

ADOPTION OF McARTHUR. [FN1]

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The mother appeals from a decree terminating her parental rights and orders setting limited posttermination and postadoption visitation. She also challenges the judge's rejection of her proposed placement plan, which entailed placing the child with his maternal grandparents. For the reasons that follow, we affirm.

Parental unfitness and termination of rights. A court may terminate parental rights where clear and convincing evidence exists that a parent is unfit and that termination is in the child's best interests. See *Adoption of Kimberly*, 414 Mass. 526, 528-529 (1993); *Adoption of Mary*, 414 Mass. 705, 710 (1993). 'The standard for parental unfitness and the standard for termination are not separate and distinct, but 'reflect different degrees of emphasis on the same factors.' *Adoption of Nancy*, 443 Mass. 512, 515 (2005), quoting from *Petition of the New England Home for Little Wanderers to Dispense with Consent to Adoption*, 367 Mass. 631, 641 (1975). We do not assess the evidence de novo; rather, our review is limited to determining whether the judge's findings are clearly erroneous and whether they proved parental unfitness by clear and convincing evidence. *Custody of Eleanor*, 414 Mass. 795, 802 (1993).

The mother does not contend that any of the judge's subsidiary findings were clearly erroneous. Instead, she argues that the evidence, viewed as a whole, did not prove unfitness by clear and convincing evidence because the child was not harmed by any of her shortcomings or deficiencies. More specifically, she contends that (1) there was no evidence her substance abuse and addiction problems affected her parenting ability; (2) there was no evidence that the child was adversely affected by witnessing domestic violence between his parents; and (3) the child developed satisfactorily despite his unstable childhood. We are unpersuaded by the fundamental assumption underlying the mother's argument: namely, that unfitness cannot be found until a child suffers serious harm. See *Custody of a Minor (No. 2)*, 378 Mass. 712, 714 (1979).

Beyond that, because the mother does not contest the accuracy of the judge's subsidiary findings, she is in effect asking that we reject the judge's qualitative evaluation of the evidence. However, 'the judge's assessment of the weight of the evidence and the credibility of the witnesses is entitled to deference.' *Custody of Two Minors*, 396 Mass. 610, 618 (1986). Our independent review of the judge's findings and the evidence underlying them shows that she fairly considered both the positive and the negative. The judge acknowledged that the child had fared well in the mother's care. She also acknowledged that the child had a significant bond with the mother, as well as with the maternal grandparents. This evidence, however, had to be weighed against a larger picture of multigenerational domestic violence, multigenerational substance abuse, the mother's lack of understanding of the significance her family history (as well as her own

history) of domestic and substance abuse, her failure to comply with her service plan, her lengthy period of incarceration while the child was young, her inability to protect the child from witnessing domestic violence, and her inability to free herself from her significant domestic and substance abuse issues. In light of this evidence, we conclude that the judge's finding of unfitness was clearly and convincingly supported by the record, even assuming that the child was not harmed in a serious way by the conditions to which the mother had exposed him.

'After ascertaining unfitness, the judge must determine whether the parent's unfitness is such that it would be in the child's best interests to end all legal relations between parent and child.' Adoption of Nancy, 443 Mass. at 515. In making such a finding, 'the court shall consider the ability, capacity, fitness and readiness of the child's parents . . . to assume parental responsibility,' as well as the plan proposed by the Department of Children and Families (DCF). G. L. c. 210, § 3(c), as amended by St. 1999, c. 3, § 17. In addition to what is set out above, the judge found (and the mother does not contest) that the child (who has spent approximately one-half his life outside the mother's care) is happy and well-adjusted in his preadoptive home. In these circumstances, we discern no error in the judge's conclusion that termination was in the child's best interests.

Rejection of the mother's proposed placement. The judge rejected the mother's proposal that the child be placed with the maternal grandparents in favor of DCF's plan that the child remain with his preadoptive family. A judge deciding between two plans for a child must determine what is in the child's best interests, Adoption of Hugo, 428 Mass. 219, 226 n.9 (1998), 'a question that presents the trial judge 'with a classic example of a discretionary decision.'" Id. at 225, quoting from Adoption of a Minor (No. 2), 367 Mass. 684, 688 (1975). We review only to determine whether that discretion was abused, and we conclude that it was not.

The State favors keeping a child with his or her natural family where the placement is otherwise appropriate. See, e.g., Petition of the Dept. of Pub. Welfare to Dispense with Consent to Adoption, 376 Mass. 252, 266 (1978). The maternal grandparents' household did not meet this standard. Among other things, both grandparents had histories of alcohol use. The maternal grandmother had been physically abused by the maternal grandfather, who had also repeatedly abused the mother. In addition to his history of domestic and alcohol abuse, the maternal grandfather had an extensive criminal history (including crimes of violence), had refused to cooperate with the DCF, and had failed to recognize the extent and significance of his alcohol abuse. In these circumstances, the maternal grandparents were not a suitable placement option for the child. Further, the judge did not abuse her discretion in determining that the DCF's plan (which entailed keeping the child in his preadoptive placement) served his best interests: the evidence showed that the child has thrived in that family's care.

Visitation. The judge ordered both posttermination and postadoption visitation between the child and the mother. Such contact may be warranted where 'significant, existing bonds between the child and a biological parent [demonstrate] that a court order abruptly disrupting that relationship would run counter to the child's best interests.' Adoption of Vito, 431 Mass. 550, 563 (2000). The contact 'is not to

strengthen the bonds between the child and his biological mother or father, but to assist the child as he negotiates, often at a very young age, the tortuous path from one family to another.' Id. at 564-565. We review to determine whether there has been an abuse of discretion. *Adoption of Lenore*, 55 Mass. App. Ct. 275, 283 (2002).

Here, the mother argues that the judge abused her discretion by permitting only two posttermination and postadoption visits per year and by failing to order any visitation for the maternal grandparents. Setting aside any question of the mother's standing to raise the issue of the grandparents' visitation, we disagree. Although the judge acknowledged the significant bond between the mother and the child, and acknowledged that the child has a warm relationship with his maternal grandparents, the judge was well within her discretion in fashioning the visitation orders that she did. The mother had a spotty history of visiting the child, setting aside the period when she was incarcerated. Her failure to attend scheduled visits upset the child, who was confused when his mother failed to appear. The child had adjusted well to his preadoptive family and there was no indication that additional maternal visitation was required for his successful transition. The same was true for the grandparents, with the additional fact that they had taken advantage of previous visitation to the child's detriment.

For the reasons set out above, the decree and visitation orders are affirmed.

So ordered.

By the court (Katzmann, Brown & Wolohojian, JJ.),

Entered: October 8, 2009.

FN1. A pseudonym.