

## THE STATE OF NEW HAMPSHIRE

### SUPREME COURT

**In Case No. 2004-0433, In re Juvenile 2004-0433, the court on July 22, 2005, issued the following order:**

Having considered the briefs and record on appeal, we conclude that oral argument is unnecessary for the disposition of this appeal and affirm the decision of the probate court. See Supreme Court Rule 25(8).

The respondent, currently serving a 25-year sentence at a Maine correctional facility after his conviction in that State, appeals an order terminating his parental rights. He participated by phone in the termination hearing. He argues that he had a due process right to be present at the hearing and that termination is not in the child's best interest. Although he advances several reasons in support of his due process argument, the record reflects that the only issue raised before the trial court was that the presence of a Maine correctional employee monitoring the telephone equipment chilled his communication with his attorney. We therefore limit our review to that issue. See State v. Blackmer, 149 N.H. 47, 48 (2003).

We employ a three-part test to determine the process due in a particular proceeding: (1) the private interest that will be affected by the official proceeding; (2) the risk of an erroneous determination of such interest through the procedures used, and the probable value, if any, of additional or substitute safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute safeguards would entail. In re Baby K., 143 N.H. 201, 205 (1998).

While the respondent's interest in the termination proceeding was high, the risk in this case of an erroneous deprivation of his interest was not. The respondent was advised that he could consult privately with his counsel at any time by indicating a need to do so to the court. A review of the record reveals that the respondent never exercised this option; he therefore cannot demonstrate any prejudice from the procedures used. Accordingly, his due process claim must fail. See McIntire v. Woodall, 140 N.H. 228, 230 (1995) (to prevail on due process claim appealing party must show actual prejudice).

Nor are we persuaded that the trial court erred in determining that termination of the respondent's rights was in the child's best interests. See In re Juvenile 2003-195, 150 N.H. 644, 649 (2004) (probate court order will not be disturbed unless unsupported by evidence or plainly erroneous as a matter of law). The record contains evidence of the child's medical and psychological

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Page Two of Two

condition and that his condition is exacerbated by his lack of availability for adoption. The father has not seen the child since he was two years of age and will not be released from prison until long after the child attains the age of majority. We find no error in the trial court's ruling.

Affirmed.

Broderick, C.J., and Nadeau, Dalianis, Duggan and Galway, JJ., concurred.

**Eileen Fox,  
Clerk**

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