

Supreme Court

No. 98-284-Appeal.
(FC 98-284)

In re Toni C. :

ORDER

This case came before the Supreme Court for oral argument on October 4, 1999, pursuant to an order directing the respondent father, Anthony Prete (Prete) to show cause why the issues raised in his appeal should not be summarily decided. Prete has appealed from a Family Court decree that terminated his parental rights to his daughter, Toni.¹ After hearing the arguments of counsel and reviewing the memoranda submitted by the parties, we conclude that cause has not been shown and that the issues raised by this appeal should be summarily decided.

Toni was born on June 6, 1988, to then sixteen-year-old Iris Cruikshank (Cruikshank) and respondent, then fifty-one years old. In December 1991, Toni was temporarily committed to the care and custody of the Department of Children, Youth and Families (DCYF). The child was returned to her mother's custody on the condition that Cruikshank refrain from permitting her boyfriend, Christopher Nantais (Nantais), any contact with Toni.

¹ At an August 19, 1997 hearing, the child's mother acknowledged that she intended to execute a direct consent adoption to Toni's foster family.

In July of 1992, Prete informed DCYF that Nantais was violating the restraining order. After confirming Prete's accusations, DCYF filed a successful motion to change Toni's placement. Subsequently, DCYF prepared the first of many case plans for Prete, following his release from prison upon serving a five-year sentence for cocaine possession with intent to deliver. Except for a period in 1993, his compliance with the case plans was sporadic, at best. For example, in March 1994, a DCYF caseworker asked Prete to submit to a sexual offender evaluation stemming from his impregnation of then 15-year-old Cruikshank and a substance abuse evaluation. He refused to do so and continued to refuse even after a Family Court justice ordered him to comply. Prete missed or refused visits with his daughter during several months in 1994 and 1995. When he did visit with Toni, he would sometimes do or say something which provoked anxiety in her.

Meanwhile, DCYF successfully pursued a neglect petition against Prete regarding Toni and against Cruikshank regarding Toni and two daughters fathered by Nantais. Appearing at the hearing pro se, Prete stated that he would appeal the finding of neglect, but he did not do so. Cruikshank appealed, and this Court issued an order which held that the record supported the trial justice's findings that Toni was abused and that all three children were neglected. In re Toni C., 688 A.2d 859 (R.I. 1997) (mem.).

On August 1, 1995, DCYF filed a termination-of-parental-rights (TPR) petition with respect to Toni. On December 5, 1997, the trial justice entered a decree terminating Prete's parental rights from which he has filed the instant appeal. When reviewing cases involving the termination of parental rights, this Court examines the record to determine whether there is legally competent evidence to support the trial justice's findings. In re Jennifer R., 667 A.2d 535, 536 (R.I. 1995). The findings of a trial justice are entitled to great weight and will not be disturbed unless the findings are clearly wrong or unless the

trial justice overlooked or misconceived material evidence. In re Kristen B., 558 A.2d 200, 204 (R.I. 1989).

Prete has raised numerous arguments in the appeal of the termination of his parental rights. First, he contended that the Family Court violated his due process and equal protection rights by not appointing counsel to represent him at the neglect hearing. As noted ante, Prete did not appeal that decision.

Prete also argued that his constitutional rights were violated because the Family Court appointed counsel to represent him in the TPR proceeding on the “eve of trial.” The record indicates that counsel for Prete was appointed on May 15, 1997, more than three months before the TPR proceeding began on August 19, 1997, at which time Prete’s counsel agreed to proceed with the TPR hearing in Family Court and did not request a continuance or more time for preparation. Therefore, we conclude that this issue is without merit.

Prete further claimed that the trial justice erred in excluding Prete from an *in camera* interview with Toni. Prete’s attorney, however, was present during the interview and never objected to the exclusion of Prete. Accordingly, we conclude that Prete’s rights were adequately protected during the *in camera* interview.

We also reject respondent’s argument that the trial justice erred in making discovery rulings and in denying his motion to dismiss and his motion for a bill of particulars. In light of Rule 20 of the Rules of Juvenile Proceedings, which provides for limited discovery in TPR proceedings, our review of the record disclosed that DCYF provided adequate discovery to Prete. Moreover, the TPR petition specifically set forth the allegations supporting it, thereby eliminating the need of such a bill to clarify issues. In re Three Minor Children, 110 R.I. 11, 14, 289 A.2d 434, 436 (1972).

With respect to the final issue raised by Prete, it is our opinion that the trial justice did not err in making findings regarding DCYF's reasonable efforts. "Reasonable efforts' is a subjective standard subject to a case-by-case analysis, taking into account, among other things, the conduct and cooperation of the parents." In re Nicole B., 703 A.2d 612, 618 (R.I. 1997). The evidence at trial indicated that Prete's refusal to follow the DCYF case plans, and not DCYF's canceling a few visits, frustrated DCYF's efforts to unify Prete and his daughter.

Furthermore, the finding of unfitness was amply supported by substantial evidence in the record, which the trial justice discussed at great length in a well-reasoned decision. The child's best interests including permanency dictate that the termination of Prete's parental rights be sustained.

For these reasons, Prete's appeal is denied and dismissed, the decree appealed from is affirmed, and the papers of the case are remanded to the Family Court.

Entered as an Order of this Court on this day of October 1999.

By Order

Brian B. Burns
Clerk Pro Tempore

