

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-434

JANUARY TERM, 2003

In re J.B., Juvenile	}	APPEALED FROM:
	}	
	}	Chittenden Family Court
	}	
	}	DOCKET NO. F127-3-99 CnJv
	}	
	}	Trial Judge: Dean B. Pineles
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Father appeals the family court's order denying his motion to transfer custody of his son, J.B., from the Department of Social and Rehabilitation Services (SRS) to the child's paternal grandparents.* We affirm.

J.B. was born in February 1998 and adjudicated a child in need of care or supervision (CHINS) in May 1999 based on mother's admission that he was without proper parental care due to her drug use and father's incarceration. At the initial disposition hearing in August 1999, J.B. was placed in the custody of his maternal grandfather, but, in February 2000, custody of the child was transferred to SRS. At the January 2001 permanency hearing, SRS recommended termination of parental rights, while the parents requested that SRS explore kinship placements, including one with J.B.'s paternal grandparents. SRS agreed to do so. In April 2001, father filed a motion asking the family court to transfer custody of J.B. to the child's paternal grandparents. In May 2001, SRS filed a petition to terminate parental rights.

A hearing was held on father's motion on February 12, 2002. The hearing was continued several times and finally concluded on August 21, 2002, at which time the family court denied the motion. The court concluded, based on the testimony of several experts, that transferring custody of J.B. from his foster parents, with whom he had bonded, would be highly detrimental to the child and would jeopardize his ability to make future attachments. The court noted that, in the winter of 2001, SRS had looked into placing J.B. with his paternal grandparents, but determined that the placement was not appropriate at the time because the grandparents were living in a small trailer with a child and five adults, including a woman against whom SRS had substantiated reports of child abuse. The court faulted both SRS and the grandparents for not following up with the potential placement when J.B. initially remained unsettled in any one foster home and the grandparents' living circumstances improved. Nevertheless, the court determined that at the time of the hearing on father's motion to transfer custody, J.B.'s best interests precluded the placement. Father appeals that ruling.

On appeal, father argues that the family court was constitutionally compelled to give deference to his request that his son be placed with the paternal grandparents. Citing In re N.H., 135 Vt. 230, 236-37 (1977), father suggests that the court was required to defer to his right to provide his son with a proper home through his parents' support. Father states that he is "fit" in the sense that he is capable of putting his son in an appropriate home with the boy's grandparents. These arguments are unavailing.

In considering father's motion to transfer custody of J.B. to the paternal grandparents, the family court properly based its decision on the best interests of the child and made a decision supported by the evidence. The court was not constitutionally compelled to defer to the placement choice of a parent who was presumed unfit based upon his stipulation to a previous disposition order placing J.B. in the custody of SRS. Cf. In re J.H., 156 Vt. 66, 71 (1991) (mother who was party to original disposition hearing and stipulated to SRS custody cannot complain that no finding of

fitness was made regarding her). At that point, father no longer had the full panoply of parental rights, but rather only residual parental rights.

A basic premise of our juvenile proceedings law is that the parents' constitutionally protected liberty interests in relating to their children must give way when the State demonstrates that the best interests of the children so require it. See N.H., 135 Vt. at 236. In N.H., the child was adjudicated CHINS and placed in SRS custody based upon a finding of abuse by the mother's boyfriend. This Court upheld the CHINS finding, but reversed the disposition order because it was beyond dispute that the father was capable and willing, with the support of his parents, to provide the child with a stable and loving home. Id. at 237. That is not the situation here. Father did not challenge the initial disposition order, and then he sought placement of his son with his parents, not himself.

Finally, notwithstanding father's arguments to the contrary, the family court was not required to rule specifically on whether a gradual transition of custody from the foster parents to the paternal grandparents could take place. The court ruled that a transfer of custody would be detrimental to the child and could prevent his ability to attach to others in the future. The court's findings support the ruling that a transfer of custody was not in J.B.'s best interests, regardless of its timing.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice