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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-028

APRIL TERM, 2003

In re J.P., Juvenile	}	APPEALED FROM:
	}	Windham Family Court
	}	DOCKET NO. 31-2-02 Wmjv
	}	Trial Judge: Ellen H. Maloney

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

Father appeals from a family court order terminating his parental rights to the minor J.P. He contends the court erred in failing to make findings concerning an alternative placement of the minor with father' s sister. We affirm.

J.P. was born in December 2001. Mother was sixteen years old at the time, and abusing drugs. Father was incarcerated in Massachusetts. J.P. was taken into the custody of the Department of Social and Rehabilitation Services (SRS) in February 2002, at the age of seven weeks, and found to be CHINS in April. The following month, SRS filed a petition seeking termination of parental rights. Mother voluntarily relinquished her parental rights at the initial disposition hearing, and the court ordered paternity testing, which confirmed father' s paternity.

The court held a hearing in January 2003, to consider SRS' s petition to terminate father' s parental rights. Father was represented by counsel, and participated by telephone during part of the hearing. The evidence established that father was currently incarcerated in Massachusetts for several felony convictions, including the statutory rape of mother which resulted in J.P.' s conception. Father' s earliest release date was determined to be July 2007. The court found that father had virtually no contact with J.P. since her birth, had not requested contact, and had shown no inclination or interest in parenting her. He had taken no parenting classes and had no plans to do so. He had two other children that he neither supported nor parented, and was barred by a restraining order from contacting one of them. In addition to the sentences he was currently serving for rape, distribution of cocaine, and larceny, father had an extensive prior history of criminal offenses.

When J.P. was first taken into SRS custody, she displayed clear symptoms of attachment disorder. The court found that through the extraordinary efforts of her foster parents, J.P. had overcome most of her initial developmental delays. She had bonded with her foster parents, was thriving, and would regress severely if moved to another placement.

Based on the foregoing, the court found that father was not fit to parent the minor. In this regard, the court noted that father' s earliest release date would be in four years, at which time J.P. would be five or six years old. Further, the time necessary to develop parenting skills, given father' s history of criminal offenses and lack of parenting experience, would be substantial. He had played no role in the minor' s life to date, had provided no support, and had demonstrated no love or affection since her birth. In addition, the court found that the minor is flourishing in her foster home and that any displacement would result in irremediable damage. Accordingly, the court found by clear and convincing evidence that termination is in the child' s best interest, and granted the petition. This appeal followed.

Father' s sole claim on appeal is that the trial court erred in failing to make findings concerning the possibility of an

alternative placement with father' s sister. Father relies on his testimony that he had communicated a request to SRS that the child be placed with his sister, and evidence that the sister had children of her own, was employed, had a home, and was drug and alcohol free.

Father' s claim is premised on his assertion that " [i]f the sister is fit and capable of providing J.P. with an appropriate home, the father is ' fit.' " There is no support, however, for the notion of derivative fitness. The issue in this proceeding was father' s fitness to parent the child, not his sister' s. There is some support for the principle that a court may consider an otherwise fit parent' s wishes concerning an alternative placement. See, e.g., In re G.C., 170 Vt. 329, 333 (2000) (statute does not compel CHINS adjudication whenever incapacitated parent leaves child with relatives or others during period of incapacitation); In re N.H., 135 Vt. 230, 237 (1977) (absent proof that father was unfit or incapable of providing appropriate home, court should have considered placement with father in grandparent' s home); see also Troxel v. Granville, 530 U.S. 57, 67 (2000) (courts must defer to fit custodial parent' s visitation decisions). There is no authority for the proposition, however, that a parent' s fitness may be measured by the fitness of a family member, or that the court is bound to defer to the wishes of a parent found to be unfit by clear and convincing evidence. Accordingly, the trial court here was not required to make findings concerning the desirability of a placement with father' s sister. See In re J.T., 166 Vt. 173, 180 (1997) (court not required to make findings on statutorily irrelevant factors). Thus, we discern no error, and no basis to disturb the judgment.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Ernest W. Gibson III, Associate Justice (Ret.)

Specially Assigned