

any other action, civil or criminal, based on the same grievance of the individual concerned.”

In *Howard v. Dorr Woolen Company*, 120 N.H. 295, 297, 414 A.2d 1273, 1274 (1980), we held that the proper remedy for unlawful discrimination is statutory, citing RSA chapter 354-A. If the commission is denied the authority to award compensatory damages under the statute, victims of unlawful discrimination will be barred from receiving complete compensation for their injuries. This result is not only inconsistent with the purpose of the statute and our previous ruling in *Burns v. Town of Gorham*, 122 N.H. 401, 445 A.2d 1111 (1982), but it also violates part I, article 14 of our State Constitution wherein our citizens are guaranteed the right to a remedy that properly compensates them. N.H. CONST. pt. I, art. 14.

Other States, construing language similar to that in our statute, have authorized the award of compensatory damages to victims of unlawful discrimination. *E.g.*, *A. P. Green Services Div. of Bigelow-Liptak Corp. v. State Fair Employment Practices Com.*, 19 Ill. App. 3d 875, 312 N.E.2d 314 (1974); *Bournewood Hospital, Inc. v. Massachusetts Com. Against Discrimination*, 358 N.E.2d 235 (Mass. App. 1976); *Williams v. Joyce*, 479 P.2d 513 (Or. App. 1971); *Jackson v. Concord*, 54 N.J. 113, 253 A.2d 793 (1969); *State Human Rights Com. v. Pauley*, 212 S.E.2d 77 (W. Va. 1975). A review of the rationale of these decisions also convinces me that the award of compensatory damages is authorized by RSA chapter 354-A.

Rockingham County Probate Court
No. 82-514

In re MATTHEW G. AND CHRISTOPHER G.

December 30, 1983

abandonment. The plaintiff claims that the master's error resulted from his failure to consider the best interests of the children for the purpose of determining whether the defendant had abandoned them.

An understanding of the structure of RSA chapter 170-C is necessary to evaluate this claim. Before a court may order the termination of a parent's rights, the statute requires proof of one of the conditions described in RSA 170-C:5, I-V (Supp. 1983) (as amended by Laws 1983, chapters 331 and 401). Such conditions may result from the parent's disability or from his wrongful act or omission. One such wrongful act is abandonment of the children. RSA 170-C:5, I (Supp. 1983).

While "abandonment" is not comprehensively defined in the statute, the statute does provide examples of factual situations giving rise to a presumption of abandonment. Failure of the parent to communicate with the child for six months is one such example. The examples make it clear that a determination of abandonment is essentially factual, just like determinations about the existence of the other statutory conditions.

The plaintiff's second claim of error assumes that the court should consider a conclusion about what is in a child's best interest when determining whether the child has been abandoned. This assumption is faulty for two reasons. First, the conclusion of what is in the child's best interest is not an evidentiary fact. Rather, the conclusion concerns which of the possible alternative dispositional orders is the most desirable, under a standard giving priority to the assumed interest of the child. Second, the conclusion has no logical tendency to prove that the parent in question abandoned the child.

On a petition to terminate parental rights, the court must consider whether it is in the child's best interest to terminate the rights of the parent in question, but only after a finding of abandonment, or one of the other statutory conditions for termination. At that point, of course, the court must resolve the issue of best interest and order termination only "when it is in the best interest of the child." RSA 170-C:1.

Nothing in the master's report is inconsistent with our construction of the requirements of the statute. We hold that the evidence supported the master's finding that the plaintiff had not met her burden of proving abandonment, and that the finding was not erroneous as a matter of law. We therefore affirm the decree.

Affirmed.

All concurred.