

SUPREME JUDICIAL COURT OF MAINE

In re Child of Eric K.

2018 ME 32 · No. Cum-17-424 · Decided March 6, 2018

SUMMARY

The Maine Supreme Judicial Court affirmed the termination of Eric K.'s parental rights under 22 M.R.S. § 4055. The court held that competent evidence supported findings that he was unable or unwilling to eliminate jeopardy and assume responsibility for the child 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, J.; Mead, J.; Gorman, J.; Jabar, J.; Hjelm, J.; Humphrey, J.
JURISDICTION	Maine
DECIDED	March 6, 2018
DOCKET	Cum-17-424
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from a District Court judgment terminating his parental rights, challenging the sufficiency of the evidence supporting the termination and the court's best-interest determination.
STANDARD OF REVIEW	The court reviews the sufficiency of the evidence supporting parental unfitness for competent evidence in the record and reviews the best-interest determination for abuse of discretion.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Eric K., father v. Maine Department of Health and Human Services

TOPICS

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

PRACTICE AREAS

family law juvenile law parental rights

QUESTIONS PRESENTED

1. Whether competent evidence supported the District Court's finding that the father was unwilling or unable to protect the child from jeopardy and that the circumstances were unlikely to change within a time reasonably calculated to meet the child's needs.
2. Whether the District Court abused its discretion in determining that termination of the father's parental rights was in the child's best interest.

HOLDINGS

1. Competent evidence supported the District Court's findings, by clear and convincing evidence, that the father was unwilling or unable to protect the child from jeopardy, that the circumstances were unlikely to change within a time reasonably calculated to meet the child's needs, and that he was unwilling or unable to take responsibility for the child within that time.
2. The District Court did not err or abuse its discretion in determining that termination of the father's parental rights, with a permanency plan of adoption, was in the child's best interest.

KEY QUOTATIONS

“the time frame which the court is gauging must be seen from the child’s perspective” (¶ 3)

“it is unreasonable to ask or expect [the child] to wait for some unspecified additional period of months or years for her [father] to resolve jeopardy.” (¶ 3)

FACTUAL BACKGROUND

The father had a lengthy history of substance abuse and criminal activity, including probation violations based on crack-cocaine use and positive drug tests. He had never lived with or parented the child, failed to obtain adequate housing, missed or cancelled visits, stopped visiting for approximately five months, and failed to demonstrate age-appropriate parenting skills. The child had been in Department custody and foster care for more than half of her young life and needed a consistent, reliable, and capable caregiver.

PROCEDURAL HISTORY

The Portland District Court terminated the father's parental rights under 22 M.R.S. § 4055(1)(A)(1) and (B)(2) (a), (b)(i)-(ii), finding by clear and convincing evidence that he was unwilling or unable to protect the child from jeopardy, that the circumstances were unlikely to change within a time reasonably calculated to meet the child's needs, and that termination was in the child's best interest. The father appealed, and the Supreme Judicial Court of Maine affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Cameron B., 2017 ME 18, ¶ 10, 154 A.3d 1199
- In re Charles G., 2001 ME 3, ¶ 7, 763 A.2d 1163

- In re Alexander D., 1998 ME 207, ¶ 18, 716 A.2d 222
- In re Thomas H., 2005 ME 123, ¶¶ 16-17, 889 A.2d 297

OPINION

PER CURIAM.

MAINE SUPREME JUDICIAL COURT Reporter of Decisions Decision: 2018 ME 32 Docket: Cum-17-424 Submitted On Briefs: February 26, 2018 Decided: March 6, 2018 Panel: ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ. IN RE CHILD OF ERIC K. PER CURIAM [¶1] Eric K. appeals from a judgment of the District Court (Portland, Duddy, J.) terminating his parental rights to his child pursuant to 22 M.R.S. § 4055(1)(A)(1) and (B)(2)(a), (b)(i)-(ii) (2017).¹ He challenges the sufficiency of the evidence to support the judgment and the court's discretionary determination of the child's best interest.

Because the evidence supports the court's findings and discretionary determination, we affirm the judgment. [¶2] Based on competent evidence in the record, the court found, by clear and convincing evidence, that the father is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs and that the father is unwilling or unable to take responsibility for the child within a time 1 The court (Duddy, J.) also terminated the mother's parental rights on September 15, 2017.

The mother did not appeal. 2 reasonably calculated to meet her needs. See 22 M.R.S. § 4055(1)(B) (2)(b)(i)-(ii). The court also found that termination of the father's parental rights is in the child's best interest. See 22 M.R.S. § 4055 (1)(B)(2)(a); In re Cameron B., 2017 ME 18, ¶ 10, 154 A.3d 1199.

The court based its findings of parental unfitness and its determination of the child's best interest on the following findings of fact: [The father] has a lengthy history of substance abuse and criminal activity. As a young man, [he] was convicted of a federal trafficking charge, and spent nearly 20 years in federal prison.... [The father] did not see or meet [the child] until late October 2015, or early November 2015.

At the time he was not sure [she] was his child.... [He] has never lived with [the child] in his household. In October 2015, shortly after his release from prison, [the father] violated his probation by using crack cocaine.

In June 2016, [he] again violated his probation by testing positive for illegal drugs.... [I]n July 2016, [he] agreed to the Court's Jeopardy Order. For well over a year, [the father] has failed to secure adequate housing for himself and his daughter.... [The father] has a new girlfriend [who] is a homeless person whom [he] met at a local homeless shelter three months ago....

[He] readily admits that he does not know much about [her].... 3 [The father] has never parented his daughter, and has demonstrated that he does not have parenting skills to do so. As part of the Rehabilitation/Reunification Plan, [he] was given visitation with [the child] beginning in September 2016. [He] attended visits for a period of time, but also had several no-shows and cancelations.

In response to [the child's] challenging behaviors during visits, [he] refused to engage with her.... [He] last visited [the child] on April 6, 2017, and stopped visiting [her]. The Department reached out to [him and he] refused to respond [for several months].... [He] showed little understanding that abruptly stopping visits with his daughter for a period of five months demonstrated poor parenting skills.

When asked how he would parent [the child, the father] testified that his plan was to have his new girlfriend... become [the child's] primary caregiver. [The new girlfriend] has never met [the child], and is completely unaware of [the child's] challenging behaviors.... [The father] has failed to take the steps required of him to eliminate jeopardy. He has failed to demonstrate that he can remain sober and drug free, failed to comply with the conditions of his probation, failed to provide or make arrangements for safe housing for him and [the child], and failed to demonstrate age-appropriate parenting skills with [the child].

[His] plan to use his new girlfriend[,], a homeless person of whom he knows next to nothing, as [the child's] primary caregiver, demonstrates a profound lack of understanding of what it takes to resolve jeopardy in this matter. [The child] entered the custody of the Department on May 2, 2016. She has now been in foster care for over half her young life. During that period of time she has experienced a 4 number of different placements.

She is beginning to make progress in her current therapeutic foster placement, but she still has substantial behavioral challenges. More than anything, [the child] needs to quickly form a consistent and reliable attachment to a loving, stable, and capable caregiver.... [The child] is only two and a half years old, and is still young enough to form a solid attachment to [an adoptive family].... [¶3] The father contends that the court erred because the record indicates that he “was working hard to redress the circumstances of jeopardy” and could find adequate housing “within a relatively short period of time.” These arguments fail to recognize, however, that “the time frame which the court is gauging must be seen from the child’s perspective” and, although the inquiry concerning parental unfitness “is prospective, the evidence to be considered is retrospective.” In re Charles G., 2001 ME 3, ¶ 7, 763 A.2d 1163 (quotation marks omitted).

After considering the father’s inability to comply with his rehabilitation and reunification plan over the past year, the court found that the father—despite his efforts and initial progress—remains incapable of alleviating jeopardy or providing adequate care for the child in a time reasonably

calculated to meet her needs. See 22 M.R.S. § 4055(1)(B)(2)(b)(i)-(ii); *In re Alexander D.*, 1998 ME 207, ¶ 18, 716 A.2d 222.

As the court aptly explained, “it is unreasonable to ask or expect [the child] to wait for some unspecified additional period of months or years for her [father] to resolve jeopardy.” [¶4] Given these findings and the court’s other specific findings of fact, all of which are supported by competent evidence in the record, the court did not err in its unfitness determination nor did it err or abuse its discretion in concluding that termination of the father’s parental rights, with a permanency plan of adoption, is in the child’s best interest.

See *In re Thomas H.*, 2005 ME 123, ¶¶ 16-17, 889 A.2d 297. The entry is: Judgment affirmed. Andrew S. Edwards, Esq., Northland Legal Solutions, LLC, PA, Portland, for appellant father Janet T. Mills, Attorney General, and Meghan Szylvian, Asst. Atty. Gen., Office of the Attorney General, Augusta, for appellee Department of Health and Human Services Portland District Court docket number PC-2016-36 FOR CLERK REFERENCE ONLY