

SUPREME JUDICIAL COURT OF MAINE

In re Alexavier G. et al.

2017 ME 227 (2017) · No. Cum-17-266 · Decided December 7, 2017

SUMMARY

The Maine Supreme Judicial Court affirmed a judgment terminating the mother's parental rights to Alexavier G. and Amaiya W. The court held that competent evidence supported the termination findings and that the trial court acted within its discretion in denying a continuance for cumulative witness testimony.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Saufley, C.J.; Alexander, J.; Mead, J.; Jabar, J.; Hjelm, J.; Humphrey, J.
JURISDICTION	Maine
DECIDED	December 7, 2017
DOCKET	Cum-17-266
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from a District Court judgment terminating her parental rights, challenging the sufficiency of the evidence and the denial of a continuance to permit a witness to testify.
STANDARD OF REVIEW	The sufficiency of the evidence supporting termination findings and the denial of a continuance were reviewed under the applicable deferential standards; the court specifically reviewed the continuance ruling for abuse of discretion.
PRECEDENTIAL VALUE	Published Maine Supreme Judicial Court opinion; precedential.
PARTIES	Mother of Alexavier G. and Amaiya W. v. Maine Department of Health and Human Services

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether competent evidence supported the District Court's findings that the mother failed to take responsibility for the children, was unwilling or unable to protect them from jeopardy, and was unlikely to change within a time reasonably calculated to meet their needs.
2. Whether the District Court abused its discretion by refusing to continue the termination hearing to allow the mother's witness to testify that the Department should have referred her to residential treatment.

HOLDINGS

1. Competent evidence supported the District Court's findings and independently supported the statutory grounds for termination of the mother's parental rights. The unchallenged finding that the mother had not made a good-faith effort to rehabilitate and reunify with the children was itself sufficient to support termination.
2. The District Court acted within its discretion in refusing to continue the hearing because the proposed testimony was cumulative, the mother articulated no prejudice, and the testimony was not likely to affect the judgment.

KEY QUOTATIONS

“The court’s findings regarding the mother’s insufficiently treated substance abuse and mental health issues, as well as their past and potential detrimental effects on the children when they are in her care, support each of the independent grounds for termination of the mother’s parental rights.” (¶ 3)

FACTUAL BACKGROUND

The mother had a long history of substance abuse and mental-health issues, repeatedly relapsed, and failed to complete required substance-abuse and diagnostic evaluations or maintain consistent counseling. The children had significant behavioral and mental-health needs, including post-traumatic stress disorder, and had been in therapeutic foster placements. The trial court found that the mother was in the early stages of recovery and that achieving stability could take up to twenty-four months, while the children needed permanency immediately.

PROCEDURAL HISTORY

The Portland District Court terminated the mother's parental rights to Alexavier G. and Amaya W. under 22 M.R.S. § 4055. The mother appealed to the Supreme Judicial Court of Maine, which affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- In re Hope H., 2017 ME 198, ¶ 8, 170 A.3d 813

- Larrabee v. Town of Knox, 2000 ME 15, ¶ 1 n.1, 744 A.2d 544
- Seider v. Bd. of Exam'rs of Psychologists, 2000 ME 206, ¶ 37, 762 A.2d 551
- In re Mya E., 2017 ME 93, ¶¶ 2, 4, 8, 161 A.3d 708
- In re Haylie W., 2017 ME 157, ¶¶ 2-3, 167 A.3d 576
- In re A.M., 2012 ME 118, ¶¶ 14-15, 24-27, 55 A.3d 463
- In re M.B., 2013 ME 46, ¶ 34, 65 A.3d 1260

OPINION

PER CURIAM.

MAINE SUPREME JUDICIAL COURT Reporter of Decisions Decision: 2017 ME 227 Docket: Cum-17-266 Submitted On Briefs: November 29, 2017 Decided: December 7, 2017 Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, JABAR, HJELM, and HUMPHREY, JJ. IN RE ALEXAVIER G. et al. PER CURIAM [¶1] The mother of Alexavier G. and Amaiya W. appeals from the District Court's (Portland, Eggert, J.) judgment terminating her parental rights to the children pursuant to 22 M.R.S. § 4055(1)(A)(1)(a), (1)(B)(2)(b)(i)-(ii), (iv) (2017).

She challenges the sufficiency of the evidence to support the court's findings that she failed to take responsibility for her children, is unwilling and unable to protect the children from jeopardy, and that both of these circumstances are unlikely to change within a time reasonably calculated to meet the children's needs.¹ She also argues that the court abused its discretion by refusing to continue the termination hearing to allow a witness of hers to testify.

Because competent evidence supports the court's findings and we ¹ The mother does not dispute the finding that she has not made a good faith effort to rehabilitate and reunify with her children. That finding alone is sufficient to support the court's termination of her parental rights. See *In re Hope H.*, 2017 ME 198, ¶ 8, 170 A.3d 813.

The mother's failure to contest this finding in her brief constitutes a waiver of this issue on appeal. See *Larrabee v. Town of Knox*, 2000 ME 15; ¶ 1 n.1, 744 A.2d 544; *Seider v. Bd. of Exam'rs of Psychologists*, 2000 ME 206, ¶ 37, 762 A.2d 551; M.R. App. P. 9(a) (2016). ² conclude that the court acted within its discretion when it declined to continue the hearing for testimony that was cumulative and not likely to affect the judgment, we affirm. [¶2] The court made the following findings of fact, which have ample support from competent evidence in the record: The Jeopardy Order required [the mother] to participate in a substance abuse evaluation to determine the appropriate level of treatment, drug testing, mental health counseling,... [a diagnostic] evaluation, parenting education, and visitation with the children.

At the time... [the mother] was incarcerated, but was released two weeks later.... [S]he was free from jail only six days before she was arrested for a probation violation for... drug use.... She has

never fulfilled [a substance abuse evaluation] to her detriment because the Department was not willing to fund a[n]... inpatient placement without that evaluation.

She also did not complete the required [diagnostic] evaluation, and has not been in any consistent mental health counseling. To her credit, [the mother] did take some steps toward her drug treatment while she was released.... [But then] she was arrested again... on a probation violation, testing positive for cocaine, oxycontin, and benzodiazepines....

Although the caseworker met her a few days after her release, she was unaware that the mother had used again... just before entering [treatment]. This has been the cycle of the mother for many years.... She is, in her own words, a “chronic relapser.” Despite times when she was not using, this chronic relapsing is all that her children have known. It has affected these children, most noticeably [the son], who worries about her constantly.

[The son’s]... significant mental health and behavioral needs... resulted in juvenile justice involvement for an assault on the mother. The children were 3 present when she was arrested [shortly after they entered the Department’s custody].....

The reality is that she is in the early phases of her recovery and... the process will take up to [twenty-four] months..... [The children] have serious behavioral and mental health needs. They have been in therapeutic foster placements and need significant supports....

The son has traumatic life experiences and fears that would burden an adult; he is only [twelve] years old.[2] [The daughter] is only four years old, but has been diagnosed with [p]ost-traumatic [s]tress [d]isorder..... Clearly, it is in the best interests of the children that they have permanency now. They have waited for their mother for the [sixteen] months of this case and really their whole lives.... [¶3] The court’s findings regarding the mother’s insufficiently treated substance abuse and mental health issues, as well as their past and potential detrimental effects on the children when they are in her care, support each of the independent grounds for termination of the mother’s parental rights.

See 22 M.R.S. § 4055(1)(A)(1)(a), (1)(B)(2)(b)(i)-(ii), (iv); *In re Mya E.*, 2 The court found that the son had witnessed his mother doing drugs and that he once “had to pull the needle out of her arm.” 4 2017 ME 93, ¶¶ 2, 4, 8, 161 A.3d 708; *In re Haylie W.*, 2017 ME 157, ¶¶ 2-3, 167 A.3d 576. [¶4] Contrary to the mother’s contention, the court did not abuse its discretion by declining to continue the hearing to allow one of her witnesses to testify that the Department should have referred her to residential treatment; she has not articulated any prejudice, and we discern none from the record, that resulted from the exclusion of this cumulative testimony.

See M.R. Civ. P. 40(c), (d) (2017); *In re A.M.*, 2012 ME 118, ¶¶ 14-15, 24-27, 55 A.3d 463; *In re M.B.*, 2013 ME 46, ¶ 34, 65 A.3d 1260. The entry is: Judgment affirmed. Deborah Munson Feagans, Esq., Gorham, for appellant Mother Janet T. Mills, Attorney General, and Hunter C.

Umphrey, Asst. Atty. Gen., Office of the Attorney General, Augusta, for appellee Department of Health and Human Services Portland District Court docket numbers PC-2016-04 and PC-2016-05
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