

SUPREME COURT OF NEW HAMPSHIRE

In re Diane R.

146 N.H. 676 (2001) · Decided July 31, 2001

SUMMARY

The New Hampshire Supreme Court held that RSA 169-C:28 does not provide a right to de novo review of post-final dispositional orders in child-abuse and neglect proceedings. The court explained that such orders may instead be challenged through a petition for writ of certiorari, but concluded that any such challenge in this case would have been untimely. The court affirmed dismissal of the parents’ appeal.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, J.; Brock, C.J.; Nadeau, J.; Dal, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	July 31, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed to the New Hampshire Supreme Court from the superior court's dismissal of their request for de novo review of a district court post-final-dispositional order continuing a long-term foster-care case plan.
STANDARD OF REVIEW	Statutory interpretation was reviewed de novo; the court also independently reviewed the record concerning whether the June 15, 1999 order substantially changed the case plan.
PRECEDENTIAL VALUE	Published memorandum opinion
PARTIES	Diane R.'s mother, Diane R.'s stepfather v. State of New Hampshire, Division for Children, Youth and Families

TOPICS

- family law procedure
- appellate procedure
- writ of certiorari
- statutory interpretation
- due process

PRACTICE AREAS

- family law
- juvenile law
- appellate procedure
- administrative law
- constitutional law

QUESTIONS PRESENTED

1. Whether RSA 169-C:28 authorizes a de novo appeal to superior court from a post-final-dispositional review order issued by the district court.
2. Whether the June 15, 1999 order substantially changed the case plan so as to constitute a new final dispositional order subject to de novo review.
3. Whether denial of de novo review violated the plaintiffs' state or federal constitutional due-process rights.

HOLDINGS

1. RSA 169-C:28 does not provide a statutory right to de novo review in superior court of post-final-dispositional review orders issued by the district court.
2. The June 15, 1999 order did not constitute a new final dispositional order because the material change from reunification to long-term foster care occurred no later than the 1997 order.
3. Even if the appeal were treated as a petition for writ of certiorari challenging the 1997 order, it would be untimely.

KEY QUOTATIONS

“We agree with the trial court that there is no statutory right to de novo appeal from post-final dispositional orders issued by the district court.” (at 677)

“The lack of a de novo appeal from post-final dispositional review orders does not, however, foreclose all avenues of review.” (at 678)

FACTUAL BACKGROUND

Diane R. reported that her stepfather had sexually abused her, and DCYF initiated neglect proceedings. Her mother consented to a neglect finding and to DCYF's legal custody, while the district court ordered that Diane remain initially in her mother's physical custody and that she have no contact with her stepfather. In 1997, after repeated district court reviews, the court changed the case plan from reunification to long-term foster care, and later orders, including the June 15, 1999 order, continued that plan.

PROCEDURAL HISTORY

In 1993, the district court approved a consent agreement finding Diane R. neglected and awarding legal custody to DCYF, and entered a final dispositional order. In 1997, the district court changed the case plan from reunification to long-term foster care; a June 15, 1999 order continued that plan. The plaintiffs sought de novo review in superior court, which dismissed the appeal because RSA 169-C:28 did not authorize de novo review of post-final-dispositional orders. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Cindy G., 124 N.H. 51 (1983)
- In re Bill F., 145 N.H. 267 (2000)
- Wilson v. Personnel Commission, 117 N.H. 783 (1977)

OPINION

In re Diane R. 146 N.H. 676

BRODERICK, J.

MEMORANDUM OPINION

BRODERICK, J. The plaintiffs, Diane R.'s mother and stepfather, appeal the order of the Superior Court (Mohl, J.) dismissing their *677 appeal for de novo review of a June 15, 1999 district court order for long-term foster care. See RSA 169-C:28 (Supp. 1999). We affirm. The record reveals the following facts. In 1993, Diane R. reported to school officials and officials of the division for children, youth and families (DCYF) that her stepfather had sexually abused her. DCYF filed a neglect petition, which alleged that Diane R., who was then seven years old, was "without proper parental care and control necessary for her physical, mental and emotional health [and was] at risk of harm." Thereafter, the parties signed a consent agreement in which Diane R.'s mother, who was represented by counsel, agreed that Diane R. was neglected and that her legal custody with the right of placement should be granted to DCYF. The Somersworth District Court (Coolidge, J.) approved the agreement in 1993. The court specifically found that Diane R.'s mother voluntarily entered into the agreement. At the dispositional hearing, the court ordered that: (1) Diane R. remain in her mother's physical custody; (2) legal custody be awarded to DCYF; and (3) no contact be allowed between Diane R. and her stepfather. Following the final dispositional order, Diane R.'s mother and stepfather did not seek de novo review in the superior court. See RSA 169-C:28 (Supp. 2000). In the years that followed, the district court reviewed the case numerous times. Although Diane R.'s physical custody changed from her mother to foster homes, DCYF continuously maintained legal custody. The "no contact" order between Diane R. and her stepfather was not changed until 1995, when the court allowed therapeutically supervised visits between the two. At no time prior to the present appeal did Diane R.'s mother seek certiorari review of any of the court's post-final dispositional orders. In a 1997 order, the district court ordered DCYF to change the case plan from reunification to long-term foster care. Among other findings supporting this change, the court concluded that the mother had not complied with the "no contact" order. The court found that long term foster care was necessary to protect Diane R. Later orders, including one issued on June 15, 1999, stated that "[t]he case plan remain[s] long-term foster care." On July 13, 1999, the parents filed an appeal in superior court and requested a de novo hearing to review the district court's June 15, 1999 order. Citing a lack of statutory authority for such appeals, DCYF filed a motion to dismiss. The trial court found that the plaintiffs had the right to de novo review of the final dispositional order, which all parties agree was issued in 1993,

but that the statute neither expressly nor by implication allowed for de novo review of subsequent orders. Finding no legal support for the *678plaintiffs' claim that the case management plan had changed substantially and was, therefore, a new final dispositional order entitling them to de novo review, the court dismissed the appeal. This appeal followed. We agree with the trial court that there is no statutory right to de novo appeal from post-final dispositional orders issued by the district court. See RSA 169-C:28. RSA 169-C:28 provides that de novo review "may be taken to the superior court by the child or the child's authorized representative or any party having an interest, including the state, . . . within SO days of the final dispositional order." (Emphasis added.) A "final dispositional order" includes "a dismissal of a petition for abuse or neglect by the district court" and "any ruling or order arising from an administrative hearing held or initiated by any administrative agency ... in which a finding of child abuse or neglect is made." Id. (emphasis added). It does not allow for de novo review of post-final dispositional review orders. See *In re Cindy G.*, 124 N.H. 51, 57-59 (1983). The lack of a de novo appeal from post-final dispositional review orders does not, however, foreclose all avenues of review. See id. at 59-60 (considering treating request for de novo review as petition for writ of certiorari). The plaintiffs could have filed a petition for writ of certiorari in either the superior court or the supreme court to contest such orders. See id.; see also *In re Bill F.*, 145 N.H. 267, 271 (2000). The plaintiffs argue that because they were denied a de novo appeal in the superior court from a post-final dispositional review order of the district court, their fundamental liberty interests were not accorded State or federal constitutional due process. After a careful review of the record, we determine that because no substantial change was made by the June 15, 1999 order, we need not address this constitutional issue. In this case, it is not disputed that the final dispositional order was issued in 1993. The plaintiffs sought superior court review of a June 15, 1999 order, which they claim significantly altered Diane R.'s case plan. Our examination of the record, however, reveals that the changes complained of did not occur in June 1999, but in orders dating back at least as far as 1997, when the court ordered "[t]hat DCYF move forward to change the case plan to long term foster care from reunification" Accordingly, any petition for a writ of certiorari should have been filed in 1997. Therefore, even if we were to treat the plaintiffs' present appeal as a petition for a writ of certiorari from the 1997 order, it would be untimely. See *Wilson v. Personnel Comm'n*, 117 *679N.H. 783, 784 (1977) ("Where the legislature has acted to provide an appeal period in a substantively analogous situation, that [thirty-day] period will prove a fair guideline as to what constitutes a reasonable time."). Affirmed. BROCK, C.J., and NADEAU, DAL1ANTS and DUGGAN, JJ., concurred.