

Judge Eston

STATE OF VERMONT  
WINDSOR COUNTY, SS

|   |  |
|---|--|
| In re Guardianship of Chloe Marie Felicetti | SUPERIOR COURT<br>Docket No. 651-9-08 Wrcv |
|---|--|

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This is an appeal of a decision by the Windsor Probate Court dated August 20, 2008, wherein Judge Vail continued the guardianship of Chloe by her grandmother, Mona Frye. Chloe's father, Joseph Felicetti seeks to have the guardianship terminated or that he be given guardianship over Chloe.

The court heard testimony in this matter on January 5, 2009. Mr. Felicetti was present, pro se. Mona Frye was also present, pro se. Chloe's mother, Amber Hugerth, did not attend the hearing. She had previously requested to participate by phone, which the court denied. Based upon the evidence at hearing, the court makes the following findings of fact, conclusions of law and order:

Findings of Fact

Chloe Felicetti was born on May 2, 2002. Within three days of her birth, Chloe was living with her maternal grandmother, Mona Frye. Both of Chloe's biological parents were addicted to substances and had criminal difficulties, necessitating Ms. Frye's intervention. Chloe regards Ms. Frye as her mother.

Joseph Felicetti (father) was incarcerated for a time and has been on probation and/or parole. In the past, father has had difficulty controlling his temper. Amber Huberth (mother) remains wanted by the police at this time for unspecified criminal charges. Ms. Huberth did not mention in her motion to participate in the hearing by telephone that she is currently wanted by the police.

This court did not receive any record of the hearing in August 2008 resulting in the order under appeal now which continued the guardianship with Ms. Frye. In the absence of a record, this court treated this hearing as a *de novo* proceeding.

Since going into guardianship in July 2002, Chloe's visits with her father have been sporadic. Mr. Felicetti does not have a driver's license, which makes it difficult to keep a regular schedule with Chloe. Ms. Frye has made considerable effort to keep Mr. Felicetti involved in Chloe's life and has taken her to see him on several occasions. Mr. Felicetti has dropped in and out of the life of both of his daughters, Chloe and Gabriella, and this has been a source of frustration to both Ms. Frye and Gabriella's mother,

CONFIRMED COPY

FILED  
JAN - 8 2009

Windsor County Clerk

Bethany Davis. There have been times when Mr. Felicetti did not keep scheduled appointments with one or both children, causing them anguish. Mr. Felicetti claims his relationship with Ms. Frye has not been good for the past couple of years, although he did not provide details.

As recently as August 2008, Mr. Felicetti lost his temper with Bethany Davis in the presence of Gabriella. This caused Gabriella to cry and become frightened. For a time she did not wish to have contact with her father.

Currently, Ms. Frye has placed Chloe at the Kurn Hattin School due to her impulsive behaviors and boundary issues. Chloe is thriving there. Mr. Felicetti agrees that Kurn Hattin is a good place for Chloe at present and asserts he would not seek to remove her from there now if he were Chloe's decision-maker.

Mr. Felicetti presented a number of witnesses to testify about his current circumstances. Several of these witnesses have come to know him through his attendance at ministry meetings both in and outside of the correctional system.

Mr. Felicetti currently lives in an apartment in Rutland. There is not room in the apartment for Chloe to live with him. He hopes to move to a bigger apartment or a house once his lease expires in several months. He had previously moved from a less-desirable neighborhood to his current location.

Michael Napolitano has known Mr. Felicetti for about eight years. They met through the prison ministry. He feels that Mr. Felicetti has turned his life around in the past couple of years. He likes Mr. Felicetti's new wife and has been impressed the times he has seen Mr. Felicetti with his children, Chloe and Gabriella. Mr. Napolitano has only seen Chloe with her father about four or five times. His contact with Mr. Felicetti and Gabriella has been much more extensive.

Mr. Napolitano was quite candid that Joseph Felicetti has an anger management problem. He does not know if Mr. Felicetti is currently receiving any counseling for this issue, but he feels he has made great progress in keeping his temper. He believes it would be a good idea for Mr. Felicetti to take parenting classes.

Thomas Kiley is a minister with the Wellspring of Life church in Rutland. He has known father for the past 6-8 years through the prison ministry. Rev. Kiley has gotten to know Mr. Felicetti much better in the past 15 months, during which time Mr. Felicetti has been regularly attending the church.

Rev. Kiley provides a Christian-based counseling service to those requesting it. He has helped counsel Mr. Felicetti in the past when requested. Rev. Kiley believes that Mr. Felicetti has made a genuine change in the past 15 months and that he now presents no danger to Chloe. Rev. Kiley has only seen Felicetti with Chloe once and that was several years ago. He has not seen Mr. Felicetti with either Chloe or Gabriella in the past 15 months.

FILED  
JAN - 8 2009

Windsor County Clerk

CONFIRMED COPY

Jared Washburn has known Mr. Felicetti for about 22 years. In recent years he has worked closely with Mr. Felicetti in the prison ministry. During the last 15 months he has seen a remarkable change in Mr. Felicetti. Of the hundreds of men he has worked with, Washburn feels the turn-around in Mr. Felicetti's life is among the most dramatic. Recently, Mr. Felicetti has made consistently better choices in his life, including the decision to leave his employment on Killington Mountain, an area known for a party atmosphere.

In the past, Washburn would not have felt safe leaving his children with Mr. Felicetti. He no longer has those concerns.

Rene Schlott is Joseph Felicetti's sister. She provided very candid testimony to the court, which the court found compelling. She agreed with others that her brother has made much better choices in recent months than he has in the past. In addition, she was very clear that Mr. Felicetti had not done what was required as a parent in the lives of his children since their birth. She feels that during the last 6 months, Mr. Felicetti has shown a consistency and an ability to make good choices that he has not shown since he became an adult. Her testimony is particularly credible in that it recognized Mr. Felicetti's past short-comings while also acknowledging the comparatively recent improvements he has made. She feels that Mr. Felicetti is on the right track, which he needs to continue. She also feels he needs more time to establish a relationship with Chloe.

Both Ms. Schlott and Ms. Frye have despaired over the lack of commitment of the biological parents to Chloe. Ms. Schlott now believes her brother is committed to Chloe, but candidly acknowledged that he had not done so in the past. She feels her brother's living situation at this time is not of adequate size for Chloe to live there.

Ms. Schlott was not aware of the terms of the Order entered by Judge Vail, calling for a review of the guardianship, upon request, in one year (now eight months). She was also not aware of the terms providing the opportunity for her brother to make progress reports to the Probate Court. These provisions allow her brother to demonstrate his continued progress.

There is no evidence that Mr. Felicetti has made any effort to advise the Probate Court of any of his on-going efforts. There is no evidence that any of the people who testified on his behalf have been asked by him to prepare any report to the Probate Court. There is no evidence that Mr. Felicetti has prepared any reports himself. He is not currently in any therapeutic counseling and has not taken any parenting classes.

The Probate Court Order specifically provides that Mr. Felicetti may visit Chloe at the Kurn Hattin School. Mr. Felicetti has done so a few times since August. He has been dissatisfied with the amount of time Kurn Hattin School has allowed him to spend with Chloe. Despite these frustrations, he has not contacted Ms. Frye to see if she could assist in making more time available. There are also weekends when Chloe is at home with Ms. Frye but Mr. Felicetti has not attempted to visit her when she is there.

FILED  
JAN - 8 2009

CONFIRMED COPY

Mr. Felicetti has expressed his heartfelt desire to assume the role of Chloe's father. However, he continues to try to meet that objective on his own terms rather than Chloe's. When the Probate Court decided to continue the guardianship, while at the same time allowing for Mr. Felicetti to provide the Court with updates on his progress, he opted to appeal the Order. He has apparently abandoned any effort to update the Probate Court as it specifically authorized.

In this court, Mr. Felicetti testified that he was "going to keep fighting until he wins." The court finds this approach to not be in Chloe's best interests. This case is not about winning; it is about Chloe.

Despite never having acted in a parental role for Chloe, or having established an on-going parent-child relationship, Mr. Felicetti seeks to have the guardianship terminated. There is no evidence before the court that a relationship with any meaningful parental bonds has been established between Mr. Felicetti and Chloe. This can only be done with time and consistency between Mr. Felicetti and Chloe, of which there has currently been too little of each.

There is no evidence that Ms. Frye has acted inappropriately on Chloe's behalf. In fact, the evidence is to the contrary. Her decisions have been sound and in Chloe's best interests. She recognizes the importance of having the biological parents in Chloe's life, so long as it is not harmful to her. She has taken steps to try to keep Mr. Felicetti involved. The difficulties between Mr. Felicetti and Ms. Frye appear to be over her unwillingness to simply accept at face value the representations he is making and to accede to his demand to terminate the guardianship. Given the past experience over the majority of Chloe's life, her reticence to do either is understandable.

The evidence is clear that Mr. Felicetti has made great improvements in his life in the past several months. He is working very hard to improve his life and his choices. The witnesses who testified on his behalf sincerely believe in him and in his efforts to become the father to Chloe that he never had. The court commends Mr. Felicetti for his considerable efforts at confronting the things which have troubled him, the evident improvements in his life he has made, and at his manifest desire to be a father to Chloe.

#### Conclusions of Law

Mr. Felicetti has asked this court to review the probate court's denial of his petition to terminate the guardianship of his daughter, Chloe. Review in this court is *de novo*, because the superior court sits "as a higher probate court with the power to try the identical matter involved in the subject of the appeal, and not to revise the errors of the probate court merely." V.R.C.P. 72(d); *Whitton v. Scott*, 120 Vt. 452, 457 (1958); 12 V.S.A. §§ 2553, 2555. Rule 72 is somewhat confusing because it calls for the probate record to be brought up on appeal, V.R.C.P. 72(c), but in any appeal from the probate court to the superior court the appellant "is entitled to a trial *de novo* before either a jury or the court on the issues appealed from." *In re Fletcher*, 144 Vt. 419, 422 (1984). This

FILED  
JAN - 8 2009

Windsor County Clerk

CONFORMED COPY

court therefore considers Mr. Felicetti's petition for termination of the guardianship based on the foregoing findings of fact.

The issue before the court at this time is whether the guardianship should be terminated. As such, the consideration is whether the termination of the guardianship at this time would be in Chloe's best interests. *Boisvert v. Harrington*, 173 Vt. 285 (2002).

Under the guardianship, Chloe's needs are being met. She is doing very well at Kurn Hattin and has a good relationship with Ms. Frye. Absent Ms. Frye's willingness to act as guardian for these many years, Chloe would undoubtedly have been in state custody.

Mr. Felicetti has made great progress in his life in the past several months. It is hoped this will continue. He is not, however, ready to assume his role as Chloe's parental guardian at this time. There is much he can do to prepare for this, including parenting classes, therapeutic counseling for anger management, consistent visitation with Chloe and improving his relationship with the legal guardian. All of these things would make Chloe's life better. All of these things would make Mr. Felicetti better able to parent her.

This court lauds Mr. Felicetti for wanting to play a meaningful role in Chloe's life and for wanting her to have a better father than he had. If he focuses on those objectives, the time will come when the guardianship should be terminated. As the Probate Court, Ms. Frye and Rene Schlott have recognized, that time has not yet come.

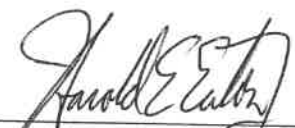
Although there are no findings accompanying the Probate Court decision, the decision itself is sound. The Probate Court's Order provides for review upon request one year from date of issuance. The Order further provides that Mr. Felicetti may provide reports on his progress to the Probate Court, which this court hopes will occur.

Continuation of the guardianship, under the terms of the Probate Court Order, is in Chloe's best interests.

**ORDER**

For the reasons stated herein, the Order of the Windsor Probate Court dated August 20, 2008 is **AFFIRMED**.

Dated at Woodstock this 8th day of January, 2009.

  
Harold E. Eaton, Jr.  
Superior Court Judge

**FILED**  
JAN - 8 2009

**Windsor County Clerk**