

ADOPTION OF IOLA (and two companion cases [FN1]).

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The father and his son, Lewis, appeal from a Juvenile Court judge's determination that the father was currently unfit and that it was in the child's best interests to terminate the father's parental rights. The father alone appeals from the termination of his parental rights as to his daughters, Iola and Suzanne. The mother does not appeal, nor do the two daughters. Iola is sixteen years old, and Lewis and Suzanne are fourteen year old twins. All three children have special needs.

The father and Lewis argue that several of the judge's findings are clearly erroneous and that the remaining findings do not support by clear and convincing evidence the judge's ultimate determination of unfitness. They also argue that most of the judge's findings concern the mother, who has serious substance abuse problems, and that any such findings are irrelevant to the father in light of the fact that the mother and father have since separated. We disagree.

The judge's findings address both the father's neglect and the special needs of the children. The father does not dispute that he was not always present but suggests that he had to work. We may assume that the father's work sometimes kept him from home. There is conflicting testimony as to the father's work schedule. The father himself testified that he worked only eight hours a day. In any event, the father's work schedule does not excuse the level of grievous neglect found by the judge and supported by the evidence. The children were not adequately toilet trained and exhibited poor hygiene. Among other things, they attended school in urine soaked clothes. By the age of nine, the twins, Lewis and Suzanne, were engaging in sexual intercourse with one another. While the father contends that hygiene is no longer an issue, this misses the point: The evidence supports the conclusion that the father grievously neglected the children. The judge also found that the father is unable to meet the children's well-documented special needs. This serves to answer the father's contention that he has demonstrated his fitness by virtue of the fact that his seventeen year old son from a previous relationship, raised by someone other than the mother here, now apparently lives with him and his new girlfriend. Moreover, despite the father's arguments to the contrary, the mother's unfitness is relevant in light of the judge's finding, based on the father's own testimony, that the father would leave the children in the mother's care. As the judge found, 'A return of the children to Father, who has demonstrated an inability to protect and supervise his children, creates an unacceptable risk that his children will be subjected to further abuse and neglect by Mother.'

After reviewing the record, we conclude that the evidence supports the judge's findings with respect to the father's grievous neglect, his inability to meet the children's special needs, and his willingness to

leave the children in the mother's care. The judge's findings provide clear and convincing evidence in support of the judge's ultimate determination that the father was currently unfit.

The father argues that he and the children have a strong bond and that it was not in the children's best interests to terminate his parental rights. At the time of trial, Iola and Lewis were living with foster families and were getting along well with their foster parents. (Iola has since supported guardianship with her foster mother.) At the time of trial, Suzanne was doing well in a residential facility and desired a new family. The judge properly weighed this evidence in making his determination. His conclusion that it was in the children's best interests to terminate the father's parental rights is also supported by clear and convincing evidence.

Lewis notes that he is now old enough that he must give his consent if he is to be adopted. See G. L. c. 210, § 2. He argues that he will not consent to his own adoption and that the termination of the father's parental rights will thus leave him a legal orphan.

We understand Lewis's arguments, and we are cognizant of the judge's finding that when Lewis's foster parents of five and one-half years moved to Alabama, he decided not to go with them because he did not want to leave his biological family. Nonetheless, while Lewis may block his adoption, this is not determinative of either the father's fitness or Lewis's best interests, especially considering the judge's finding that Lewis's intellectual ability makes it difficult for him to comprehend his environment and potential harm. There is an order allowing Lewis posttermination visitation with his father, and nothing in our order prohibits Lewis from maintaining his relationship with his father once he turns eighteen. There was no error in the judge's ruling with respect to visitation, which was committed to his sound discretion, *Adoption of John*, 53 Mass. App. Ct. 431, 439 (2001). Indeed, visitation with Lewis may have been required as a matter of law. See *Adoption of Rico*, 453 Mass. 749, 754-758 (2009) (posttermination visitation order required where there is a strong bond between parent and child, visitation is in the child's best interests, and adoption of the child is not in reasonable sight). If any of the children, including Lewis, desire even greater visitation in the future, they may petition the Juvenile Court.

Finally, the father may be understood to argue that evidence introduced at a subsequent posttermination visitation hearing, including evidence of a bond between the father and the children, shows that he is currently fit. This evidence is not inconsequential, and the judge properly took it into consideration in awarding expanded visitation. The judge also ruled that the expanded visitation was not intended to undo or subvert the prior termination of the father's parental rights and that the father was still unfit. Even were we to take into account this posttrial evidence, all the evidence before the judge, adduced both at and after trial, still demonstrates unfitness by clear and convincing evidence.

Decrees affirmed.

By the Court (Berry, Mills & Rubin, JJ.),

Entered: June 26, 2009.

FN1. Adoption of Lewis and Adoption of Suzanne. The children's names are pseudonyms.