

GUARDIANSHIP OF AUTUMN S. et al.

Submitted on Briefs September 23, 2010

Decided October 7, 2010

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, and JABAR, JJ.

MEMORANDUM OF DECISION

The mother appeals from a judgment of the Sagadahoc County Probate Court (*Voorhees, J.*) granting the children's maternal grandmother guardianship of the children. Contrary to the mother's contentions, a fact-finder reasonably could have been persuaded that the grandmother proved to a high probability that the mother engaged in a pattern of verbal abuse and neglect of the children, that she engaged in physical abuse of one of the children, and that she failed to provide financial support in spite of her receipt of benefits for the children, whereas the grandmother provided a home and consistent support for the children for most of their lives. *See Spooner v. Spooner*, 2004 ME 69, ¶ 30, 850 A.2d 354, 363 (noting standard of review). The court therefore did not commit clear error in concluding that the mother had created an intolerable living situation for the children and the grandmother will provide a living situation that is in the best interest of the children, pursuant to 18-A M.R.S. § 5-204(c) (2009). *See Guardianship of Jewel M.*, 2010 ME 17, ¶ 10, 989 A.2d 726, 729. Furthermore, the court's factual findings satisfy the requirements that "(1) the parent is currently unable to meet the child's needs and that inability will have an effect on the child's well-being that may be dramatic, and even traumatic, if the child lives with the parent, and (2) the proposed guardian will provide a living situation that is in the best interest of the child." *Id.* ¶ 13, 989 A.2d at 730. The court therefore did not err as a matter of law in granting the guardianship of the children pursuant to section 5-204(c). *Id.* ¶¶ 10, 12-13, 989 A.2d at 729-30.

Because we affirm the judgment based on the court's finding of an intolerable living situation, we need not address the mother's contention that the

court erred in granting the guardianship based on a de facto guardianship, pursuant to 18-A M.R.S. § 5-204(d) (2009). We have fully considered the mother's contention that she is entitled to a new trial but conclude that the court did not commit clear error with respect to the factual findings underlying its denial of the motion, and its ultimate disposition on the motion was not an abuse of discretion. *See Ma v. Bryan*, 2010 ME 55, ¶ 4, 997 A.2d 755, 757 (noting standard of review).

The entry is:

Judgment affirmed.

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