

SUPREME COURT OF RHODE ISLAND

In re Carlos F. et al.

849 A.2d 364 (R.I. 2004) · No. No. 2002-718-Appeal · Decided June 10, 2004

SUMMARY

The Rhode Island Supreme Court affirmed a Family Court judgment terminating a mother's parental rights to five children based on chronic substance abuse and parental unfitness. The court held that the mother failed to establish that the maternal grandmother was a suitable placement and that the children's best interests supported their remaining in stable pre-adoptive homes.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Per Curiam; Williams, C.J.; Flanders, J.; Goldberg, J.
JURISDICTION	Rhode Island
DECIDED	June 10, 2004
DOCKET	No. 2002-718-Appeal
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from a Family Court judgment terminating her parental rights to five children.
STANDARD OF REVIEW	The Supreme Court reviewed the record to determine whether the Family Court's findings were supported by legally competent evidence. Findings were entitled to great weight and would not be disturbed unless the trial justice overlooked or misconceived material evidence or was clearly wrong.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Luzcelina Feliciano v. Department of Children, Youth and Families

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- family law
- termination of parental rights
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Family Court erred by terminating the mother's parental rights after finding her unfit because of chronic substance abuse.
2. Whether the Family Court was required to consider placement of the children with their maternal grandmother based on the state's policy of preserving family ties.
3. Whether the Family Court properly determined that the children's best interests were served by allowing them to remain in their stable, familiar, pre-adoptive placements.

HOLDINGS

1. The termination of parental rights was proper because the Family Court's finding that the mother was unfit due to chronic substance abuse was supported by the record, and the statutory requirements for termination were satisfied.
2. Once a parent has been adjudged unfit, the burden shifts to the parent to prove that the proposed relative is an appropriate person for placement.
3. The Family Court did not abuse its discretion by refusing to place the children with the maternal grandmother and determining that their best interests were served by remaining in their stable, familiar, pre-adoptive homes.

KEY QUOTATIONS

"[O]nce a parent has been adjudged unfit, [however,] the balance shifts so that the 'best interests of the child outweigh all other considerations.'" (366)

"Although we recognize the importance of maintaining familial ties, the overriding consideration is the best interest of the child, not the interests of the state nor the natural parent, and most especially not the interests of a family member." (367)

FACTUAL BACKGROUND

The mother was arrested on a heroin-possession charge while accompanied by two children, who entered DCYF custody. She subsequently failed to cooperate with DCYF, repeatedly failed to complete substance-abuse treatment, and missed scheduled visits; additional children were removed from her custody. The mother proposed placement with the maternal grandmother, but the purported Puerto Rican home study was unauthenticated and incomplete, and no evidence established the suitability of the grandmother's Rhode Island home or her ability to care for the children.

PROCEDURAL HISTORY

The Department of Children, Youth and Families filed termination petitions concerning five children. After several days of testimony, the Family Court terminated the mother's parental rights under G.L. 1956 §§ 15-7-7(a)(2)(iii) and 15-7-7(a)(3). The Supreme Court of Rhode Island summarily decided the appeal after concluding that the parties had not shown cause why the appeal should not be resolved without further proceedings.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The record shall be remanded to the Family Court.

CASES CITED

- In re Brianna D., 798 A.2d 413, 414 (R.I. 2002)
- In re Marcella, 834 A.2d 717, 718 (R.I. 2003)
- In re Nicole B., 703 A.2d 612, 615 (R.I. 1997)
- In re Kristen B., 558 A.2d 200, 203 (R.I. 1989)
- In re Kristina L., 520 A.2d 574, 579 (R.I. 1987)

OPINION

In Re Carlos F. 849 A.2d 364

PER CURIAM.

849 A.2d 364 (2004) In re CARLOS F. et al. No. 2002-718-Appeal. Supreme Court of Rhode Island. June 10, 2004. Thomas J. Corrigan Jr., Washington Crossing, PA, for Plaintiff. Catherine A. Gibran, Providence, for Defendant. Present: WILLIAMS, C.J., FLANDERS, and GOLDBERG, JJ.

OPINION

PER CURIAM. The respondent, Luzcelina Feliciano (respondent or mother), appeals from a Family Court judgment terminating her parental rights to five of her children, Kelvin, Luis, Adrine, Neisha, and Sasha.[1] This case came before the Supreme Court on May 10, 2004, pursuant to an order directing the parties to appear and show cause *365 why the issues raised in this appeal should not summarily be decided. After hearing the arguments of counsel and reviewing the memoranda of the parties, we are satisfied that cause has not been shown. Accordingly, we shall decide the appeal at this time. The Department of Children, Youth and Families (DCYF) first encountered respondent and her children on January 21, 2000, when respondent was arrested and charged with possession of heroin with intent to deliver. At the time of her arrest, respondent was accompanied by two of her children, Carlos and Neisha, who came into DCYF's custody and were placed in non-relative foster care. As a result of her arrest, respondent entered a plea of nolo contendere and was sentenced to the Adult Correctional Institutions for a term of five years, with six months to serve. The respondent's relationship with DCYF was neither cooperative nor productive. She initially declined to convey any family history and refused to sign medical releases. The mother also failed to disclose to DCYF that she had three other children, who were being cared for by a friend. On April 2, 2000, while incarcerated, respondent gave birth to Sasha, who was also placed in non-relative foster care. At a meeting

before her release from prison, respondent informed her DCYF caseworker, Karen Harvey (Harvey), of her other children, Adrine, Luis and Kelvin. After she was released from prison, respondent retained custody of Adrine, Luis and Kelvin; but they eventually were removed because of her failure to cooperate with substance abuse treatment. Thereafter, respondent identified her mother, Mildred Vargas (Mrs. Vargas), as a possible caretaker for her five children. At the time, however, Mrs. Vargas was a resident of Puerto Rico. To place the children with Mrs. Vargas in Puerto Rico, DCYF was required to seek a home study relative to the suitability of Mrs. Vargas and the conditions of her home, through the Interstate Compact on Placement of Children (ICPC). Upon learning that Mrs. Vargas was a possible placement, Harvey completed the necessary ICPC paperwork, which then was forwarded to a social service agency in Puerto Rico. Although Harvey contacted the ICPC administrator about the status of the ICPC, Puerto Rican authorities never forwarded Harvey a completed report. Despite DCYF's efforts, respondent failed to successfully complete a single substance abuse treatment program and she repeatedly missed scheduled visits with her children. On April 6, 2001, DCYF filed termination of parental rights petitions for Neisha, Sasha, Kelvin, Luis and Adrine. After several days of testimony, the trial justice terminated respondent's parental rights on the basis of G.L. 1956 §§ 15-7-7(a)(2)(iii) and 15-7-7(a)(3). On appeal, respondent admits that despite DCYF's efforts to assist her rehabilitation, she has not yet overcome her drug and alcohol dependency. Although respondent does not challenge the trial justice's findings of parental unfitness, she alleges that the trial justice erred in failing to consider placement of the children with their maternal grandmother. The respondent points out that in November 2001, three months before the termination hearing, Mrs. Vargas returned to Rhode Island and presented DCYF with a document purported to be a home study conducted by Puerto Rican social services that recommended placement in Mrs. Vargas's home. Mrs. Vargas also testified that she and her husband had permanently relocated to Rhode Island to care for respondent's children and that she was willing to *366 cooperate with DCYF if she were granted custody. Citing G.L.1956 § 14-1-2, respondent argues that the trial justice should have considered placing the children with Mrs. Vargas pursuant to the "codified public policy of this state * * * '[t]o conserve and strengthen the child's family ties wherever possible.'" It is well settled that when reviewing a termination of parental rights decree, this Court examines the record to determine whether the findings of the trial justice are supported by legally competent evidence. In re Brianna D., 798 A.2d 413, 414 (R.I.2002) (per curiam). "[T]he findings of a trial justice are entitled to great weight and will not be disturbed unless the trial justice overlooked or misconceived material evidence or was otherwise clearly wrong." In re Marcella, 834 A.2d 717, 718 (R.I.2003) (per curiam). To protect a parent's fundamental liberty interest in the care and maintenance of his or her children, parental rights may not be terminated until the state proves by clear and convincing evidence that the parent is unfit. In re Nicole B., 703 A.2d 612, 615 (R.I.1997). "[O]nce a parent has been adjudged unfit, [however,] the balance shifts so that the 'best interests of the child outweigh all other considerations.'" Id. (quoting In re Kristen B., 558

A.2d 200, 203 (R.I.1989)). After reviewing the evidence in this case, the trial justice found that respondent was an unfit parent because of her chronic substance abuse. Once the finding of unfitness was made, the burden of proof shifted to respondent to prove that Mrs. Vargas was an appropriate person for placement. The respondent failed to meet this burden of proof. At trial, respondent argued that the children should be placed with Mrs. Vargas based upon a home study purportedly conducted by Puerto Rican authorities. The authenticity of the home study document, which was hand-delivered to DCYF by Mrs. Vargas, was not verified before trial. Although the document provided information about the size of Mrs. Vargas's home and her finances, it failed to provide a criminal background check or an evaluation of Mrs. Vargas's parenting skills. Also, at the time of trial, Mrs. Vargas represented that she had abandoned her home in Puerto Rico and permanently relocated to Rhode Island.[2] The record clearly supports the trial justice's finding that the home study document was "insufficient for placing the children in Puerto Rico." The trial justice's refusal to consider placement of the children with Mrs. Vargas was further supported by respondent's failure to present any evidence about the suitability of Mrs. Vargas's Rhode Island home or her ability to care for the children. The respondent also asserts that "the court and the department were fully satisfied with the children's present (and, in some cases, pre-adoptive) placements, to the detriment of the grandmother." This Court previously has recognized that the termination of parental rights involves a balancing of three interests, namely, those of the state, the child, and the natural parents. In *re Kristina L.*, 520 A.2d 574, 579 (R.I.1987). Although we recognize the importance of maintaining familial ties, the overriding consideration is the best interest of the child, not the interests of the state nor the natural parent, and most especially not the interests of a family member. The trial justice acted within his *367 discretion in determining that the best interest of the children would be served by enabling them to remain in their respective placements in the stable and familiar pre-adoptive homes in which they were residing. For the reasons stated herein, we affirm the judgment of the Family Court. The record shall be remanded to the Family Court. Justice FLAHERTY and Justice SUTTELL did not participate.

NOTES

[1] The respondent's eldest child, Carlos F., was not named in the termination of rights petition and is not involved in these proceedings.

[2] It was disclosed at oral argument that Mrs. Vargas has returned to Puerto Rico.