

Child Protection Committee

Constitutional Issues

Summary: The interest of a parent in the care and custody of his or her child is a fundamental right. However, if an individual is not a fit parent or is not adequately caring for his or her child, the state can intervene. There is no apparent constitutional limitation on the ability of this Committee to suggest legislative changes to improve child protection.

Current Law: Freedom of personal choice in matters of marriage and family life is protected by the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, and “[t]he interest of a parent in the custody, care, and control of his child may be the oldest of the fundamental liberty interests our federal constitution protects.” Glidden v. Conley, 2003 VT 12, ¶12, 175 Vt. 111, 115 (2003), citing Troxel v. Granville, 530 U.S. 57, 65 (2000). As a result, there is a presumption that fit parents are acting in the best interests of their children and so long as a parent is adequately caring for his or her child, there will be no reason for the State to interfere in the parent-child relationship. Glidden, 2003 VT 12, ¶12, 175 Vt. at 115, quoting Troxel, 530 U.S. at 68-69.

However, if an individual is not acting as a fit parent and is not adequately caring for his or her child, the state can intervene. See generally Paquette v. Paquette, 146 Vt. 83 (1985) (although a parent has a fundamental right to raise a child, that right is not absolute and where a parent has abandoned the child or is unfit, the best interest of the child must be given first priority). In re D.C., 2012 VT 108, 193 Vt. 101, the Vermont Supreme Court extensively discussed both Vermont and U.S. Supreme Court precedent and held that:

- A state can establish whatever measure of unfitness is required to terminate parental rights. 2012 VT 108, ¶¶ 21-22. Therefore, Vermont can establish the criteria that will form the basis to intervene in the child-parent relationship or to remove a child.
- The factors supporting a termination of parental rights must be established by clear and convincing evidence. 2012 VT 108, ¶ 25. Note: The factors supporting a temporary placement of a child need only be established by the lower standard of a preponderance of the evidence. See In re A.D., 143 Vt. 432, 435-436 (1983) (clear and convincing evidence appropriate standard for termination parental rights, preponderance of the evidence for temporary placement of a child). 33 V.S.A. § 5317(c).

In re D.C., the Court emphasized that, in a termination proceeding, the question is not whether a parent is a “good” person or is generally fit to parent any child, instead “the critical question ... is whether the parent is fit, or will be fit within a reasonable period of time, to parent the particular child who is the subject of the termination proceeding.” 2012 VT 108, ¶ 22, 193 Vt. at 111.