

SUPREME JUDICIAL COURT OF MAINE

In re Child of Shai F.

2020 ME 67 (2020) · No. Cum-19-482 · Decided May 12, 2020

SUMMARY

The Maine Supreme Judicial Court affirmed a District Court judgment terminating Shai F.'s parental rights. The court held that the record supported findings of parental unfitness based on jeopardy, failure to take responsibility, and failure to make a good-faith effort toward reunification, as well as the finding that termination was in the child's best interest. The court also concluded that an erroneous factual finding regarding visitation was harmless.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Mead, J.; Gorman, J.; Jabar, J.; Humphrey, J.; Horton, J.; Connors, J.
JURISDICTION	Maine
DECIDED	May 12, 2020
DOCKET	Cum-19-482
DISPOSITION	affirmed
PROCEDURAL POSTURE	Shai F. appealed from a District Court judgment terminating her parental rights. Appointed counsel filed a no-merit brief under the procedure established in <i>In re M.C.</i> ; the court allowed the mother to file a supplemental brief, but she did not do so.
STANDARD OF REVIEW	The Supreme Judicial Court reviewed whether the record supported the District Court's findings and determinations; it accepted findings supported by competent record evidence and concluded that the supported findings established parental unfitness and that termination was in the child's best interest by clear and convincing evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Shai F. v. Department of Health and Human Services

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

harmless error

PRACTICE AREAS

family law

termination of parental rights

child protection

QUESTIONS PRESENTED

1. Whether the record supported the District Court's findings that the mother was an unfit parent under 22 M.R.S. § 4055(1)(B)(2)(b).
2. Whether clear and convincing evidence established that termination of the mother's parental rights was in the child's best interest under 22 M.R.S. § 4055(1)(B)(2)(a).
3. Whether an erroneous finding concerning the suspension of the mother's visitation required reversal.

HOLDINGS

1. The record supported the District Court's findings, by clear and convincing evidence, that the mother was unable or unwilling to protect the child from jeopardy, unable or unwilling to take responsibility for the child within a reasonable time, and failed to make a good-faith effort to reunify.
2. The District Court's supported findings established by clear and convincing evidence that termination of the mother's parental rights was in the child's best interest.
3. The erroneous finding that the mother's weekly visits had been suspended since May 1, 2019 was harmless and did not require reversal.

KEY QUOTATIONS

“Because the record supports the court’s findings that the mother is an unfit parent and that termination of her parental rights is in the child’s best interest, we affirm the judgment.” (¶ 1)

“The court’s supported findings are sufficient to support these determinations.” (¶ 4)

FACTUAL BACKGROUND

The child had mental-health and behavioral needs and required structure and consistency. The mother had unstable housing, ongoing cannabis dependence, three positive cocaine tests, sporadic participation in counseling and family-team meetings, missed visits, and limited progress toward reunification. The child was bonded with the foster mother, who was willing to provide a permanent home. The District Court found the mother unfit and found termination of her parental rights to be in the child's best interest.

PROCEDURAL HISTORY

The Department of Health and Human Services filed a child-protection petition and obtained a preliminary protection order and custody of the child in June 2017. The mother later consented to a jeopardy order. The Department petitioned to terminate her parental rights in December 2018, and after a contested hearing in October 2019, the District Court terminated her parental rights. The Maine Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re M.C., 2014 ME 128, ¶¶ 6-7, 104 A.3d 139
- In re Child of Stephenie F., 2018 ME 163, ¶ 2 n.2, 198 A.3d 203
- In re Child of Nathaniel B., 2019 ME 120, ¶ 5, 212 A.3d 863

OPINION

PER CURIAM.

MAINE SUPREME JUDICIAL COURT Reporter of Decisions Decision: 2020 ME 67 Docket: Cum-19-482 Submitted On Briefs: May 4, 2020 Decided: May 12, 2020 Panel: MEAD, GORMAN, JABAR, HUMPHREY, HORTON, and CONNORS, JJ. IN RE CHILD OF SHAI F. PER CURIAM [¶1] Shai F. appeals from a judgment of the District Court (Portland, Powers, J.) terminating her parental rights to her child.¹ Counsel for the mother filed, in accordance with the procedure we outlined in *In re M.C.*, 2014 ME 128, ¶¶ 6-7, 104 A.3d 139, a brief indicating that there are no arguable issues of merit for appeal.

We entered an order permitting the mother to file a supplemental brief on or before February 19, 2020, but she did not do so. Because the record supports the court’s findings that the mother is an unfit parent and that termination of her parental rights is in the child’s best interest, we affirm the judgment. [¶2] In June 2017, the Department of Health and Human Services filed a petition for child protection and preliminary protection orders.

See 22 M.R.S. 1 The child’s father consented to termination of his parental rights in a judgment dated October 7, 2019. He is not a party to this appeal. 2 § 4032 (2020). The petition alleged that the mother had exposed her child to a dangerous situation involving a firearm and that the mother had intentionally avoided contact with the Department following that incident.

The court (Darvin, J.) entered a preliminary protection order the same day and granted the Department custody of the child. See 22 M.R.S. §§ 4034(2), 4036(1)(F) (2020). The mother waived her right to a summary preliminary hearing, see 22 M.R.S. § 4034(4) (2020), and later consented to the entry of an order finding that the child was in circumstances of jeopardy in her care, see 22 M.R.S. § 4035 (2020).

In December 2018, the Department petitioned to terminate the mother’s parental rights. See 22 M.R.S. § 4052 (2020). [¶3] The court (Powers, J.) held a one-day contested hearing on the termination petition in October 2019. Based on the evidence at the hearing, the court entered a judgment terminating the mother’s parental rights to her child.

In its written decision, the court made the following findings of fact. See 22 M.R.S. § 4055(1)(B) (2) (2020). [The child] [has a mental health diagnosis].... All agree he needs structure and consistency in his routines. [The child] remains extremely active and likes to be outdoors.... He seems improved since receiving HCT in-home counseling services, which unfortunately have just ended.

The family still needs outpatient counseling. Despite the above issues, [the child] and [the foster mother] have a bond. [The child] is learning to accept boundaries set by [the foster mother] and still requires a regular routine. [The 3 foster mother] is willing to become a permanent home for [the child] should [the mother's] parental rights be terminated.

[The child] has reacted badly at times to his mother's missed visits. [The mother] has had gaps of up to three months between visits. The mother now is required to confirm her upcoming attendance at visits to avoid having [the child] show up when his mother does not.

The mother's visits have been suspended four times, typically because she has not properly accessed transportation to visit, resulting in missed visits. [The mother] becomes angry when visit suspensions occur. She at times has had twice weekly visits, but the current schedule is supervised contact once weekly for two hours. These have unfortunately been suspended since May 1, 2019. [2] [The child] enjoys the visits with his mother, which go well....

However, when asked about a living location, [the child] states that he likes living with [the foster mother].... [The mother] has had multiple residence locations in southern Maine. She had lived in a motel room recently. [She] has been employed regularly at several jobs during this case.... [The mother] has had on-going substance use problems throughout this case.

Her long-time counselor had diagnosed her with cannabis dependence, and the mother admits she smokes marijuana daily. She admitted doing so on the day she testified. She has been tested for drugs and alcohol on at least five dates from December 2017 to May 2019. [The mother] denies using cocaine despite three positive tests for that illegal drug, a position 2 Contrary to the court's finding, the Department's caseworker did not testify that the mother's weekly visits with the child have been suspended since May 1, 2019.

In fact, the caseworker testified that the mother began once-weekly visits on that date. Because there is substantial other evidence that supports the court's finding that the mother failed to make a good faith effort to rehabilitate and reunify with the child, it is highly probable that the court's erroneous finding did not affect its ultimate conclusion.

Therefore, the error was harmless. See *In re Child of Stephenie F.*, 2018 ME 163, ¶ 2 n.2, 198 A.3d 203. Moreover, the court's "misstatement does not undermine the other two grounds of parental unfitness found by the court, and each ground, standing on its own, supports a termination of parental rights." *Id.* 4 supported by her counselor/advocate.

The mother remains in treatment for mental health and substance use issues with a counselor she has seen off and on since June 2018. This counselor has kept her as a client despite her history of “no shows”. The counselor diagnosed her with major depressive disorder as well as cannabis dependence. [The mother] has attended her sessions sporadically. She has made some progress in learning to identify the stresses in her life and trying to make changes and communicate more confidently.

Much of the mother’s sadness revolves around not seeing her son. She seems to understand the negative impact on her son from her failure to attend scheduled mother/child visits. The mother is asking the court for more time to reunify with her son. She thinks she could handle her behaviors differently from the past. [The mother] hopes to get an apartment of her own soon.

Right now she has no such place that would be suitable for [the child]. Unfortunately, [the mother] has missed three of seven family team meetings. She has had a checkered history of attending counseling, child visits, drug testing, and family team meetings. She has not really progressed in any meaningful way regarding reunification efforts due to her lack of engagement.

[The mother] was required to undergo her substance use and mental health counseling, have case management, get safe housing, visit her child, go to drug testing, and stay away from unsafe people. [The mother] has led an unstable life herself and has not been able to deal with her several issues, never mind her son’s difficulties. She has at times not been cooperative with DHHS and has shown limited insight into her parenting deficits. [¶4] Except where we have indicated otherwise, see supra n.2, the court’s findings are supported by competent record evidence.

See *In re Child of Nathaniel B.*, 2019 ME 120, ¶ 5, 212 A.3d 863. Based on these findings, the court found by clear and convincing evidence that the mother is an unfit parent because (1) she is unable or unwilling to protect her child from jeopardy and these circumstances are unlikely to change within a time reasonably calculated to meet the child’s needs; (2) she has been unable or unwilling to take responsibility for her child within a time that is reasonably calculated to meet the child’s needs; and (3) she failed to make a good faith effort to reunify with the child.

See 22 M.R.S. § 4055(1)(B)(2)(b)(i)-(ii), (iv). The court also found by clear and convincing evidence that termination of the mother’s parental rights is in the child’s best interest. See *id.* § 4055(1)(B)(2)(a). The court’s supported findings are sufficient to support these determinations. See *In re Child of Nathaniel B.*, 2019 ME 120, ¶ 5, 212 A.3d 863.

The entry is: Judgment affirmed. Valerie A. Randall, Esq., Hanly Law, Portland, for appellant mother With leave of the Court, the Department of Health and Human Services did not file a brief Portland District Court docket number PC-2017-52 FOR CLERK REFERENCE ONLY