

**STATE OF LOUISIANA IN  
THE INTEREST OF V.S.**

**\* NO. 2001-CA-1821  
\* COURT OF APPEAL  
\* FOURTH CIRCUIT  
\* STATE OF LOUISIANA**

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**PLOTKIN, J. CONCURS WITH WRITTEN REASONS:**

Although I agree with the majority’s decision affirming the trial court judgment terminating the parental rights of L.S., I write separately to express my opinion that the trial court improperly changed the dates on the petition.

The State of Louisiana Department of Social Services filed a petition on June 26, 2001, alleging that L.S. failed to provide significant support or contact with her daughter, V.S., during the six-month period between December 1, 2000, and June 1, 2001. Under the provisions of La. Ch.C. art. 1015(4)(a), parental rights may be terminated if, at the time the petition is filed, “the parent has failed to provide significant contributions to the child’s care and support or any period of six consecutive months.” Likewise, under La. Ch.C. art. 1015(4)(b), parental rights may be terminated if, at the time the petition is filed, “the parent has failed to maintain significant contact with the child by visiting him or communicating with him for any period of

six consecutive months.” Under the article, proof of either of the above-specified circumstances by clear and convincing evidence is sufficient to carry the State’s burden to demonstrate “an intention to permanently avoid parental responsibility,” and thus to support termination of parental rights.

When the matter was heard, the trial judge decided to reform the dates in the petition and considered the six-month period just prior to the filing of the petition, making the time period he considered December 26, 2000, to June 26, 2001, rather than December 1, 2000, to June 1, 2001, as alleged in the petition. Thus, L. S. was required to defend her actions during a period of time different from the period she could have prepared to defend prior to trial on the basis of the petition. Due process considerations guarantee litigants’ the right to notice, hearing, and an adequate opportunity to prove their case or defend against allegations against them. See In the Matter of R.S., 94-2657, 94-2596, 94-2663, p. 3 (La.11/9/94), 645 So.2d 205, 208.

The effect of the trial court’s ex parte decision to reform the dates was to deny L.S.’s procedural due process rights, specifically her right to notice of the time period she allegedly failed to provide significant support or contact with her child. The trial court’s action in this case is especially disturbing because L.S. claims to have visited her child on three occasions during the 26-day period between December 1, 2000, the date listed in the petition, and

December 26, 2000 the date used by the trial court. Thus, I would hold that the trial court improperly changed the dates in the petition.

Nevertheless, my review of the evidence, including L.S.'s claims concerning her contact with the child during the 26-day period the trial court excluded, convinces me that the trial court's decision to terminate L.S.'s parental rights is not manifestly erroneous. Although L.S. was incarcerated during a large part of the six-month period involved, her responsibility to provide support to her child and to have contact and/or communication with her child is not suspended simply because she has taken a voluntary act that resulted in her imprisonment. Perhaps even more important is the fact that L.S. apparently made no effort to contact or communicate with V.S., or to support V.S., during the period between the day after Christmas 2000 and her incarceration on February 5, 2001, or between the time that incarceration ended on February 23, 2001, and the time her next incarceration began on March 21, 2001. In order to avoid termination of her parental rights, L.S. was required to show that she had significant contact or communication with V.S., and provided significant support for V.S. during the relevant time period; token contact or support is insufficient to overcome the State's proof. In order to prove that she had significant contact or communication with her child, I would require that L.S. show that she spent quality time with her

child that had some nurturing or developmental role or impact on her life.

Likewise, the support she provided would have to be substantial enough to have a nurturing or developmental role or impact on her child's life.

Thus, I concur in the majority decision affirming the trial court judgment terminating L.S.'s parental rights to V.S., based only on her failure to provide significant contributions to the child's care and support during the petition charged time period.