

ADOPTION OF FERDINAND (and two companion cases [FN1]).

A mother and two fathers appeal from Juvenile Court decrees terminating their parental rights to three children. The first decrees terminated the mother and father F's parental rights to their children, Ferdinand (born in August, 1999) and Rose (born in February, 2003). Another decree terminated the mother and father D's parental rights to a younger child, Daniel (born in May, 2007). All three parents contest the termination decisions. The mother and father F also challenge the failure to order posttermination contact or sibling visitation. Because the judge did not abuse her discretion or commit a clear error of law, we affirm the decrees.

1. Background. The Department of Children and Families (DCF) became involved with this family in 2001 after receiving a G. L. c. 119, § 51A, report of cigarette burns on Ferdinand. DCF found allegations of neglect supported. See G. L. c. 119, § 51B. DCF received another § 51A report, which was also supported, in March, 2004, after the mother left Ferdinand and Rose with father D, while he was so intoxicated that he dropped Rose. On that occasion, the mother appeared under the influence and could not recall father F's last name. Rose showed signs of neglect, wearing soiled pajamas and smelling of old urine. DCF took emergency custody, filed a care and protection petition, and later returned custody to the mother.

In November, 2004, DCF received another § 51A report, [FN2] this time alleging that the mother used drugs in front of Ferdinand and Rose and left needles and pipes around the house. DCF also received unsupported reports that the mother prostituted herself for drug money with the children present.

The situation deteriorated further in July, 2005. A DCF worker attempted a home visit and found an eviction notice on the mother's door. The next month, police found the mother, Ferdinand, and Rose living in the woods behind a laundromat. A cardboard box of the children's toys contained used needles and empty heroin bags. The mother again appeared under the influence. DCF took emergency custody of the children and filed another care and protection petition.

From September, 2005, to January, 2006, the mother did not visit Ferdinand or Rose. She was homeless and using heroin. The mother eventually asked to visit the children in May, 2006, but arrived at several visits under the influence.

Father F spent much of Ferdinand and Rose's lives in prison, serving time for heroin distribution in 2003 and 2005. He did successfully visit with the children once a month while incarcerated, beginning in January, 2006.

In 2006, the mother became pregnant by father D. She violated probation that December and was in jail until February, 2007. While in jail, the mother received prenatal care, but did not keep medical

appointments after her release. When Daniel was born that May, he entered the neonatal ICU for methadone withdrawal. The mother rarely visited, stating, '[H]e's just a newborn and won't even know if I'm there.' Father D made occasional visits. DCF filed a care and protection petition on behalf of Daniel.

Daniel entered foster care. DCF set his goal to adoption after his parents failed to comply with service plans. The mother and father D attended only one day of the termination trial. Father D never finished testifying, and the mother did not testify at all. The judge terminated parental rights.

2. Discussion. a. Standard of review. 'When reviewing a decision to terminate parental rights, we must determine whether the trial judge abused [her] discretion or committed a clear error of law.' Adoption of Elena, 446 Mass. 24, 30 (2006). We accept the judge's subsidiary findings, which the petitioner must prove by a preponderance of the evidence, absent clear error. Ibid. at 30-31. We then consider the two-part termination inquiry. First, the judge must find 'parental unfitness by clear and convincing evidence.' Adoption of Nancy, 443 Mass. 512, 515 (2005). Second, the judge must conclude that the 'unfitness is such that it would be in the child's best interests to end all legal relations between parent and child.' Ibid.

In these two cases, the judge made more than 200 subsidiary findings that demonstrate her close attention to the evidence. Id. at 515. The judge made no error by concluding that these findings provide clear and convincing evidence of unfitness and that termination serves the children's best interests.

b. Drug abuse. The mother correctly asserts that drug abuse, standing alone, does not prove unfitness. Adoption of Katharine, 42 Mass. App. Ct. 25, 34 (1997). However, a clear nexus exists here between all three parents' drug abuse and their inability to care for their children. See Elena, supra at 32 (affirming termination where findings showed parent's 'longstanding involvement with drugs and the effect this had on the children').

In the mother's case, the episode in which police found the family living in the woods, with used needles in the children's toy box, exemplifies this nexus. Multiple positive drug tests in 2007, belie her recent sobriety claim.

Father F could not take care of his children during the mother's difficult times because his drug activities led to his incarceration. Although father F had positive visits with Ferdinand and Rose while in prison, the judge found that he had not 'demonstrated his ability to care for the children.' When asked whether, from 2001 on, he was 'either in jail or . . . selling heroin,' he answered, 'Yeah, you could say [that].'

Drugs also affected father D's fitness to parent Daniel, as evidenced by his inconsistent participation in DCF services, sporadic visitation, and failure to complete his testimony at the care and protection proceeding. His pattern of drug abuse and resulting dangerous behavior dates back to 2004, when he dropped Rose while intoxicated.

In all three cases, the judge properly relied on 'prior patterns of ongoing, repeated, serious parental neglect, abuse, and misconduct in determining current unfitness.' Adoption of Diane, 400 Mass. 196, 204 (1987). Because all three parents' convictions for drug offenses bear on parental fitness, these also 'may properly be weighed in the balance.' Care & Protection of Frank, 409 Mass. 492, 495 (1991). In sum, patterns of drug abuse, incarceration, and a resulting inability to provide basic care show that the judge neither abused her discretion nor committed a clear error in terminating parental rights.

c. Posttermination and postadoption contact. A judge may allow posttermination and postadoption visitation if it serves a child's best interests. See Adoption of Helen, 429 Mass. 856, 863 (1999). However, this decision 'must be left to [the judge's] sound discretion.' Adoption of John, 53 Mass. App. Ct. 431, 439 (2001). Here, the findings show that the judge did not abuse her discretion in declining to order visitation, as they do not show 'significant, existing bonds' between the children and the parents 'such that a court order abruptly disrupting the relationship would run counter to [their] best interests.' Adoption of Vito, 431 Mass. 550, 563 (2000).

d. Sibling visitation. The mother and father F waived the sibling visitation issue by failing to raise it at trial. Adoption of Gillian, 63 Mass. App. Ct. 398, 408 (2005). After the termination of parental rights, the mother and father F lost standing. Ibid. The siblings themselves may at any time seek visitation through G. L. c. 119, § 26. Ibid.

Decrees affirmed.

By the Court (McHugh, Dreben & Katzmann, JJ.),

Entered: January 23, 2009.

FN1. Adoption of Rose and Adoption of Daniel. The children's names are pseudonyms.

FN2. 'General Laws c. 119, § 51A, reports are admissible only to explain [DCF's] initial involvement with the family.' Adoption of Yale, 65 Mass. App. Ct. 236, 238 (2005).