

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 2026 ME 91

Docket: Ken-25-28

Submitted

On Briefs: December 30, 2025

Decided: August 18, 2026

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

Majority: STANFILL, C.J., and MEAD, CONNORS, DOUGLAS, and LIPEZ, JJ,

Concurrence: HORTON, A.R.J., and LAWRENCE, J.

IN RE CHILD OF KAREN J.

MEAD, J.

[¶1] Karen J. appeals from an order of the District Court (Augusta, *Montgomery, J.*) terminating her parental rights to her child. She contends that the court erroneously relied upon her failure to relocate to Maine as a significant factor in its conclusion that she was unfit to care for her child when she had, in the court’s words, “gone above and beyond” the Department’s requirements for reunification. Because we conclude that the court’s substantial reliance on the mother’s inability to return to Maine to reunify with the child in reaching its determination of unfitness, and the failure of the court to identify any other indicia of unfitness, was erroneous, we vacate the judgment and remand the matter to the trial court.

I. BACKGROUND

A. Procedural History

[¶2] On August 8, 2021, the Department of Health and Human Services filed a petition for a child protection order after the mother was found intoxicated with her child, having called 9-1-1 to ask for a ride back to her home state of New Mexico. She had traveled to Maine with her child to meet an individual, who had prior domestic violence assault convictions, after corresponding with him online. A preliminary protection order was issued the same day, and on August 16, 2021, the mother waived her right to a summary preliminary hearing. On August 26, 2021, the court (*Nale, J.*) ordered the Department to reach out to its New Mexico counterpart to begin the process of placing the child in New Mexico pursuant to the Interstate Compact on the Placement of Children (ICPC). *See* 22 M.R.S. §§ 4191-4247 (2026). On November 2, 2021, the court (*Gilbert, J.*) issued a jeopardy order based on the mother's substance misuse and her exposure of the child to unsafe partners.

[¶3] The child was returned to New Mexico on November 29, 2021, with notice to, and approval of, the New Mexico Child Youth and Family Department (NMCYFD). On March 16, 2022, a Department case worker called the mother and, concerned that she was intoxicated, subsequently called the New Mexico

State Police to do a welfare check. The NMCYFD then took the child into custody but refused to continue the placement and gave the Department until March 22, 2022, to retrieve the child and return him to Maine. The Department returned the child to Maine and placed him with his previous resource parent.

[¶4] The Department filed a reunification plan on September 28, 2022, requiring the mother to engage in random drug and alcohol screenings, participate in a neuropsychological evaluation, maintain safe and stable housing, engage with case management for mental health and housing needs, be involved in all support services and education for her child, and engage in parenting classes. The court issued two orders on judicial review and permanency planning, on September 29, 2022 (*Nale, J.*), and March 2, 2023 (*Montgomery, J.*), noting that the mother was inconsistent in attending her intensive outpatient program and was not engaging with her child's providers, and ordering the Department to facilitate this engagement.

[¶5] In April, the Department informed the mother that it required supervised in-person visits between the mother and her child and requested that the mother come to Maine. On October 15, 2023, the Department filed another reunification plan, containing the same requirements as the prior plan, indicating that "it is recommended that [the mother] return to the State of

Maine in order to have in person visitation with her [child] . . . to enable the Department to observe her ability to parent.” The plan noted that the mother had made progress on the reunification requirements.

[¶6] On October 17, 2023, the Department filed a petition for termination of parental rights. On March 28, 2024, the court (*Daniel Mitchell, J.*) held another hearing on judicial review and permanency planning, finding that the child was flourishing in his placement with his resource parent and that the mother was progressing as required by the reunification plan. The mother came to Maine on April 11 and 12, 2024, with the Department paying for her airfare and lodging, so that she could look for housing. She was unsuccessful in locating satisfactory, affordable housing for herself and her child.

[¶7] The court (*Montgomery, J.*) held a two-day hearing on the termination petition on July 9 and September 17, 2024. In between the hearing dates, on July 31, 2024, the Department filed another reunification plan, which now required the mother to “work with her case manager to obtain housing in Maine.” On October 7, 2024, the court entered a judgment terminating the mother’s parental rights. In the judgment, after finding that the mother had “gone above and beyond” in satisfying the requirements of the reunification plans, the court found by clear and convincing evidence that the mother was

unwilling or unable to protect the child from jeopardy and was unwilling or unable to take responsibility for the child, and that these circumstances were unlikely to change within a time that is reasonably calculated to meet the child's needs; and that she had failed to make a good faith effort to rehabilitate and reunify with the child. *See* 22 M.R.S. § 4055(1)(B)(2)(b)(i), (ii), (iv) (2026). The court further found that termination of the mother's parental rights was in the child's best interest. *See id.* § 4055(1)(B)(2)(a).

[¶8] On October 17, 2024, the mother filed a motion for amended or additional findings and to alter or amend the judgment. *See* M.R. Civ. P. 52(b), 59(e). On October 26, 2024, the Department moved to amend the order terminating the mother's parental rights. On December 29, 2024, the court granted the Department's motion and denied the mother's motion. The mother timely appealed. *See* 22 M.R.S. § 4006 (2026); M.R. App. P. 2B(c)(2).

B. Trial Court Findings of Fact

[¶9] "The court made the following factual findings, all of which are supported by competent record evidence."¹ *In re Children of Christopher S.*, 2019 ME 31, ¶ 6, 203 A.3d 808. The child is nine years old and has autism, "with

¹ Because the mother filed a motion for amended or additional findings of fact that was denied, our review is limited to the express findings of the court, and "we cannot assume that the court implicitly found facts sufficient to support its ultimate determination." *Atkinson v. Capoldo*, 2021 ME 27, ¶ 10, 250 A.3d 1099.

exceptionally high needs,” having issues with speech, eating, toileting, volatility and aggression, elopement, and mobility. “He must be watched constantly and be within an arm’s length of his caretakers.” The child has seventeen providers to treat his conditions. The resource parent has provided him with exceptional care so that all his needs are met. The child has bonded with his resource parent.

[¶10] The mother has resided in New Mexico throughout this case, having been a resident for her entire life. As to the requirements of the reunification plan, the court expressly noted that she went “above and beyond what she has been asked to do by [the Department] to address her own individual issues.” She has completed intensive outpatient programs for both substance abuse and mental health treatment, in addition to receiving a neuropsychological evaluation. She continues to participate in mental health counseling and regularly attends parenting classes. Further, the mother joined and actively engaged with a domestic violence support group. All her random substance screenings have been negative.

[¶11] The mother “remotely attends many of [the child’s] medical and service provider appointments” and has become involved in multiple organizations, in New Mexico and online, focused on autism. She has a safe,

well-maintained apartment in New Mexico, that is covered by a housing voucher. If she were to transfer her voucher to Maine, she would lose her home in New Mexico and would not be able to get it back. The sole requirement of the reunification plan that the mother did not complete was relocation to Maine for an indefinite amount of time so that the Department could supervise her interactions with her child.

II. DISCUSSION

A. Legal Standard

[¶12] “We must review this case within the constitutional framework imposing a heightened burden to prove parental unfitness by clear and convincing evidence,” *In re Child of Barni A.*, 2024 ME 16, ¶ 39, 314 A.3d 148, because “the parental interest in maintaining the parent-child relationship is one of the most fundamental liberty interests protected by our constitution.” *In re Jazmine L.*, 2004 ME 125, ¶ 12, 861 A.2d 1277. The process of terminating parental rights involves two distinct and sequential steps: (i) “a trial court must first find one of the four statutory bases of parental unfitness in 22 M.R.S. § 4055(1)(B)(2)(b),” and only if the court finds by clear and convincing evidence that at least one basis exists, (ii) “it must [then] consider the best interest of the child.” *In re Child of Barni A.*, 2024 ME 16, ¶ 13, 314 A.3d 148.

A court cannot consider terminating parental rights, even if it may be in the child's best interest, unless it finds by clear and convincing evidence that the parent is unfit. *See id.*

[¶13] “We will set aside a finding of parental unfitness only if there is no competent evidence in the record to support it, if the fact-finder clearly misapprehends the meaning of the evidence, or if the finding is so contrary to the credible evidence that it does not represent the truth and right of the case.” *In re Children of Quincy A.*, 2023 ME 49, ¶ 12, 300 A.3d 832 (quotation marks omitted). We review the court's final decision regarding the child's best interest for an abuse of discretion. *In re Children of Christopher S.*, 2019 ME 31, ¶ 7, 203 A.3d 808.

B. Parental Unfitness

[¶14] The Department's “rehabilitation and reunification plan is the centerpiece of child protective proceedings The plan provides a roadmap by which the Department and a parent are expected to cooperatively seek to rehabilitate the conditions that resulted in jeopardy to the child, and to reunify the family. . . .” *In re Thomas D.*, 2004 ME 104, ¶ 26, 854 A.2d 195. “If the Department files a petition for termination of parental rights, the plan establishes benchmarks by which to assess whether a parent has successfully

ameliorated the problems that led to the initial finding of jeopardy.” *Id.* We have previously held that “[a]lthough the rehabilitation and reunification plan is the centerpiece of the child protection proceeding, compliance with the plan is not the final word on the ability to parent; . . . a parent may comply with everything asked of her by the Department yet remain unable to safely parent her child.” *In re Child of Rebecca J.*, 2019 ME 119, ¶ 11, 213 A.3d 108 (citation and quotation marks omitted).

[¶15] Despite this, we have vacated judgments terminating parental rights when the Department did not meet its burden of proving by clear and convincing evidence that failure to comply with the reunification plan requirements demonstrated that the parent was unfit. *See, e.g., In re Child of Barni A.*, 2024 ME 16, ¶¶ 38-42, 314 A.3d 148 (vacating termination of parental rights because the Department’s failure to provide legally required medical services to the child impeded the mother’s ability to demonstrate her fitness). For instance, in *In re Shannon R.*, we vacated the court’s decision to terminate the mother’s parental rights because the Department did not demonstrate, by clear and convincing evidence, that the mother had abandoned her children. 461 A.2d 707, 715-16 (Me. 1983).

[¶16] In *Shannon R.*, the mother, who had no contact with her children for two years after the Department took custody, had moved to Pennsylvania but continued to complete the reunification plan requirements and contacted the Pennsylvania Children and Youth Services Agency to maintain contact with the Department on her status. *Id.* at 709-10. The District Court found that she had abandoned her children and that she had refused to take responsibility for the children and was unlikely to do so, thus justifying termination of her parental rights. *Id.* at 711. We vacated the decision, noting that the court's findings must be "examined in light of the facts" that the mother had returned to her home state of Pennsylvania, that she had made attempts to have the children placed with foster homes in the state, and that the Department has not made sufficient efforts in working towards reunification. *Id.* at 713. We also noted that the Department could consider the difficulties the mother was facing as a "mitigating circumstance," *id.* at 712, and that the record could support the inference that the mother had returned to her home state to "improve her situation and to work toward the reunification goals," *id.* at 714. We held that the Department had not met its burden to prove parental unfitness because

“[t]he very nature of ‘clear and convincing’ evidence argues against two such plausible conclusions from one record.”² *Id.*

[¶17] Despite the termination petition in *Shannon R.* being predicated upon abandonment, rather than the grounds of unfitness alleged here, the circumstances and the logic employed in that decision support the notion that the Department has not met its burden here. The mother, a New Mexico resident for her entire life, did make a trip to Maine to look for housing options, but found nothing that she could afford with her meager Section 8 housing voucher.³ She was left with a Hobson’s choice of forfeiting her Section 8 housing voucher for her home in her home state, where she had lined up an array of support services and providers for the child, and relocating to Maine for an indeterminate amount of time, with no guaranteed housing and no connections or support outside of the Department.

² We note that the standard of review employed in *Shannon R.* was subsequently overruled in *Taylor v. Comm’r of Mental Health & Mental Retardation*, 481 A.2d 139, 154 n.28 (Me. 1984). However, we are not relying on the outdated formulation of the clear-and-convincing evidentiary standard employed there to reach our decision here. *See supra* ¶¶ 12,13. We are simply acknowledging that the factual similarities and the logic employed there have relevance here in reviewing whether the Department has met its burden under the *current* standard.

³ The mother’s case manager testified that the mother did not qualify for substance use homes or housing shelters and would not be able to pay rent in New Mexico and Maine simultaneously. The mother also testified that the apartments in Maine that she had looked at would cost about \$1,500 per month, while her housing voucher covers only \$800 per month.

[¶18] The District Court framed the mother’s inability to relocate as a “refusal to engage in a trial placement,” but as with *Shannon R.*, we find that the record supports the mother’s assertion that she wished to stay in New Mexico, her home state, to “improve her situation and to work toward the reunification goals.” *Id.* Additionally, the mother pursued a second placement of the child in New Mexico pursuant to the ICPC, undercutting the notion that she expressly refused to engage in a trial placement. The Department’s desire to observe and supervise the mother’s interaction with the child is certainly appropriate, but requiring a residential relocation from New Mexico to Maine presented a near impossible and potentially ruinous task for the mother, because she was effectively indigent and dependent on Section 8 housing. Her failure to relocate was not a willful *refusal* to accede to a condition imposed by the Department; it simply reflected the practical impossibility of compliance.

[¶19] If the mother moved to Maine, she would give up her Section 8 housing benefits that allowed her to secure safe and sufficient housing. She would leave behind the resources that had provided the support to go above and beyond what was required of her, including professional resources to assist with this child’s special needs. And notably, with a critical lack of low-income housing in Maine, she could find herself essentially homeless. *See Maine Section*

8 HCV Centralized *Waiting List*, Affordable Housing, <https://www.affordablehousing.com/mainecwl> (last visited Aug. 13, 2026) (“Due to the high demand for housing assistance, waiting lists are generally very long and [it] could take years for an application to come to the top of the list. Each PHA may give an estimated wait time and/or actual placement on the list at their own discretion, and will vary depending on any waiting list preferences that a housing agency may have.”).⁴

[¶20] Given the District Court’s finding that the mother had gone “above and beyond” what was asked of her in the reunification plan to alleviate jeopardy, the court’s determination that three bases of unfitness existed, based almost solely on her failure to relocate, was erroneous.

[¶21] We do not conclude that the Department cannot request that the mother return to Maine. The Department can certainly do so, and the failure of a parent to relocate to Maine must be examined in context to determine whether that failure is evidence of parental unfitness. The circumstances surrounding the mother’s failure to relocate to Maine that we have described here do not, in any fashion, constitute evidence of parental unfitness.

⁴ We note that this website is the official portal for Section 8 housing applications, waitlists, and grants in the State of Maine.

Problematic here is the fact that the failure of the mother to relocate to Maine loomed large in the trial court's finding of unfitness.

[¶22] The evidence is undisputed that the mother was unable to find housing in Maine within her financial capabilities and that she would face a long waiting list without any guarantee of housing even if she applied her housing voucher to Maine. Thus, without this guarantee, she would trade one reunification plan requirement (stable housing) for another (presence in Maine) while ultimately remaining unable, through no fault of her own, to remain in compliance with the reunification plan. *See Catch-22*, American Heritage Dictionary of the English Language (5th ed. 2016) (defining "Catch-22" as "[a] situation in which a desired outcome or solution is impossible to attain because of a set of inherently contradictory . . . conditions").

[¶23] An inability to find housing in a state halfway across the country while living on a fixed income has little bearing on whether a parent is unfit to parent their child, especially where the parent not only complied with every other requirement of the plan, but went "above and beyond" what was required. As a result, given the significant weight that the court placed upon a factor outside the mother's reasonable control, we cannot conclude that the Department has satisfied its burden to demonstrate parental unfitness

pursuant to 22 M.R.S. § 4055(1)(B)(2)(b). For that reason, we do not reach the second step of the analysis, the best interest of the child.

[¶24] We are not mandating a relocation of the child to New Mexico. Our decision focuses narrowly and specifically upon the trial court’s finding of unfitness based significantly upon the mother’s failure to return to Maine, along with the court’s separate finding that she had gone “above and beyond” what was required with every other requirement of the plan. Upon remand, as noted below, the trial court will have discretion to manage the case within the full scope of its discretionary prerogatives. *See, e.g.*, Concurring Opinion ¶ 28.

III. CONCLUSION

[¶25] The foster parents are to be commended for their successful efforts to provide a safe and supportive environment for this child, but the fact remains that we cannot reach the issue of the best interest of the child before addressing the threshold issue of parental unfitness. We are cognizant that “[w]e must review this case within the constitutional framework imposing a heightened burden to prove parental unfitness by clear and convincing evidence.” *In re Child of Barni A.*, 2024 ME 16, ¶ 39, 314 A.3d 148. Given the record before us, we cannot conclude that the circumstances surrounding the mother’s practical inability to relocate to Maine was a factor to be considered, let alone given

dispositive weight, in determining whether the Department had proved by clear and convincing evidence that at the time of the termination hearing she was unfit to parent her child. To be clear, our decision today does not mandate that the child be transported to New Mexico; we merely remand for further proceedings in which the court will further consider the existing and any new evidence (with the exception of the failure of the mother to relocate to Maine), make express findings, and revisit the issue of parental unfitness as appropriate and then, upon such a future finding, would address the secondary but equally important issue of the best interest of the child, an issue upon which we do not consider or opine upon today.

The entry is:

Judgment vacated. Remanded for further proceedings consistent with this opinion.

HORTON, A.R.J., with whom LAWRENCE, J., joins, concurring.

[¶26] I concur in the judgment. The trial court found that the requirement that the mother move, even temporarily, to Maine for a trial home placement would have compelled her to give up her housing in New Mexico. She would have had to look for stable housing all over again after completing

the placement in Maine. Viewed in that light, her refusal to return to Maine could have been intended to preserve her ability to provide the child safe, stable, and long-term housing.

[¶27] I write separately because given the particularly challenging circumstances presented in this case, I believe that we should offer guidance for the parties and the court beyond a simple remand for further proceedings. *See, e.g., In re Child of Mindy P.*, 2026 ME 55, ¶¶ 52-56, 358 A.3d 1151. The denial of a petition to terminate a parent's rights, whether by the trial court after hearing or, as here, pursuant to a mandate after appeal, leaves the proceeding in somewhat of a state of limbo. The legislative dictate to achieve a speedy resolution remains in full force, so the court must promptly take steps to move the case forward. *See* 22 M.R.S. § 4003(4) (2026); *In re Randy Scott B.*, 511 A.2d 450, 453-54 (Me. 1986).

[¶28] Vacating the judgment terminating the mother's rights does not terminate the Department's custody of the child, nor does it necessarily preclude a future termination of the mother's parental rights on a new and different record. Vacating the judgment does revive the Department's reunification and rehabilitation obligations, *see* 22 M.R.S. § 4041(1-A) (2026), because the trial court never issued an order relieving the Department of those

obligations. *See id.* § 4041(2)(A-2). The mother's successful effort to achieve sobriety and prepare herself to care for the child bodes well for reunification. If the Department continues to believe that a trial home placement is necessary, our ruling does not preclude a further effort of that nature, except that it cannot consign the mother to a forfeiture of her housing in New Mexico.

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