juvenile proceeding, and affirm the termination orders. ¶ 2.

In November 2005, the family court found both E.A. and E.A. were children in need of care or supervision (CHINS) based on the parents' stipulation that father had a history of domestic violence and substance abuse, and that mother had parenting deficits that rendered her incapable of meeting her children's needs.

In January 2006, the court granted the Commissioner of the Department for Children and Families (DCF) custody of the children. The children returned to live with parents in April and August 2006, but DCF retained custody. Following an incident in October 2006, where father physically abused an older son then living with the family, the children returned to foster care.

DCF then changed the case-plan goal to adoption and filed petitions to terminate in January 2007. The court set a contested termination hearing for April 19, 2007. At the hearing, both parents agreed to voluntarily terminate their parental rights. Each parent signed a termination agreement, recognizing that it was in the children's best interests to terminate their parental rights. ¶ 3.

At the hearing, the court conducted a colloquy with each parent. In answer to the court's questions, father testified that he understood he was agreeing to terminate his parental rights and that it was a final decision. Father also stated that he was satisfied with his attorney's representation and that he understood the proceeding.

The court also questioned mother, and she confirmed that she was competent to make the decision, and was making it of her own free will. Mother confirmed that she understood she was terminating her parental rights and that she could not change her mind later.

The court questioned, 'You understand as well that you can't go to any other court like you can't go to Family Court, you can't go to Probate Court to try and change this, that when you make this decision today it's for all courts for all time?' Mother answered affirmatively.

Although mother expressed some dissatisfaction with her attorney, mother explained that she had had enough time to decide, and was voluntarily deciding to terminate because it was in her children's best interest. Based on the testimony, the court found that each parent had voluntarily and knowingly executed the termination documents.

The court terminated the parents' rights and granted DCF custody without limitation as to adoption. ¶ 4. On May 17, 2007, mother and father filed petitions to appeal, attaching affidavits to explain why the termination *528decisions should be invalidated. Father claimed that he was told that he would go to jail if he did not agree to termination. Mother's affidavit asserted that she had only fifteen minutes to make her decision and was told that she or father would go to jail if she insisted on a contested hearing.

The court construed their petitions as notices of appeal. ¶ 5. On appeal, mother and father contend for the first time that: (1) their pro se filing constituted a revocation of a voluntary relinquishment of their parental rights under the VAA, and (2) the VAA's twenty-one-day period for revocation should be tolled because parents were erroneously advised that their relinquishment was irrevocable.

The State responds that (1) parents cannot raise any issue under the VAA because they failed to raise it below, (2) the VAA does not apply to juvenile proceedings, such as this one, and (3) the record supports termination. ¶ 6.

We agree with the State that the VAA does not apply to this juvenile proceeding and affirm the termination orders. Determining whether mother and father may revoke their termination decision is a question of law, which requires us to construe both the VAA and the statutes relating to juvenile proceedings.

In construing statutes, "[o]ur overall purpose is to implement the intent of the Legislature." In re Margaret Susan P., 169 Vt. 252, 262, 733 A.2d 38, 46 (1999). Therefore, we first examine the statutory language itself to determine whether its meaning is plain. Id. ¶7.

The VAA grants probate courts "jurisdiction over a proceeding for the adoption of a minor commenced under this title." 15A V.S.A. § 3-101(a). Relinquishment of parental rights under the VAA is done when a parent voluntarily decides to place a child up for adoption.

The VAA sets out procedural and content requirements for a parent or guardian to comply with before deciding to put a child up for adoption. See id. §§ 2-405, 2-406. Specifically, the VAA states that a parent who executes a relinquishment may revoke the consent within twenty-one days by filing a written notice in court. Id. § 2-404.

The VAA is not a protective statute, endeavoring to protect children from abuse or neglect, rather its purpose is to set uniform laws governing the adoption process. See M. Arzt, In the Best

Interests of the Child: The Uniform Adoption Act, 25 Stetson L. Rev. 835, 842 (1996) (explaining that the goal of the Uniform Adoption Act, upon which the Vermont statute is based, is to “draft adoption laws with the goals of certainty, predictability, and most of all, stability”). ¶ 8.

In contrast, a child comes under the jurisdiction of the family court if it finds the child is a CHINS or delinquent. 33 V.S.A. § 5503. A child is CHINS if he or she is abandoned or abused, without proper parental care, or beyond the control of his parents. Id. § 5502(a)(12). Once a child is found to be a CHINS, the family court has jurisdiction to issue certain “orders of disposition most suited to the protection and physical, mental and moral welfare of the child,” including transferring legal custody.

Id. § 5528.* The court may modify its orders, upon a showing of changed circumstances and in the best interests of the child. Id. § 5532. ¶ 9. In this case, the proceedings leading to termination of mother’s and father’s parental rights were based on the protective juvenile statutes in chapter 55 of Title 33, not the adoption provisions of the VAA.

The children came under the family court’s jurisdiction following the CHINS determination, and the family court retained exclusive jurisdiction over *529the proceedings related to their welfare, including the termination decision. See 15A V.S.A. § 3-101(0 (“Nothing in this section shall be construed to remove jurisdiction from the family court over relinquishments or termination of parental rights under 33 V.S.A. chapter 55.”).

Thus, the YAA’s provision allowing a parent who is releasing a child for adoption a period in which to revoke his or her decision does not apply, and there is no parallel provision in the juvenile statutes for revoking a termination decision. There is no basis to revoke the termination orders and they are affirmed. Affirmed.

The family court has a variety of options at disposition, but adoption is not one of them. The family court may terminate parental rights without limitation as to adoption, but the court is not granting an adoption like the probate court would under the VAA.