

JUVENILE

CHILD ABUSE REGISTRY EXPUNGEMENT

[In re P.J.](#), 2008-057, 2009 VT 5 (*Published entry order*)

Court affirms decision by Human Services Board denying petitioner an evidentiary hearing to expunge her name from the child abuse registry. Board determined her application to expunge was collaterally estopped by findings of Chittenden Family Court made during a prior hearing resulting in the termination of mother's parental rights with respect to her child E.M.

JUVENILE/CHINS/TPR

[In re J.B. Juvenile](#), No. 2009-004, April 16, 2009.

In this case of medical neglect involving a lack of progress treating encopresis over three years, father appeals the CHINS adjudication claiming the family court's key findings are unsupported by the record. The record showed a specific recommendation of hospitalization was made and refused. Father's failure to allow doctor to communicate with school regarding day to day progress, and his failure to follow up with a gastroenterologist resulted in J.B. continuing to suffer for another year from this highly treatable medical condition. As a result the Court found any error would be harmless.

Additionally father claimed the family court erred by failing to enter a written visitation order, apparently believing the court should indicate which days, rather than leaving him to make arrangements. The Court found that his visitation was in no way denied nor was he precluded from submitting his proposed visitation schedule to the family court for its approval. Affirmed.

JUVENILE/CHINS/TPR

[In re J.B. Juvenile](#), No. 2008-514, April 15, 2009.

J.B. is the fifth child to be removed from these parents' custody. Parents contend that there is no evidence of findings to support that waiting any longer for them to be able to resume their parental duties would compound the risk of harm to J.B. They also contest that the risk posed by having a sex offender boarder is based on a questionable stipulation made when no termination petition was pending. The Court ruled that the presence of sex offenders residing in the home place J.B. at a substantial risk of harm. The parents demonstrated a continuing unwillingness or inability to recognize the devastating effects of sexual abuse and the threat posed by exposing J.B. to sex offenders. This obstacle prevents the parents from being able to resume their parental duties within a reasonable period of time, according to the Court

Additionally mother is aware that she falls asleep at inappropriate times (including during the termination hearing) impairing her ability to care for and protect J.B., but because she has not treated this condition, she argued that the court made findings unsupported by medical testimony. The Court pointed out that its job was not to identify the condition but to identify the potential area of concern as to J.B.'s safety. Affirmed.

JUVENILE/CHINS/TPR

[In re W.L., Juvenile](#), No. 2008-497, April 15, 2009.

Here the parents do not challenge the court's decision to terminate their parental rights but rather challenge the family court's decision denying their request to transfer their residual parental rights to W.L.'s paternal aunt and uncle rather than to DCF at the final hearing, proposing a shared custody arrangement where legal responsibility would be shared and physical responsibility would go to foster mother with aunt and uncle having contact. At age one W.L. was placed in foster care where foster parent expressed a desire to adopt her. W.L.'s aunt and uncle, who were initially granted party status, also wanted to adopt her and her siblings. Two of W.L.'s older sisters have

successfully adjusted to placement in aunt and uncle's home. Two forensic evaluations came to different conclusions about W.L.'s placement with aunt and uncle regarding the importance of placement with biological family, and the trauma of the move from the foster home where W.L. has been for four years. As visits between the siblings increased, so did behavioral changes in W.L., including aggression, clinginess, and toileting accidents. Parents, but not aunt and uncle, appealed the decision to pursue adoption by the foster parent.

Parents wanted expert testimony based on current information, but the court is not required to base its findings on such testimony to support disposition order. While the reports of the two experts regarding placement was not current, the family court found it credible regarding the cooperation needed for transitioning. So the court concluded the findings were based on current information, as reports were supplemented by other credible testimony.

The Court found that the family court showed no abuse of discretion when it rejected the shared arrangement idea as it would delay permanency for W.L. given that the further modifications of such an arrangement are unknown. Additionally the foster mother and aunt and uncle were unable to work together, and the households are not "capable of working cooperatively in order to develop a detailed, coherent plan for [W.L.] to have the best of both households in her life, an incapacity due to mistrust and case delays."

JUVENILE/CHINS/TPR

[In re C.E. and N.E., Juveniles](#), No.2008-431, February 4, 2009.

Evidence of mother's former addiction to drugs and other related problems led the family court to conclude that she would be unable to resume parental responsibilities within a reasonable time. When she missed scheduled visits with the children, including two in a row, visitation was suspended. The failure to establish a constructive relationship with the children coupled with a failure to demonstrate an ability to place her children's needs over her own contributed to the Court's conclusion to affirm the family court's decision to terminate mother's residual parental rights, finding mother's expressed interest in resuming visitation after treatment "too little, too late."

Mother also contended the family court improperly considered the children's relationship with their foster family. The Court stated that "it is plainly appropriate for the court to consider the children's "interaction and interrelationship with ...[their] foster parents," 33 V.S.A. § 5540(1). Affirmed.

JUVENILE/CHINS/TPR

[In re C.P., Juvenile](#), No. 2008-397 March 5, 2009.

The family court determined stagnation had occurred. Mother did not challenge any of the findings leading to this conclusion. C.P. had spent almost his entire life, of 18 months, in foster care. Mother asserts that the family court based its conclusion on the need for permanency on the fact that the child does not call anyone "mama" or "dada," but there is no evidence that this failure is the result of his need for permanency, with either mother or foster parents. Court affirmed TPR. Affirmed.

JUVENILE/CHINS/TPR

[In re S.T., B.T. and S.T., Juveniles](#), No. 2008-394 February 4, 2009.

Father, who is incarcerated, appealed contending that the family court failed to make sufficient findings to justify conclusion (1) not return custody of the children to mother, particularly Sa.T.,(argument which mother joined), and (2) not ordering a kinship placement for any of the children with the paternal grandmother. As to the first argument, father claimed the family court minimized mother's progress and failed to consider current circumstances, but failed to explain why mother should be given custody of Sa.T. One of the other children is severely handicapped and the

other has behavioral issues. However the Court found sufficient evidence in the record to support the family court's decision to TPR all three children.

As to the second argument the Court affirmed the decision of the family court noting that the grandmother had recently shortened visits and expressed reservations about caring for the children, given their significant needs. Additionally "(1) grandmother was under significant pressure from father to assume custody; (2) mother did not support custody of the children with the grandmother; (3) grandmother often sided with her son against mother; (4) grandmother had no had any contact with the children's school; and (5) there were reliable reports of the children being upset following visits with grandmother." Affirmed.

JUVENILE/CHINS/TPR

[In re J.B., Juvenile](#), No. 2008-391, January 14, 2009.

Father appeals family court's order adjudicating J.B. as CHINS under 33 V.S.A. §§ 5502(a)(12)(A) and (B). The family court, contrary to father's assertion, found J.B.'s numerous out-of-court statements regarding sexual abuse to be credible and admissible under Rule 804a. The family court noted J.B.'s behavior changed markedly after he was taken into DCF custody, and that his sexualized conduct reemerged after he began visiting father. The family court found father's statements, from his initial interview through his testimony, were incredible and blame-shifting to the point of being incriminatory. Parents continued to blame J.B.'s behavior on low blood sugar, even after this was contradicted by an endocrinologist. They were unable to take a more realistic view of J.B.'s behaviors and failed to provide him with proper care for his well-being. The Court emphasized a lack of understanding or refusal to accept the child's needs on the parents' part, rather than the state imparting its view of proper parenting. Parents impeded progress. Father argued about the way the family court evaluated the evidence but failed to demonstrate that the family court's findings were clearly erroneous. Affirmed.

TPR NOTIFICATION

[In re D.M.](#), No. 2008-337

Mother appeals TPR arguing that family court's termination order must be reversed because court did not directly notify her of scheduled termination hearing, as required in [In re M.T.](#), 2006 VT 114. Court agreed and reversed and remanded for new termination hearing. Court rejected State's argument that mother had not demonstrated prejudice by articulating: (1) how the trial court's failure to send her notice resulted in her not attending termination hearing; or (2) how her absence impacted the court's judgment. Court stood by [M.T.](#) where such direct notice from the court is required. "The court's failure to provide them with this right cannot be rectified by speculating as to why the parents did not participate in the hearing or by requiring the parents to try to recreate what might have been had they been provided with the required notice."

JUVENILE/CHINS/TPR

[In re K.S.-M., Juvenile](#), No. 2008-328, January 14, 2009.

K.S.-M. was eight years old at the time of the TPR proceeding and had been repeatedly sexually abused by various people from which the mother failed to protect her. Mother claimed that the family court erred by not considering the alternative disposition of permanent guardianship (or long term permanent placement) with child's aunt and uncle. However the Court affirmed that termination was in the best interests of the child noting that the aunt and uncle were "not prepared to state a position" regarding the permanent guardianship, and that permanent guardianship was not a viable option. See 14 V.S.A. § 2662(a)(2), which expresses the public policy that to consider a permanent guardianship the court must find that adoption of the child is not "reasonably likely during the remainder of the child's minority." Additionally, the planned permanent living

arrangement is the least desirable disposition, available only when adoption is not a viable alternative. 33 V.S. A. § 5531(d)(4) .

Mother also contended that the family court erred by discounting the importance of preserving the parent-child bond. The Court clarified it's holding in In re J.F., 2006 VT 45 that "in some cases a loving relationship will override other factors." Id. at ¶ 13. The Court affirmed that the family court ruling and emphasized that "public policy does not compel maintenance of the bond regardless of the safety and welfare of the child." Affirmed.

JUVENILE/CHINS/TPR

In re C.P.P., Juvenile, No 2008-318, January 14, 2009.

Mother does not dispute her ongoing substance-abuse problems. She contended that the permanency plan was to maintain custody of C.P.P. with his father rather than to free him for adoption. The Court agreed with the one parent TPR stating that "there is nothing in the statutory best-interests analysis criteria that requires consideration of the particular permanency plan contemplated for the child..." explaining that the termination proceeding is not a custody case, but rather "a legislatively created... proceeding in which the court is required to weigh specified statutory factors when determining whether to grant a petition for termination of residual parental rights." In re S.B. 174 Vt. At 428. Affirmed.

JUVENILE/CHINS/TPR

In re A.K., Juvenile, No. 2008-314, January 14, 2009.

Father had almost no involvement in child's life, and he refused to complete a domestic violence program. The Court cited father's repeated incarceration and unsound, immature choices resulting in incarceration to affirm TPR. Seven one-hour supervised visits, where the child exhibited no excitement on seeing him, and father's hope that occasional prison visits would establish personal contact, were insufficient for the Court to find father could assume parenting within a reasonable amount of time. The Court reiterated that they have repeatedly held parents responsible for lack of parent-child contact that results from incarceration. Affirmed.

JUVENILE/CHINS/TPR

In re L.W., Juvenile, No. 2008-300, January 14, 2009.

L.W. lived with her paternal grandparents, or aunt and uncle over the course of thirteen years. Her mother had only occasional contact with L.W. and was not active in court proceedings concerning the child. The Court affirmed termination finding dismissing mother's claims that TPR and adoption are not necessary and finding that "Mother fails to acknowledge as inconsistent that, notwithstanding her longstanding absence from the child's life and her marriage to a man whom L.W. claims molested her, she has expressed an interest in bringing L.W. to live with her in Missouri." Affirmed.

JUVENILE/CHINS/TPR

In re C.G., Juvenile, No. 2008-285, January 14, 2009.

Father was subject to a protective order prohibiting father's contact with the caseworker and with C.G. He failed to engage in a sex-offender evaluation. He appealed the permanency findings and order suggesting that the court failed to employ a clear-and-convincing evidence standard in making its findings. At the time father made no objection to the way hearing was conducted, and so the Court would "not consider any matter raised for the first time on appellate review."

The Court pointed out that while the creation of a permanent guardianship requires the court base its findings on clear-and-convincing evidence, in the case here "all evidence helpful...may be admitted..." 33 V.S.A. § 5531(c). Affirmed.

JUVENILE/CHINS/TPR

[In re R.D.W., Juvenile](#), No. 2008-281, November 5, 2008.

Parents separately appealed in this case where six and a half year old child was taken into custody based on allegations of truancy and medical neglect which included severe tooth decay reflecting years of neglect which ultimately required extensive fillings, extractions and caps. Father tested positive for alcohol on three visits with the child and failed to follow through on the goals which including receiving substance-abuse counseling. He asserted that the lower court relied on “personal opinions” of the social worker about people in poverty. On appeal the Court detected no personal views or bias in the court’s finding that a tent and camper which father parked at various campgrounds failed to satisfy the case plan goal of appropriate permanent housing. Based on father’s confrontational behavior and lack of progress, the family court finding that termination was in the best interests of the child was affirmed, even though there was mutual affection between father and child.

Mother’s contention was that DCF failed to recommend a separation from the father, a course of action that father steadfastly refused and which mother was unwilling to do. The Court affirmed the lower court finding based on her unwillingness to acknowledge father’s substance-abuse problem, recognize the child’s pressing health and education needs, and assume control. Affirmed.

JUVENILE/CHINS/TPR

[In re K.L. and B.L., Juveniles](#), No. 2008-277 November 5, 2008.

Parents appeal termination independently, but both have a history of extensive drug use. Previous involvement with DCF was initiated when the boys as toddlers were playing unsupervised in the road. DCF again became involved and during this second period one of the boys was seriously injured when he walked in front of a car believing he had special powers that would stop the car with his eyes. Despite extensive services made available the family court did not find that mother made enough progress dealing with her drug problems. Additionally the father’s apparent interest in the placement of the children appeared to have more to do with competition than any demonstrated love. TPR affirmed.

JUVENILE/CHINS/TPR

[In re B.K., S.C. and K.C., Juveniles](#), No. 2008-271 & 2008-414, January 14, 2009.

Mother had difficulty controlling her temper according to B.K.’s testimony. Mother claimed ineffective assistance of counsel, and kept switching attorneys. The family court warned her that she would be expected to work cooperatively with the new attorney. She also argued that her trial counsel improperly conceded that her children were CHINS on the second day of the CHINS hearing. Mother’s attorney had urged the court to find that if there was any neglect or abuse, only that there had been some improper care by mother due to her failure to take medication for bi-polar and post traumatic stress disorders. Although the State failed to prove abandonment, the Court did find abuse. Mother did not object to her attorney’s tactical argument at trial. The family court could find no record of mother’s motion regarding her post-judgment requests regarding appointment and ineffective-assistance-of-counsel claims. Finding the appeal untimely filed, the Court gave little consideration to mother’s request to consider the appeal as necessary to the furtherance of justice noting the lack of explanation in mother’s request. The Court held, however, that the Family Court erred in not assigning new trial counsel after her counsel was permitted to withdraw. Although mom had been assigned appellate counsel, mother needed trial counsel to consult with to determine if she had any viable claims considering modification of the CHINS and disposition orders. CHINS and disposition orders affirmed. Remanded for assignment of trial counsel.

JUVENILE/CHINS/TPR

[In re D.H., Juvenile](#), No. 2008-255, October 2, 2008.

Where mother desired a modification of the permanency plan to allow limited supervised contact with her son, the family court in June 2008 issued a written decision concluding that mother had failed to demonstrate any change in circumstances sufficient to review the plan, as she demonstrated virtually no insight into D.H.'s disorders which caused violent outbursts requiring careful monitoring.

On appeal mother claimed the family court erred in failing to enter a visitation order, appearing to argue that the court believed it lacked authority over visitation issues. This was not the issue before the Court, and mother failed to carry her burden to show that a change of circumstances warranted an order of unsupervised visitation, as the issue was framed and litigated at the hearing. Affirmed.

JUVENILE/CHINS/TPR

[In re M.C., Juvenile](#), No. 2008-227, October 2, 2008.

Seeking to object to DCF's characterization of her, and to a modified permanency plan for her son, who turned 18 in January 2009, mother argued the family court abused its discretion in denying her request for a hearing. Several attorneys filed motions to withdraw during the course of this case. Both M.C. and his brother, also in DCF custody, expressed their frustration with mother's behavior which contributed to an ongoing pattern leading to proposed plans dragging on for months. Finally the Court found mother's pro se motion to be "more of the same" and untimely, and found that M.C.'s need for certainty and finality was paramount, finding no error. Affirmed.

JUVENILE/CHINS/TPR

[In re T.M. and E.S., Juveniles](#), No. 2008-225, October 2, 2008.

E.S. quickly and severely regressed while in mother's care, and child's need for a level of highly trained and structured care would tax anyone. Mother does not have skills to deescalate E.S.'s physically and emotionally out-of-control behaviors. Mother claims she is held to an improperly high standard of parental fitness, but the family court finding was that she had stagnated and that she remained unable to parent E.S. Mother also contends that the family court failed to consider the value of her relationship with the children. However the Court found mother had no relationship with T.M., having not seen her for over a year, and it supported the conclusion that any evidence that E.S. enjoyed mother's phone contact did not outweigh the overwhelming evidence that mother lacked the necessary skills to parent E.S. within a reasonable period of time. Affirmed.

JUVENILE/CHINS/TPR

[In re P.D., Juvenile](#), No. 2008-220, October 2, 2008.

The family court order terminated father's parental rights which was the issue before the Court. Father appealed this decision based on his perception that the family court erred in failing to ensure the child's adoption by the current foster parent, who is father's adult daughter. Only on appeal did father assert the best interests of the child could best be met by granting the foster parent guardianship over the child or residual parental rights and responsibilities pursuant to 33 V.S. A. § 5528(3)(B). The daughter could have then consented to the adoption and the court could have consolidated the adoption action in probate court. But since this was not raised below, the claim was waived. The Court affirmed the TPR. Affirmed.

JUVENILE/CHINS/TPR

[In re D.L. and W.L.S., Juveniles](#), No. 2008-205, October 2, 2008.

After being given a substantial amount of hand's on parent education the family court found that the evidence that mother would be able to resume parenting within a reasonable period of time was "equivocal at best". Additionally it took mother two years to concede that father has a bad temper and was a danger around the young children, who had suffered serious non-accidental injuries and unexplained bruises. After a year and a half mother still wanted more time to make progress with her parenting skills. Considering these factors, coupled with her lack of stable housing and her own basic personal hygiene, the Court found that the family court did not abuse its discretion in concluding that mother would not be able to resume parenting within a reasonable period of time. Affirmed.

JUVENILE/CHINS/TPR

[In re D.S., Juvenile](#), No. 2008-174, August 2008

D.S. has a rare blood disorder, requiring ongoing medical attention, and Reactive Attachment Disorder, disinhibited type. DCF substantiated mother for medical neglect. Mother has medical and emotional problems, substance abuse issues and a lengthy criminal history. After she became homeless she took D.S. to Florida and an arrest warrant was issued for mother, and D.S. was taken into emergency custody. Predictable and consistent caretaking and feeling safe and secure are essential for D.S., which mother could not provide. DCF found mother slow to participate in services, despite substantial supports. Extended incarceration prevented any significant progress toward the goal of the plan. Mother's being subject to re-incarceration until 2010 will not provide D.S. with the needed stability and the court found no error in this consideration, and found it consistent with the family court's finding of stagnation, "and the mother's inability to parent D.S. within a reasonable period of time." TPR affirmed.

JUVENILE/CHINS/TPR

[In re A.R. and C.R., Juveniles](#), No. 2008-154, August 21, 2008.

"[M]other failed to protect children from physical and sexual abuse, she failed to understand the serious effects of the abuse they suffered, and she failed to take steps to create a safe environment for them." The Court refuted mother's argument that the family court ruled she has no hope of being able to parent by clarifying that "there is no possibility that [mother] will be able to parent these children within a reasonable period of time." Additionally mother's assertion that she has some bond with the children, and plays some constructive role in their lives was refuted by the Court which has discretion to determine the credibility of the witnesses and to weigh the evidence. In a footnote the Court addresses mother's assertion that the lack of progress was attributable to the quality of services provided responding that the "court is not required to conduct "an open-ended inquiry into how the parents might respond to alternative [DCF] services and why those services have not been provided."" [In re B.S.](#), 166 Vt. At 353. Affirmed.

JUVENILE/CHINS/TPR

[In re D.G. and I.G., Juveniles](#), No. 2008-140, August 2008.

Father lost his appeal of the order terminating his rights suggesting that his noncustodial role would not place them in any harm, and that the family court improperly focused on whether he would be able to resume his parental duties within a reasonable period of time. The Court ruled that the noncustodial role does not insulate him from the criteria set forth in 33 V.S.A. §5540. The Court's review found that "father had played no constructive role in the children's lives, had had virtually no communication with the children, and that he had done nothing to address his tendencies

toward violence and criminal activity.” The children are placed with their mother who seems to be doing well. Affirmed.

JUVENILE/CHINS/TPR

[In re E.D. and J.D., Juveniles](#), No. 2008-137, August 2008.

DCF filed petition alleging that father sexually abused E.D. and mother failed to protect E.D. from father. She refused to take J.D., who is autistic, to his medical appointments. Both children have substantial needs, a finding mother does not challenge. Mother argued that the family court’s decision has no rational basis, and her continued contact with J.D. was in his interest; and that the family court was mistaken in its belief that E.D.’s foster family wanted to adopt him. However mother failed to engage in services and failed to recognize that the negative impact of her conduct on the children outweighed any benefits of continued contact, and the Court affirmed TPR. Affirmed.

TRANSFER

[State v. Dixon](#), 2008 VT 112

Justice Reiber, writing for an unanimous Court, reversed and remanded on interlocutory appeal the district court’s order denying Jonas Dixon’s transfer request to juvenile court in a case involving 2d degree murder. This is the first case where the Supremes have found the trial court to have abused its discretion in refusing to transfer a criminal case to juvenile court. The Court found error in the lower court’s failure to give any weight to the “factual backdrop to defendant’s actions,” which included his inability to control any of the escalating events at home or the fact that there was a DCF “system breakdown” against the defendant. The Court held that failure to consider these factors goes against the special status accorded juvenile cases by the Legislature under 33 V.S.A. 5501.

The Court also rejected concerns that transfer would hamper the ability of the public to follow the case through the judicial system. “This was not a proper consideration and was not entitled to independent weight as a matter of law. The Legislature has determined that a primary purpose of the juvenile court system is to project juveniles from the ‘taint of criminality’ that inevitably results from the publicity and permanence of convictions in the district court.” The Court, rejecting the district court’s consideration of all non-Kent factors, also rejected the court’s analysis of some of the Kent factors, including whether there was prospective merit to the complaint. Dismissing this factor has not having much, if any, dispositive weight, the Court found this issue to have already been decided by the district court’s finding of probable cause for the charge. Additionally, “requiring an evaluation of defenses at such an early state of prosecution, seems to us rather unwieldy; it would seem to require a mini-trial at a stage of the proceedings when the defense might be well-served not to reveal its hand.”

JUVENILE/CHINS/TPR

[In re M.B., Juvenile](#), No. 2008-083, June 19, 2008.

Both parents were diagnosed with several mental disorders and serious substance abuse problems endangering M.B. Though substantial supports were in place while M.B. was in custody, both parents eventually failed to go to mental-health-counseling appointments, attend therapy sessions or take medications. Parents independently appealed the family court’s decision to TPR. The Court found a substantial change in material conditions insofar as the parents’ parenting skills had stagnated if not regressed, concluding that the “parents had regressed with respect to longstanding problems,...and were unable to take care of themselves let alone a child.”

JUVENILE/CHINS/TPR

[In re T.C., Juvenile](#), No. 2008-073, June 19, 2008.

The family court found mother's life style, using drugs and continuing to associate with drug dealers posed a threat to T.C.'s health and well-being. T.C. was born in October 2004, and taken into custody in April 2006 after mother intentionally overdosed. He adjusted well to his new foster family and he wanted to remain there. Measured from the child's perspective, the Court concluded mother would not be able to parent T.C. within a reasonable period of time. The child's relationship with mother is one of the statutory factors in 33 V.S.A. § 5540 and the Court found that while mother may love T.C. her parenting had ranged from dangerous to indifferent. The statute does not require an analysis, as mother urged, of whether T.C.'s need for adoption outweighed the benefits of continued parent-child contact, or whether the benefits of continued contact argued against termination and for a different permanency alternative. The Court also rejected mother's challenges to the family court's assessment of the child's bond with his foster family commenting that the foster mother does not need to be married to her long-term boyfriend in order to provide T.C. with a loving, stable home, as mother suggested. Mother's post-hearing emergency motion to return T.C. to her custody without holding a hearing was denied and the Court found no abuse of discretion here.

JUVENILE/CHINS/TPR

[In re S.S., Juvenile](#), No. 2008-049, June 19, 2008.

Mother and father appealed the termination order separately. S.S. was four years old when taken into emergency custody after father assaulted her, picking her up throwing her to the ground. Although father pled guilty to felony assault, mother demonstrated open reluctance to believing it occurred. One of father's conditions of release was to have no contact with S.S. He completed the recommended programs and was not charged with any further claims. DOC had authorized father to open communication with his daughter, by writing her a letter, but he failed to do so. He based his argument regarding the family court's conclusions that there was no material change of circumstances, or that he could not resume parental responsibilities within a reasonable period of time, on the fact that the parole condition prohibiting contact with S.S. was punishment for circumstances beyond his control. He could have written a letter, but made no attempt to re-establish communication, apologize or express remorse. The Court found that he was in fact responsible for the no-contact order because of his violence toward S.S.

Mother blamed the poor relationship with the DCF case worker for her failure to make progress, urging that it was DCF's responsibility to replace the case worker. This argument has no support in the facts or law. Additionally the Court agreed that mother's "overall attitude" of denying father's abuse, anger and resentment toward the minor, and resisting the need for education, prevented progress, placing the responsibility squarely on the mother.

TPR/REASONABLE EFFORTS/EFFECTIVE ASSISTANCE OF COUNSEL/NOTICE OF TPR HEARING

[In re S.W., L.F., T.B., K.F., & K.F.](#), 2008 VT 38 (mem.)

Mother and children moved to Vermont in early Fall of 2004 and not long thereafter the children were taken into state custody and adjudicated CHINS. Mother of all five and father of S.W. challenge the TPR of their children on several grounds. Supreme Court affirms TPR holding that the record supports the family court's determination that DCF made reasonable efforts in complying with family court order that DCF should actively seek placement for children in mother and children's home state of Massachusetts. Court once again refuses to answer question of whether a parent is entitled to effective assistance of counsel during a termination proceeding, because mother failed to show that her counsel's representation was ineffective or that she was prejudiced by the representation. The Court also concluded that its holding in [In re M.T.](#), 2006 VT 114 was fully

complied with where the court sent direct notice to mother at her last known address and that the notice had not been returned as undeliverable. Finally, the Court found father's "derivative-fitness argument" unavailing, where father argued the family court erred in not making findings on DCF's failure to explore his recommended kinship placement with his sister and erroneously found that his sister declined to assume care over S.W.

JUVENILE/CHINS/TPR

[In re R.J., Juvenile](#), No. 2008-005.

R.J. was placed with a foster family within two weeks of birth due to DCF's concerns about mother's mental illness and inability to bond and care for the child. She stipulated to the CHINS petition and voluntarily relinquished her parental rights. The initial petition recommended termination of both parents' parental rights which father opposed, after confirmation of his paternity. Father lives in Schenectady, and DCF acknowledged the obstacles to visitation, but the family court insisted father could have relocated, or visited more frequently than once a month. The father lost his appeal based on the Court's desire to achieve permanency within a reasonable period of time from the standpoint of the child. There was no guarantee that a home study conducted by New York officials would quickly confirm that father could provide a safe and stable home for the child in Schenectady.

JUVENILE/CHINS/TPR

[In re L.P.-M.](#), No. 2007-469, May 8, 2008.

L.P.-M. was born addicted to methadone and DCF became involved when child was one month old. Mother has a history of drug abuse and incarceration. Her unsuccessful appeal of the TPR challenged the legal standard applied to a termination at the initial disposition proceeding. Mother's assertion was that the family court should have applied a higher standard at this type of disposition hearing and that it failed to "err" on the side of preserving parental rights. The Court found no error in the resulting decision based on the scrupulously analyzed record in the family court. Mother's claim that not enough weight was given to her four month drug free status since her release from prison was also unpersuasive given her long history of drug use and rehabilitation failures. To support its position that mother had not developed a relationship with the child the court emphasized that even if some of the impediments to visitation were not the mother's fault while she was incarcerated, the fact that she was incarcerated was her sole responsibility.

TERMINATION OF PARENTAL RIGHTS/DOCUMENTARY EVIDENCE

[In re T.G.](#), 2007-401, February 2008

Father appealed termination of parental rights, challenging DCF's reliance on documentary exhibits alone to establish its case. Father argued that use of documentary evidence alone neglects DCF's obligation to make informed findings of the child's best interests and shifted burden to father that he would be able to parent child. Court, finding evidence presented included witness testimony of father—state had called father as a witness—declined to decide whether documentary evidence alone could ever be sufficient for a TPR order. Court affirmed TPR order.

TERMINATION OF PARENTAL RIGHTS/DEVELOPMENTAL DISABILITIES

[In re A.A. and M.A.](#), 2007-296, November 2007

Father appealed termination of parental rights based on lack of findings to support court's conclusion that he would not be able to resume responsibilities within a reasonable period of time. Court affirmed. Family court based conclusion on findings that developmentally disabled father had never seen children, had virtually no relationship with them, had no child care experience or parenting skills, and had no demonstrated ability to live independently, maintain stable employment,

or care for himself. Father lives with mother and brother who are his co-guardians under a guardianship order. Father also faced sexual misconduct charges and possible future incarceration. Although not convicted, DCF had substantiated several of them and the court found that this was enough to raise serious concerns about recognition of proper sexual boundaries. Considerations of sexual misconduct charges and existence of legal guardianship by court was proper as it was not solely based on this, but on overwhelming independent evidence of unfitness of parent.

TERMINATION OF PARENTAL RIGHTS/REASONABLE PERIOD OF TIME

[In re S.R.T., T.R.F. and J.R.](#), 2007-287

Court affirmed decision to terminate mother's parental rights where the family court found that mother showed consistent failure to engage in numerous services offered to her, had minimal understanding of her children's needs, lived in 15 different residences during the children's lives subjecting them to unsanitary living conditions and an atmosphere of physical abuse and neglect, and had ceased contact with her children for the last four or five months before TPR proceedings. Mother challenged family court's conclusion that she would not be able to parent within a reasonable period of time was based on findings that the children were likely to be adopted by their foster parents. Court dismissed this argument, determining that court's conclusion rested on proper 33 V.S.A. § 5540 factors. Court further held that the family court has no statutory obligation to make findings concerning the suitability of prospective adoptive parents in determining TPR.

TERMINATION OF PARENTAL RIGHTS/FIANCÉ AS REGISTERED SEX OFFENDER

[In re E.S. and D.S.](#), 2007-277

Mother appealed termination order arguing findings based solely on hearsay and that termination, which was done at the initial disposition hearing, was premature. Court affirmed decision, holding that court can rely on hearsay evidence in combination of other evidence supporting termination. Evidence that mother's fiancé was a convicted sex offender was based on a Federal Bureau of Prisons' Sex Offender Discharge Report, and mother's and fiancé's testimony. Family court found mother placed children at risk by leaving children alone with fiancé, allowing him to shower naked with the children and did not appreciate level of risk that he posed. Court held that family courts should generally avoid termination at the initial disposition hearing, but concluded no error here because decision was in the best interests of the children as the mother testified that she intended to stay with fiancé permanently.

TERMINATION OF PARENTAL RIGHTS/REASONABLE PERIOD OF TIME

[In re L.L.](#), 2007-248

Court affirmed family court's decision to terminate parental rights of mother even where the court found that she continued to love and to have a constructive role in the child's life. Although mother had taken significant steps to comply with the disposition report, the court found that given her lack of housing, current unemployment, psychological instability, and lack of maturity, it was in the best interest of the child that parental rights be terminated.

DISPOSITION/CHINS/KINSHIP PLACEMENT

[In re S.W., Juvenile](#), 2007-218

Where son is placed with willing and able grandmother, the Court affirmed that DCF should be granted custody as mother failed to address her drug addiction, or engage in other services (even if not her fault). Leaving a child with a relative does not necessitate a CHINS finding but here the court affirmed it was not an unnecessary governmental intrusion. The CHINS determination was based not the grandmother's temporary custody, but the mother's stipulation that due to her use of

drugs and inability to control her addiction, she was unable to provide appropriate care for her son. The lower court did not abuse its discretion.

TPR/VT ADOPTION ACT/DURESS

[In re E.A. and E.A., Juveniles](#), 2007-203

Here the Court construed both the Vermont Adoption Act (VAA) and the juvenile statutes related to this proceeding. The parents' counsel appealed termination after parents filed pro se a Petition to Appeal, claiming their relinquishment was involuntary, basing their appeal on duress suffered when making their decision though a thorough colloquy was conducted by the lower court. Parents' counsel raised the VAA using the theory that they have a right to retract the adoption, which was not raised below, and counsel abandoned the duress theory. The Court focused on the VAA, finding it not applicable.

Justice Johnson dissents looking at the parent's petition as more in the nature of a Motion to Reopen than literally a Petition to Appeal. She laments that the Court fails to address the parents' claims of duress, arguing that a remand to address this issue would not take an excessive amount of time. Additionally she notes that even the State recognizes that the trial court could have treated the parents' petitions as a motion for relief under V.R.C.P 60(b) of 33 V.S.A. § 5532.

DISPOSITION ORDER/NO CHANGED CIRCUMSTANCES

[In re D.P., D.P., & S.P.](#), 2007-201

Court declined to reweigh evidence and find changed circumstances for both father and mother who appealed the family court's decision to not modify the disposition order based on substantially changed circumstances. Although there was evidence of some improvement, the court found that mother's joblessness, homelessness, and relationship with an abusive boyfriend evidenced continued lack of progress in being able to resume parental duties. The court found father's argument that guardian grandmother's general health issues, without providing specifics on how these negatively impacted the children, had minimal relevance in this case given his own obstacles to being able to resume parental duties. Father's alcohol-related driving and fraud convictions establish circumstances substantially unchanged considering his 5 previous dui convictions and lifetime suspension of driver's license.

DELINQUENCY/ARSON/SUFFICIENCY OF THE EVIDENCE

[In re S.M.](#), 2007-150

Here a twelve year old is found guilty of first-degree arson and placed on probation until age eighteen. Harmless error found where Detective's hearsay testimony was admitted. In light of S.M.'s multiple, contradictory versions of how the fire started, the Court concluded that the State presented ample evidence to support the finding of the family court even without detective's testimony that fire was of criminal origin, or proof that S.M. willfully and maliciously started the fire.

TERMINATION OF PARENTAL RIGHTS/REASONABLE PERIOD OF TIME

[In re B.T., K.T., & T.T.](#), 2007-133

Mother challenged the lower court's failure to make adequate findings on what constituted a reasonable period of time that she could resume parental duties with each of the three children. Court held that the requirement for findings of fact pursuant to 33 V.S.A. 5540 does not require the family court to make specific findings on precisely what amount of delay will be harmful to a child or exactly how long a child can wait for a parent to resume parental duties. Mother had seventeen months to establish progress and the Court affirmed the family court's findings that she was unable to parent her children within a reasonable period of time.

PERMANENT GUARDIANSHIP

[In re M.W., Juvenile](#), 2007-83

This case is about creating a permanent guardianship. The Court emphasized that the terms of the permanent guardianship statute, 14 V.S.A. § 2664, are explained in a policy statement by the Legislature accompanying the statute that the creation of a permanent guardianship is designed to “provide the opportunity for a child, whose circumstances make adoption or return to the care of the parents not reasonably possible, to be placed in a stable and nurturing home for the duration of the child’s minority.” 1999, No. 162 (Adj. Sess.), a “last resort” to be considered “only when the options of return to the parents and adoption have been fully explored and ruled out based on clear and convincing evidence.” In this case the grandmother was willing to adopt the child, so the Court affirmed the termination and denied mother’s request to create a permanent guardianship.

MODIFICATION OF PERMANENCY PLAN

[In re D.H., Juvenile](#), 2007-76

Mother appealed the decision of the family court denying her request to modify D.H.’s long term foster care permanency plan to a plan with the goal of reunification. The Court was not persuaded and found no error, that there was no substantial change of circumstances, where mother argued a lower threshold for changed circumstances applies in a modification of plan appeal.

TPR/LONG-TERM FOSTER CARE

[In re M.K. and J.K., Juveniles](#), 2007-53

The Court rejected parents’ request that the option of long-term foster care be adopted rather than termination in part because the strong parent-child bond is skewed. In this case the child assumes the adult role, worrying about mother and dealing with father. The Court finds this behavior ultimately destructive because it skews the children’s sense of self, subjects the children to stress and forced them to become caregivers for adults in their world.

TPR/PERMANENT GUARDIANSHIP/JURISDICTION

[In re N.B. & A.B.](#), 2007-52, August 2007

After initial finding of CHINS, children were returned back to custody of mother. After learning that mother was secretly planning on moving to Utah instead of Florida where they would be close to paternal grandparents, DCF sought and obtained an emergency pick-up order. At the subsequent emergency hearing, custody was returned to DCF. Children were placed with paternal grandparents and state sought termination. Father petitioned court to appoint his parents as permanent guardians of his two children. Court rejected petition finding statutory criteria not met because grandparents would likely adopt. On appeal father argued that when family court transferred custody back to mother, the children were no longer CHINS, and thus the court lost its subject matter jurisdiction to reopen the CHINS and eventually terminate his parental rights. Supreme Court rules that father waived this argument by failing to raise it below. Furthermore, record fully supports family court’s order terminating father’s parental rights and rejecting permanent guardianship.

TERMINATION OF PARENTAL RIGHTS/REASONABLE PERIOD OF TIME

[In re C.M.](#), 2007-51

Family court termination parental rights of mother and the Court affirmed the decision citing mom had a reasonable period of time to demonstrate parenting ability where termination was recommended in the original disposition report and mother had 15 months to demonstrate improvement. Whether or not child is experiencing permanency in the foster home is not relevant to

the inquiry of whether the parent will be able to resume a parental role in a reasonable period of time.

TPR/UNSUPPORTED FINDING

[In re M.E.](#), 2007-42, June 2007

Father argues reversal of TPR is required because family court based its termination order, in part, on its conclusion that he didn't play a constructive role in M.E.'s life, which in turn was based on its unsupported finding that visitation had been harmful to M.E. The Supreme Court affirms the order finding that the record was replete with evidence of father's failure to visit M.E. on a regular basis and testimony that the child was hurt and confused with parents' inconsistent presence in her life. Court further finds that even if evidence did not support challenged conclusion, there was overwhelming evidence which did support the order.