

SUPREME COURT OF NEW HAMPSHIRE

In re H.J.

171 N.H. 605 (2018) · No. 2018-0440 · Decided December 21, 2018

SUMMARY

The New Hampshire Supreme Court affirmed the termination of a father's parental rights based on abandonment and inadequate support. The court held that the father failed to rebut the statutory presumption of abandonment, and that termination was in the child's best interest given the father's minimal contact, repeated incarcerations, and lack of meaningful efforts to establish a relationship with the child.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of New Hampshire                                                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Bassett, J.; Lynn, C.J.; Hicks, J.; Hantz Marconi, J.; Donovan, J.                                                                                                                                                                                                                                      |
| JURISDICTION          | New Hampshire                                                                                                                                                                                                                                                                                           |
| DECIDED               | December 21, 2018                                                                                                                                                                                                                                                                                       |
| DOCKET                | 2018-0440                                                                                                                                                                                                                                                                                               |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | The father appealed an order of the Circuit Court, 6th Circuit Court-Concord Family Division, terminating his parental rights on grounds of abandonment and non-support and finding termination in the child's best interest.                                                                           |
| STANDARD OF REVIEW    | The Supreme Court will affirm the trial court's order unless it is unsupported by the evidence or plainly erroneous as a matter of law. Abandonment is a factual issue reviewed under the same standard. The petitioning party must prove a statutory ground for termination beyond a reasonable doubt. |
| PRECEDENTIAL VALUE    | published opinion                                                                                                                                                                                                                                                                                       |
| PARTIES               | Father of H.J. v. Mother of H.J.                                                                                                                                                                                                                                                                        |

TOPICS

- termination of parental rights
- parental rights
- family law
- appellate procedure
- standard of review

## PRACTICE AREAS

family law

termination of parental rights

child custody

appellate procedure

## QUESTIONS PRESENTED

1. Whether the evidence established beyond a reasonable doubt that the father abandoned H.J. under RSA 170-C:5, I.
2. Whether the father's periods of incarceration, the domestic-violence order, and the mother's denial of a 2011 visit precluded a finding of abandonment or required greater consideration of his contacts with the child.
3. Whether termination of the father's parental rights was in H.J.'s best interest.
4. Whether the alleged failure to provide adequate support required reversal despite the separate finding of abandonment.

## HOLDINGS

1. The father abandoned H.J. because his contacts and support were minimal and not substantial, and his conduct demonstrated a failure to assume responsibility for the child's care and well-being.
2. Termination of the father's parental rights was in H.J.'s best interest.
3. The court did not need to decide the father's challenge to the non-support finding because RSA 170-C:5 permits termination when one or more statutory grounds are established, and the abandonment finding independently supported termination.

## KEY QUOTATIONS

*“Strictly speaking, there is no abandonment by a parent where the separation of parent and child is caused solely by the other parent or a third party and because of no fault on the part of the parent whose rights are sought to be terminated.” (4)*

*“A termination of parental rights “petition may be granted where the court finds that one or more” of the listed statutory grounds exist.” (5)*

*“Implicit in [RSA chapter 170-C] is the philosophy that whenever possible family life should be strengthened and preserved.” (8)*

## FACTUAL BACKGROUND

The father was incarcerated for substantial periods after H.J.'s birth and had only two supervised visits in February and March 2010. Although a parenting plan allowed supervised visitation and permitted him to seek further orders after becoming able to be a consistent influence, he did not pursue additional visitation after his release in 2014 and maintained only sporadic correspondence with the child. The mother reported receiving only \$458.70 in child support since July 2009, while the child lived with the mother and stepfather, who had provided continuous day-to-day and emotional support and wished to adopt H.J.

## PROCEDURAL HISTORY

The mother obtained sole legal and physical custody of H.J. in 2009, with the father receiving limited supervised visitation subject to the parenting plan. After periods of incarceration and minimal contact, the mother petitioned in 2017 to terminate the father's parental rights. The circuit court found abandonment, inadequate support, and that termination was in H.J.'s best interest. The Supreme Court of New Hampshire affirmed.

#### DISPOSITION

affirmed

#### CASES CITED

- In re Sophia-Marie H., 165 N.H. 332, 335-39 (2013)
- In re Shannon M., 146 N.H. 22, 25-26 (2001)
- In re Deven O., 165 N.H. 685, 690-91 (2013)
- In re Sheena B., 139 N.H. 179, 181, 184 (1994)
- In re Jessie E., 137 N.H. 336, 342-43 (1993)
- In re G. B., 167 N.H. 99, 105 (2014)
- In re William A., 142 N.H. 598, 600-02 (1998)
- In re Adam R., 159 N.H. at 792