

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0172, In re Juvenile 2004-0172, the court on October 7, 2005, issued the following order:

The father appeals an order of the family division terminating his parental rights over Juvenile 2004-0172. He contends that the family division erred because: (1) the State made no effort to reunify him with his child; (2) there was insufficient evidence of abandonment; (3) the petition's allegations concerning abandonment in 1997 and 1998 were barred by the statute of limitations; (4) his request for testimonial immunity was denied; and (5) the court failed to hold the State to a stipulation by which it agreed to keep him informed about his child. We affirm.

We will uphold the findings and rulings of the trial court unless unsupported by the evidence or tainted by error of law. In re Adam M., 148 N.H. 83, 84 (2002). A parent-child relationship may be terminated when the court finds that the parent has abandoned the child. RSA 170-C:5, I (2002).

The father first argues that the family division erred in allowing the State to seek termination of his parental rights without first attempting reunification. In this case, the father is serving a life sentence without parole for the first-degree murder of the mother of Juvenile 2004-0172. A review of RSA chapter 169-C indicates that although preservation of family unity is an important goal, see RSA 169-C:2, I (b) (2002), the legislature contemplated that reunification efforts might not be reasonable in certain cases, see RSA 169-C:24-a, IV. We find no merit in this claim of error.

The father next contends that the record contains insufficient evidence of abandonment. Abandonment is a factual issue to be determined by the trial court; we will not disturb that determination unless unsupported by the evidence or plainly erroneous as a matter of law. In re Shannon M., 146 N.H. 22, 25 (2001). The father did not seek visitation for more than six months after his conviction; by that time he had had no contact with his child for twenty-one months. He also made no effort to contact his child by mail or telephone until July 2002. Based upon the record before us, we find no error in the trial court's ruling.

The father also argues that allegations of abandonment that dated from 1997 and 1998 were barred by the statute of limitations. The Child Protection Act does not include a statute of limitations; the father argues that by default an action to terminate parental rights must be brought within three years. See RSA 508:4 (1997) (action may be brought within three years of act or omission

complained of). Even if we assume, without deciding, that RSA 508:4 is applicable, we conclude that this would not bar evidence of a continuing course of abandonment.

In this case, the act was abandonment. See RSA 170-C:5, I. The trial court found that “[f]rom May 1998 to the present (and certainly from January 1999)” the father had indicated interest in contacting his child “only a few times.” Based upon this finding, the trial court ruled that he had “at best, show[n] only a mere flicker of interest in [his child].” See In re Shannon M., 146 N.H. 22, 25 (2001). Based upon the record before us, we find no error in either the trial court’s ruling or the admission of the contested evidence.

The father next argues that the trial court erred in denying his request for testimonial immunity. The trial court advised the father that he could assert his privilege against self-incrimination on a question-by-question basis. The father rejected this option and chose not to testify. On appeal, he contends that the denial of his request for immunity violated due process. We will assume, without deciding, that the failure to immunize a witness in a termination of parental rights proceeding may have due process implications. The father argues that, if granted immunity, he would have testified about his devotion to his children. Because this statement would not have rebutted the allegations of abandonment, we sustain the trial court’s ruling. See McIntire v. Woodall, 140 N.H. 228, 230 (1995) (claimant will not prevail on due process claim absent showing of actual prejudice).

The father also argues that the trial court erred in failing to hold the State to a stipulation that it would keep him informed about his child’s social, educational and medical issues. In essence, the father seeks to appeal an order of the family division entered in the underlying neglect proceeding. Contrary to the father’s contention, the June 2, 2002 order of this court did not preserve his right to raise this issue in the termination proceeding. Because an appeal addressing the agreement entered in the underlying neglect proceeding is untimely, see RSA 169-C:28 (2002); In re Diane R., 146 N.H. 676, 678-79 (2001), we decline to consider this issue.

The respondent’s motion to remand to family court or for additional briefing is denied.

Affirmed.

NADEAU, DALIANIS and DUGGAN, JJ., concurred.

**Eileen Fox,
Clerk**