Supreme Court

No. 98-560-Appeal.
(94-232-01)

In re Dennis P. :

Present: Weisberger, C.J., Lederberg, Bourcier, Flanders, and Goldberg, JJ.

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PER CURIAM. This case came before the Court for oral argument on April 3, 2000, pursuant to an order that directed both parties to appear in order to show cause why the issues raised by the appeal should not be summarily decided. After hearing the arguments of counsel and examining the memoranda filed by the parties, we are of the opinion that cause has not been shown and that the issues raised by this appeal should be summarily decided. The facts pertinent to this appeal are as follows.

The respondent mother (respondent or mother) appeals from a Family Court judgment terminating her parental rights. Dennis, respondent's sixth child, was born on February 19, 1994. Shortly thereafter, he was detained in the care, custody, and control of the Department of Children, Youth and Families (DCYF) on an ex parte petition based on delayed prenatal care and previous terminations of respondent's parental rights to her other children.[1] Both respondent and the child's

[1] The respondent's parental rights to her five older children had been involuntarily terminated before the instant petition was filed; four children pursuant to Rhode Island law, one pursuant to the laws of the State of California. The trial justice took judicial notice of a Rhode Island Family Court decree terminating respondent's parental rights to three of those children. In an earlier evaluation with respect to the older children, a clinician at the Kent County Mental Health Clinic observed that respondent had a chronic substance abuse problem and that she was unable to care for her children.

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Lisa Kolek (Kolek), the social worker assigned to the case, prepared four case plans for the parents. Each plan was designed to address similar objectives (to maintain a safe, stable home environment, parenting and care for the child, and to maintain a substance-free lifestyle and avoid illegal activities), and had the goal of reunification. Kolek also referred the parents to Haven Miles (Miles) at the Providence Center for a parent-child evaluation, followed by a referral to the Kent County Mental Health Reunification Program and then followed up by a reevaluation by Miles. Janet Marquez (Marquez), a clinician at the Kent County Mental Health Clinic, worked with the family throughout the reunification program.

At trial, both Miles and Marquez testified concerning the parents' interaction with the child and their participation and progress in the reunification program. Miles testified that she met and observed mother, father, and child when the child was three months old. At that time, she observed almost no interaction between the parents and the child. She recommended that the parents talk extensively to the child during visits and repeat his sounds, that they hold the child facing them, and that they take a child development course. In her reassessment of the parents and child five months later, Miles noted that the parents had learned to repeat the child's sounds and to properly hold the child, and had many hours of contact with the child over the previous sixteen weeks, but that no relationship had developed between the parents and child. Marquez testified that although the parents' attendance during the first sixteen weeks of the reunification program was good, no improvement in the mother's performance was observed by the end of the first phase of the program. Rather, respondent was able to learn the course

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Furthermore, in October 1994, respondent also underwent a psychiatric evaluation. It was determined that respondent was mildly mentally retarded and that there was no reason for optimism regarding her ability to modify her pattern and behavior. It was also noted that recurrent concerns about respondent included

> "inadequate parenting skills, neglect, substance abuse, unstable or inadequate housing or lack of housing, multiple suicide attempts, domestic violence, poor judgment, non-compliance with parent education programs, frequent moves due to fear of physical harm by significant others, reported physical abuse by the father of her last baby, and threats to kill herself on more than one occasion. [Respondent had also] been treated for cocaine abuse * * *."

Based on these observations and reports, as well as the previous history of services, the Kent County Reunification Program did not recommend reunification and did not recommend advancement to Phase II of the reunification program.

Pursuant to a Family Court order, Kolek requested an additional parenting assessment at the Spurwink School (Spurwink) parenting skills program. Loretta Jones (Jones), a former social worker at Spurwink, testified that she met mother, father, and child four times beginning in August 1995 to make the assessment. She testified that although mother and father attempted to establish a relationship with the child, the child did not interact with his parents. Jones observed that the child refused to engage his natural parents in any activity and that he avoided eye contact with them, but that he was more animated when in contact with his foster parents. Jones testified that the child's avoidance of his natural parents and his contentment with his foster parents, and the fact that mother and father ended their

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relationship in October 1995,[2] were obstacles to reunification. Indeed, Kolek testified that after respondent broke up with the child's father, her visits with the child became very inconsistent. During those visits, respondent had very little interaction with the child, and the child would play independently.

On April 29, 1998, after a trial in Family Court, the trial justice delivered a decision terminating respondent's parental rights. The trial justice specifically found that DCYF had proven by clear and convincing evidence that respondent lacked the ability to respond to services that would rehabilitate her, that she was not able to achieve an understanding of homemaking, safety issues, child care and parenting, and that she had no condition that would be responsive to treatment or which could be modified to improve her ability to care for her children or manage her life and household. He also found that nothing further could be done for respondent, that she suffered from a mental deficiency which made it improbable that she would be able to care for the child in the foreseeable future, and that it was improbable that any additional program would result in reunification within a reasonable period. Finally, he concluded that DCYF had proven by clear and convincing evidence that respondent was unfit and that termination of her parental rights was in the best interests of the child.

The respondent then filed the instant appeal arguing that the Family Court justice erred when he concluded that DCYF had made reasonable efforts to reunify her with her son. The respondent argues that, in light of her limited cognitive abilities, DCYF should have done more than send her to Spurwink for an evaluation. The respondent also argues that DCYF should have provided Dennis with services that might have helped him overcome his resistance to his mother. "Parents enjoy a fundamental

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After the breakup, respondent began living with another man, with whom respondent had two more children. One child was placed under the guardianship of relatives. The putative father has custody of the other child, but respondent is not allowed to be left alone with the child.

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In its petition to terminate respondent's parental rights, pursuant to G.L. 1956 § 15-7-7, DCYF alleged that respondent was unfit for three reasons: (1) because of the previous terminations of her parental rights to her other children, id. at (a)(2)(iv), (2) because of respondent's emotional illness, mental illness, or mental deficiency, id. at (a)(2)(i), and (3) because of allegations that respondent abandoned or deserted the child, id. at (a)(4). The trial justice granted the petition on the basis of the first two allegations, and denied and dismissed the third allegation because DCYF had not proven by clear and convincing evidence that respondent had abandoned or deserted the child. Accordingly, we will examine the propriety of the termination of parental rights on the basis of the first two allegations.

Pursuant to the Termination of Parental Rights statute, § 15-7-7(a)(1), (a)(2)(i), or (a)(2)(iii), "the petitioning agency, as a condition precedent [to the termination of parental rights], must satisfy the trial court by clear and convincing evidence that 'reasonable efforts' were undertaken to 'encourage and strengthen the parental relationship.'" In re Nicole B., 703 A.2d at 617 (quoting § 15-7-7(b)(1)). However, "[i]n the event that a petition is filed pursuant to subsection (a)(2)(ii), (a)(2)(iv), (a)(2)(v),

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As an initial matter, respondent's parental rights were appropriately terminated on the basis of § 15-7-7(a)(2)(iv). That section provides that the court shall terminate parental rights if

> "the court has previously involuntarily terminated parental rights to another child of the parent and the parent continues to lack the ability or willingness to respond to services which would rehabilitate the parent and provided further that the court finds it is improbable that an additional period of services would result in reunification within a reasonable period of time considering the child's age and the need for a permanent home." Id.

As was previously stated, DCYF is not obligated to engage in reasonable efforts to preserve and reunify the family when a petition is filed based on this ground.

In regard to the allegation of unfitness, the trial justice found that respondent's parental rights to four other children previously had been involuntarily terminated because of an unsatisfactory demonstration of adequate parenting, substance abuse, unstable housing, mental health issues, poor living conditions, volatile family relationships, and mild retardation that impaired her parenting ability. The trial justice also found that in the instant case respondent lacked the ability to respond to services that would rehabilitate her and that it was improbable that any additional continuance would result in reunification within a reasonable period. There is ample support for these findings. Evidence introduced at trial established that from 1986 until 1990, and again in 1994, respondent participated in various programs designed to address home management, homemaking, and parenting. Marquez testified that despite respondent's ability to learn the course materials by rote memorization, respondent was unable to apply what she had learned. Doctor Douglas Robbins, who conducted respondent's psychiatric evaluation, stated in his report that there was no reason for optimism concerning her ability to modify her

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In regard to the allegation of unfitness, the trial justice found that respondent's parental rights to four other children previously had been involuntarily terminated because of an unsatisfactory demonstration of adequate parenting, substance abuse, unstable housing, mental health issues, poor living conditions, volatile family relationships, and mild retardation that impaired her parenting ability. The trial justice also found that in the instant case respondent lacked the ability to respond to services that would rehabilitate her and that it was improbable that any additional continuance would result in reunification within a reasonable period. There is ample support for these findings. Evidence introduced at trial established that from 1986 until 1990, and again in 1994, respondent participated in various programs designed to address home management, homemaking, and parenting. Marquez testified that despite respondent's ability to learn the course materials by rote memorization, respondent was unable to apply what she had learned. Doctor Douglas Robbins, who conducted respondent's psychiatric evaluation, stated in his report that there was no reason for optimism concerning her ability to modify her

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The evidence also supports terminating respondent's parental rights on the basis of § 15-7-7(a)(2)(i). Pursuant to this provision, DCYF must prove by clear and convincing evidence that it made "reasonable efforts" to "encourage and strengthen" the parental relationship. In re Nicole B., 703 A.2d at 617 (quoting § 15-7-7(b)(1)). "Reasonable efforts" is a subjective standard determined according to a case-by-case analysis. In re Antonio G., 657 A.2d 1052, 1058 (R.I. 1995). Generally, it requires that the agency show that "reunification of the family was attempted in good faith." In re Nicole B., 703 A.2d at 617.

In In re Armand, 433 A.2d 957 (R.I. 1981), this Court set forth guidelines to be used in determining whether an agency has made reasonable efforts to encourage the parental relationship. They are:

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JUSTICES:	Weisberger, C.J., Lederberg, Bourcier, Flanders, Goldberg, JJ. **Concurring**
WRITTEN BY:	PER CURIAM
ATTORNEYS:	Frank P. Iacono, Jr. Thomas J. Corrigan, Jr. **For Plaintiff**
ATTORNEYS:	Paula Rosin **For Defendant**

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JUDGE FROM OTHER COURT:	Palombo, J.
JUSTICES:	Weisberger, C.J., Lederberg, Bourcier, Flanders, Goldberg, JJ. **Concurring**
WRITTEN BY:	PER CURIAM
ATTORNEYS:	Frank P. Iacono, Jr. Thomas J. Corrigan, Jr. **For Plaintiff**
ATTORNEYS:	Paula Rosin **For Defendant**

CORRECTION NOTICE

TITLE OF CASE:	In, re Dennis P.
DOCKET NO.:	1998-560 - A.
COURT:	Supreme Court
DATE OPINION FILED:	April 28, 2000

A correction has been made on page 1. In the last line of paragraph 2, the word "plaintiff's" has been changed to "respondent's".

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