

IN RE CHILD OF RACHEL D.

Submitted on Briefs March 27, 2024

Decided April 18, 2024

Panel: STANFILL, C.J., and MEAD, HORTON, CONNORS, LAWRENCE, and DOUGLAS, JJ.

MEMORANDUM OF DECISION

Rachel D. appeals from a judgment of the District Court (Bangor, *Campbell, J.*) terminating her parental rights to her child pursuant to 22 M.R.S. § 4055(1)(A)(1)(a), (B)(2)(a), (b)(i-ii) (2023).<sup>1</sup> Contrary to the mother's contention, on this record the court did not clearly err or abuse its discretion in finding by clear and convincing evidence that she is unfit and that termination is in the child's best interest. *See In re Children of Quincy A.*, 2023 ME 49, ¶¶ 10, 12-13, 300 A.3d 832.

Further, reviewing for obvious error, the mother's contention that she was deprived of due process by procedural errors that occurred as the child protection case progressed fails because she does not identify any prejudice resulting from the claimed errors. *See In re Child of Corey B.*, 2020 ME 3, ¶ 12, 223 A.3d 462; *In re Child of Kenneth S.*, 2022 ME 14, ¶ 22, 269 A.3d 242. The mother does not dispute that the jeopardy order clearly requires that she refrain from all illegal substance use and alcohol use, or that the court found that she was aware of that condition. She is correct that 22 M.R.S. § 4038(5)(D) (2023) specifically requires a court conducting a judicial review to "make written findings that determine . . . [t]he extent of the parties' compliance with

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<sup>1</sup> The father's parental rights were terminated by consent.

the case plan and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care[.]” The court here<sup>2</sup> made no such findings—the box at Section 8(D) (compliance) of the standard Judicial Review Order is unchecked and incomplete for each of the three judicial reviews conducted, perhaps unsurprisingly because the mother did not attend the judicial reviews, although she was represented by counsel.<sup>3</sup> The mother argues that the court’s failure to comply with the statutory requirement to make findings regarding compliance—specifically regarding alcohol in this instance—requires that we vacate the termination judgment. This due process argument fails because (1) the prohibition against alcohol use is present in the jeopardy order, and (2) the court found that she was indeed aware of that condition.

Finally, the mother asserts that the Department’s attorney “made numerous inappropriate and inflammatory remarks” in his closing, including arguments unsupported by the evidence. The Department essentially concedes as much on appeal, agreeing that the closing argument “did not meet the high standards of the Office of [the] Attorney General.” We agree. In this matter, however, which was tried to a judge and not a jury, the asserted prosecutorial error on the part of the Department in its closing argument does not rise to the level of obvious error requiring that we vacate the court’s thorough judgment because there is no indication in the record that the error affected the outcome of the proceeding. To the contrary, the trial judge appropriately stopped the Department’s attorney more than once when the argument crossed the line. *See In re Weapons Restriction of J.*, 2022 ME 34, ¶ 35, 276 A.3d 510; *State v. Pratt*, 2020 ME 141, ¶ 14, 243 A.3d 469; *State v. Ferguson*, 2019 ME 10, ¶ 25, 200 A.3d 272.

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<sup>2</sup> The judge that conducted the judicial reviews was not the judge that issued the judgment terminating the mother's parental rights.

<sup>3</sup> The three judicial review orders, which were entered by agreement and appear to have been prepared by the Department’s attorney, also fail to include any of the other findings required by 22 M.R.S. § 4038(5), including the safety of the placement or the date by which permanency may be expected. Virtually none of the other information in the form orders is filled out, information intended to ensure compliance with various provisions of the statute and the reunification process.

The entry is:

Judgment affirmed.

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Julian Richter, Esq., Family Advocacy of Maine, Bath, for appellant mother

Aaron M. Frey, Attorney General, and Hunter C. Umphrey, Asst. Atty. Gen., Office of the Attorney General, Bangor, for appellee Department of Health and Human Services

Bangor District Court docket number PC-2021-337  
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