

IN RE ASHLEY I. et al.

Submitted on Briefs April 14, 2000
Decided June 30, 2000

Panel: WATHEN, C.J., and CLIFFORD, RUDMAN, DANA, SAUFLEY,
ALEXANDER, and CALKINS, JJ.

MEMORANDUM OF DECISION

The parents of Ashley, Justin, and Diane appeal from the judgments entered in the District Court (Bangor, *Gunther, J.*) pursuant to 22 M.R.S.A. § 4055 (1992 & Supp. 1999) terminating their parental rights. The father also appeals from the judgment entered in the Superior Court (Penobscot County, *Marden, J.*) affirming a judgment of the District Court (Bangor *Hjelm, J.*) in which the court concluded that the children were in jeopardy.¹ Contrary to the arguments of the father, the court did not err in admitting the out-of-court statements of Diane, *see* 22 M.R.S.A. § 4007(2) (1992), and the record supports the court's factual findings in the jeopardy order, *see* 22 M.R.S.A. § 4035 (1992 & Supp. 1999).

1. The Superior Court (*Marsano, J.*) erroneously held that the parties had the discretion, pursuant to 22 M.R.S.A. § 4006 (1992 & Supp. 1999) to appeal to the Superior Court. Although there may be a question as to whether the amended version of section 4006 applies to the appeal from the jeopardy order, *see DeMello v. Department of Env'tl. Protection*, 611 A.2d 985, 986-87 (Me. 1992); *Schlear v. Fiber Materials, Inc.*, 574 A.2d 876, 878 (Me. 1990); *Fishermens Landing, Inc. v. Town of Bar Harbor*, 522 A.2d 1312, 1313 (1987), neither party raised the issue and we, therefore, do not reach it here, *see Aseptic Packaging Council v. State*, 637 A.2d 457, 463 (Me. 1994).

Further, contrary to the contentions of both parents, the court did not err in entertaining the petition for termination of parental rights while the jeopardy appeal was pending, *see In re Kristy Y.*, 2000 ME 98, ¶ 11, --- A.2d ----, ----, and the record supports the court's factual findings that circumstances of jeopardy are unlikely to change within a time reasonably calculated to meet the children's needs and that termination is in the best interest of the children, *see* 22 M.R.S.A. § 4055(1)(B)(2) (1992).

The entry is:

Judgment affirmed.

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