

SUPREME JUDICIAL COURT OF MAINE

In re Jonathan D.

200 A.3d 799 (Me. 2019) · Decided January 24, 2019

SUMMARY

The Maine Supreme Judicial Court affirmed a judgment terminating Jonathan D.'s parental rights under 22 M.R.S. § 4055. The court held that the trial court's supported findings established that he remained unable to protect the child from jeopardy or assume responsibility within a time reasonably calculated to meet the child's needs, and that termination was in the child's best interest.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Alexander; Gorman; Hjelm; Humphrey; Jabar; Mead
JURISDICTION	Maine
DECIDED	January 24, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from a District Court judgment terminating his parental rights. Appointed counsel filed a brief stating that she believed there were no meritorious appellate issues; the father was granted additional time to file a supplemental brief but did not do so.
STANDARD OF REVIEW	The Supreme Judicial Court reviewed whether the District Court's findings were supported by competent evidence, whether the statutory grounds for termination were established by clear and convincing evidence, and whether the best-interest determination involved error or an abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jonathan D., father v. Department of Health and Human Services

TOPICS

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

PRACTICE AREAS

- family law
- termination of parental rights
- child protection
- appellate procedure

QUESTIONS PRESENTED

1. Whether competent evidence and clear and convincing evidence supported termination of the father's parental rights on the grounds that he was unable or unwilling to protect the child from jeopardy or take responsibility for the child within a time reasonably calculated to meet the child's needs.
2. Whether the District Court erred or abused its discretion in determining that termination of the father's parental rights was in the child's best interest.

HOLDINGS

1. The District Court did not err in determining that the father remained unable to protect the child from jeopardy or take responsibility for the child within a time reasonably calculated to meet the child's needs.
2. The District Court did not err or abuse its discretion in determining that termination of the father's parental rights was in the child's best interest.

KEY QUOTATIONS

“Based on the court's findings of fact, all of which have evidentiary support, the court did not err in determining that the father remains unable to protect the child from jeopardy or take responsibility for the child within a time that is reasonably calculated to meet the child's needs.” (802)

“Nor did the court err or abuse its discretion in determining that termination of the father's parental rights was in the child's best interest.” (802)

FACTUAL BACKGROUND

The father was a registered sex offender who had been convicted of Class B unlawful sexual contact involving a two-year-old child. He had serious mental-health conditions and had engaged only sporadically in sex-offender treatment, while refusing at least twice to sign required treatment contracts and declining to accept responsibility for the conduct underlying his conviction. The District Court found that he remained unable to protect the child from jeopardy, that the risk of sexual abuse remained high, and that reunification would disrupt the child's relationship with the mother.

PROCEDURAL HISTORY

The Department of Health and Human Services filed a child-protection petition, and the District Court transferred custody of the child to the Department. After a jeopardy hearing, the court relieved the Department of its obligation to pursue reunification efforts with the father but ordered sex-offender treatment and individual counseling. The Department later petitioned to terminate the father's parental rights, and the District Court granted the petition after finding by clear and convincing evidence that statutory grounds existed and termination was in the child's best interest. The Supreme Judicial Court of Maine affirmed.

DISPOSITION

affirmed

CASES CITED

- In re M.C., 2014 ME 128, ¶ 7, 104 A.3d 139
- In re Child of Gustavus E., 2018 ME 43, ¶ 8, 182 A.3d 153
- In re Thomas D., 2004 ME 104, ¶ 21, 854 A.2d 195
- In re Alexander D., 1998 ME 207, ¶ 18, 716 A.2d 222
- In re A.H., 2013 ME 85, ¶ 16, 77 A.3d 1012
- In re Marcus S., 2007 ME 24, ¶ 11, 916 A.2d 225

OPINION

PER CURIAM.

PER CURIAM [¶1] Jonathan D. appeals from a judgment of the District Court (Lewiston, Montgomery, J.) terminating his parental rights to his child pursuant to 22 M.R.S. § 4055(1)(B)(2) (a), (b)(i)-(ii) (2017).¹ We affirm the judgment. *801[¶2] On July 7, 2016, the Department of Health and Human Services filed a child protection petition when the child was approximately fifteen months old.

See 22 M.R.S. § 4032 (2017). The petition alleged that the father is a registered sex offender with a history of serious untreated mental health issues and that the mother was unable to keep unsafe persons-including the father-away from the child.

On August 3, 2016, the Department requested a preliminary protection order. The court (Oram, J.) held a hearing on the Department's request on August 16, 2016, and entered an order transferring custody of the child to the Department the following day. [¶3] On November 1, 2016, the court (Dow, J.) held a jeopardy hearing and, after issuing findings of facts, entered an order relieving the Department of its obligation to pursue reunification efforts with the father based on the aggravating factor of his 2008 conviction of unlawful sexual contact (Class B), 17-A M.R.S. § 255-A(1)(E-1) (2017), involving a two-year-old child.

See 22 M.R.S. §§ 4002(1-B)(A)(1), 4035(1), (2) (2017). Despite the cease reunification order, the court ordered the Department to provide the father with sex offender treatment and individual counseling. [¶4] On January 25, 2018, the Department filed a petition for termination of the father's parental rights.

The court (Montgomery, J.) held a hearing on the petition on April 10, 2018, and, on May 14, 2018, issued an order granting the Department's petition to terminate the father's parental rights. Based on the testimony presented at the hearing and other competent evidence in the record, the court found by clear and convincing evidence that termination of the father's parental rights is in the best interest of the child because he is unwilling or unable to protect the child from jeopardy or take responsibility for the child within a time which is reasonably calculated to meet the child's need.

22 M.R.S. § 4055(1)(B)(2)(a), (b)(i)-(ii). ¶5] The court based its decision on the following factual findings, all of which are supported by competent evidence in the record. As a very young child, [the father] was subjected to egregious... abuse as well as neglect. He has been diagnosed with a variety of mental illnesses, including schitzo-affective disorder, bipolar disorder, dissociative identity disorder, PTSD, and depression.

This extended and severe childhood trauma has likely caused and/or exacerbated [the father's] mental illness and demonstrable anger. In 2008, [the father] was convicted of Class B Unlawful Sexual Contact and sentenced to five years with all but two years suspended and six years of probation. His crime involved sexual contact with a two-year-old girl while babysitting her....

As for sex offender treatment, [the father's] engagement has been sporadic over the course of the last six or so years. Despite repeated attempts to engage in the therapy, he has expressed a lack of confidence in the efficacy of such treatment and at least twice refused to sign treatment contracts, which is a required step in the treatment....[The father's] failure to wholeheartedly embrace and engage in treatment has increased the significant safety risks he poses to [the child] in a parenting role....

[T]he risk to [the child] from [the father] for sexual abuse remains high as he refuses to take full responsibility for *802the conduct leading to his sex offense conviction. His claim that the conviction resulted from him having a seizure while caring for the child victim is not only not credible, it shows a complete refusal to take one of the most important steps toward recovery, which is acknowledgment of his own action.

As long as [the father] attempts to convince himself and others that any sexual touching of that child victim was outside of his own control, he will be unable to make the changes necessary to reduce the risk of harm he poses to young children. [The father] faces great challenges as he attempts to address his very serious mental health conditions and to take responsibility for his past actions.

He remains an untreated sex offender who poses a threat of sexual abuse to [the child]. Since [the mother] and DHHS refuse to grant permission, he is statutorily prohibited from having contact with [the child].... In addition, [the father] would be unable to protect [the child] from Jeopardy as [the child] would be subject to the threat of sexual abuse by him.

[The child] has not had any contact with [the] father since [the child] was about 15 months old. [The child] is now three years old.... The record evidence supports the conclusion that any future contact with [the father] would be akin to granting contact with a stranger.

Moreover, [the father] has historically demonstrated a familiarity with the court system and its processes. In the first 15 months of [the child's] life, [the father] estimated that he and [the mother] had appeared in the Lewiston District Court 20 to 30 times....

The chance of a successful reunification between [the mother and the child] is possible only if [the father] is prohibited from disrupting [the child's] life with [the] mother. Given [the father's] demonstrated inclination to excessively engage the court system, it is likely that without a termination of his parental rights, he will continue to use the system in a way that is disruptive to [the child's] progress. [¶6] The father timely appealed.

See 22 M.R.S. § 4006 (2017); M.R. App. P. 2B(c). On September 21, 2018, pursuant to the process outlined in *In re M.C.*, 2014 ME 128, ¶ 7, 104 A.3d 139, counsel for the father filed a brief containing the factual and procedural history of the case, stating that she believed that there are no meritorious issues for appeal. Counsel also filed a motion for an enlargement of time to allow the father to personally file a supplemental brief.

Although we granted the father an enlargement of time, he did not file a supplemental brief. [¶7] Based on the court's findings of fact, all of which have evidentiary support, the court did not err in determining that the father remains unable to protect the child from jeopardy or take responsibility for the child within a time that is reasonably calculated to meet the child's needs.

See 22 M.R.S. § 4055(1)(B)(2)(b)(i), (ii); see also *In re Child of Gustavus E.*, 2018 ME 43, ¶ 8, 182 A.3d 153; *In re Thomas D.*, 2004 ME 104, ¶ 21, 854 A.2d 195; *In re Alexander D.*, 1998 ME 207, ¶ 18, 716 A.2d 222. Nor did the court err or abuse its discretion in determining that termination of the father's parental rights was in the child's best interest. See 22 M.R.S. § 4055(1)(B)(2)(a); see also *In re A.H.*, 2013 ME 85, ¶ 16, 77 A.3d 1012; *In re Marcus S.*, 2007 ME 24, ¶ 11, 916 A.2d 225.

The entry is: *803Judgment affirmed. The Department sought termination of the father's rights only. The child has been in the care of the mother since September 1, 2017, and custody was returned to the mother on November 16, 2017.