IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAUREN CRAFT and DAVID DANIELS,[1]	§	
	§	
	§	Nos. 507, 508, 509, 510, 2011
Respondents Below-Appellants,	§	
	§	Court Below: Family Court of the State of Delaware in and for Sussex County.
v.	§	
	§	
DIVISION OF FAMILY SERVICES, and COURT APPOINTED SPECIAL ADVOCATE,	§	File Nos. 10-12-05TS
	§	10-10-02TS
	§	10-10-03TS
	§	
Petitioners Below-Appellees.	§	Petition Nos. 10-42263
	§	10-34486
	§	10-34499
	§	
	§	CONSOLIDATED

Submitted: January 17, 2012
Decided: February 24, 2012

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

O R D E R

This 24th day of February 2012, it appears to the Court that:

(1) Respondent-Below/Appellant, Lauren Craft ("Mother"), appeals from a Family Court judgment granting a petition by the Division of Family Services ("DFS") for termination of Mother's parental rights with respect to her three children: G.H., born May 25, 2009; J.P., born December 31, 2006; and D.D., born

[1] The Court *sua sponte* assigned pseudonyms to the parties by Order dated September 26, 2011. Supr. Ct. R. 7(d).

April 18, 2004 (collectively, the "Children"). Respondent-Below/Appellant David Daniels ("Father") (with Mother, the "Parents" or "Appellants") appeals from the judgment terminating his parental rights with respect to his child, D.D.[2]

(2) Parents raise two arguments on appeal. First, they contend that the Family Court erred as a matter of law by terminating their parental rights based solely on poverty. Second, they contend that the Family Court committed clear error in its interpretation and application of the best interest of the child factors under 13 *Del. C.* § 722. We find no merit to Parents' appeal and affirm.

(3) This matter commenced approximately two years ago when the Family Court entered an *ex parte* order placing D.D. and J.P. in the care and custody of DHS. Mother stipulated to DFS custody at the preliminary protective hearing and the adjudicatory hearing due to her lack of housing and employment. Mother failed to appear at a dispositional hearing and, four days later, gave birth to her eighth child, G.H. At this time, she was living in a homeless shelter.

(4) At a dispositional hearing on June 18, 2009, Mother agreed to a case plan for reunification with D.D. and J.P. Under the case plan, Mother was required to: secure employment or have sufficient income to provide for the Children's basic needs, obtaining any available State assistance; contact Delaware Vocational Rehabilitation to help obtain employment; attend medical appointments for the

[2] The fathers of G.H. and J.P. do not appeal the termination of their parental rights.

Children; attend the Children and Families First/Strengthening Families Reunification Class; and secure and maintain safe, stable housing for a period of three months.

(5) On June 22, 2009, Mother began working, but by the August 20, 2009 review hearing, she was unemployed. She was also unable to secure stable housing.[3] On October 13, 2009, because Mother was homeless again and unable to care for her son, DFS was granted custody of G.H. Mother waived the preliminary protection and adjudicatory hearings, and DFS incorporated a case plan for G.H. into her case plan for D.D. and J.P. From October 2009 to March 2010, Mother was again unable to secure stable housing and employment.

(6) By May 2010, Mother had secured a two-bedroom apartment in Bridgeville, Delaware through the People's Place Safe program. The program provides the homeless a security deposit and up to six months' rent. Mother had completed her parenting classes. Mother was also working through another temp agency. But, by the July 2010 permanency hearing, Mother was no longer employed.[4] The temp agency had offered Mother a new job at Perdue, but because she failed to appear twice, she did not obtain the position and was also terminated from the temp agency. She was able to go back to the temp agency to be placed

[3] Safe and Stable Families helped her fill out applications for public housing, but to qualify for a housing voucher to pay rent, Mother needed to be employed for at least twenty hours a week.
[4] The employment lasted from March 2010 to July 7, 2010.

with another employer after a ninety-day period, but never did so. Mother has not worked regularly since. Despite being unemployed, the People's Place Safe program provided Mother with another six months' rent. Since moving into the apartment in Bridgeville, Mother had been living with her fiancé, Robert Harris.

(7) On September 23, 2010, the Family Court held a permanency review hearing with respect to all three children. The Family Court found that Mother had worked for approximately one month in 2009 and four months in 2010. The Family Court noted that Mother had complied with the terms of her case plan except those involving financial issues and housing. Mother testified at the hearing that she expected her fiancé, Robert Harris, to pay the rent for their apartment once the payments from the program ceased.[5] The Family Court found that Mother had not satisfied her case plan regarding financial issues and housing; that Mother relied entirely on the income of Harris; and that even relying on Harris's income, it was insufficient to support the family. Thus, the Family Court changed the permanency goal to termination of parental rights.

(8) In March and May 2011, the Family Court held the termination of parental rights hearings. Several witnesses testified, including Mother and Harris. In its post-hearing opinion, the Family Court concluded that DFS had proved by clear and convincing evidence that Mother had failed to plan adequately for D.D.,

[5] Harris was collecting disability payments at this time and was also unemployed.

J.P., and G.H. under 13 *Del. C.* § 1103(a)(5). While Mother had complied with some aspects of the reunification case plan provided two years earlier, she never sufficiently addressed the housing and employment issues.

(9) As for income, the Family Court also found that Mother failed to demonstrate that she and Harris would have sufficient income to support the family after May 2011, when the People's Place support ended. Because Mother and Harris had never been responsible for rent payments, the Family Court was not convinced that Harris's income was sufficient to cover Mother's expenses in raising the Children. The Family Court found that the only certain income to Mother and Harris were foods stamps and $1100 per month in disability income, and that their total expenses were $1247.50 per month.

(10) The Family Court also found that the housing requirement of Mother's case plan had not been satisfied. Testimony from Mother's landlord raised questions "as to whether [M]other and her fiancé would be able to continue to reside in their residence" after May 2011.[6] In fact, Mother "stated that she had no idea where she would be living after May 31, 2011."[7]

(11) The Family Court also emphasized that D.D. and J.P. had been in foster care for over two years, and that G.H. had been in foster care for almost two

[6] *D.F.S. v. L.C. & D.N*, Nos. 10-42263, 10-34486, 10-34499 (Del. Fam. Aug. 23, 2011) (the "Family Court Order").
[7] *Id*.

years. Throughout that time, Mother had "been given every opportunity to address the issues of housing and income."[8] The Family Court further noted that it had extended its permanency determination for several months, to give Mother additional opportunities to find secure housing and employment. The Family Court concluded that Mother failed to adequately plan "for the physical needs and mental health and development of [the Children], by failing to secure appropriate housing and by failing to secure an appropriate source of income."[9]

(12) The Family Court also concluded that Father failed to plan as to D.D. because he is serving a lengthy period of incarceration. The Family Court concluded that Father intended to abandon D.D. because two years earlier he had decided that he did not want to be transported from prison for any further Family Court proceedings. The Family Court further held that Father "failed to communicate and visit regularly" with D.D. for a period of six consecutive months in the year preceding DFS's petition for termination and that Father "failed to manifest an ability and willingness to assume legal and physical custody of" D.D.[10] The Family Court also concluded that Father's parental rights should be terminated pursuant to 13 *Del. C.* § 1103(a)(4)(a), because Father had been convicted of Second Degree Rape where the victim was seventeen years old.

[8] *Id.*
[9] *Id.* at 25–26.
[10] *Id.* at 29.

(13) Finally, the Family Court concluded that termination of the Appellants' parental rights was in the Children's best interests. The Family Court considered each of the factors in 13 *Del. C.* § 722, and relevantly explained:

> Factor one indicates that [M]other wants all three children to be placed in her care and [Father] wants [D.D.] to be placed in [M]other's care. Unfortunately, these wishes are not consistent with mother's actions to obtain appropriate housing. This factor does not assist the [c]ourt in making its decision.
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> Factor two indicates that, while [D.D.] would like to live with [M]other, she is not unhappy in foster care. However, the pre-adoptive resource, as determined by DFS is not the same foster home where [D.D.] has lived. The [c]ourt's findings with respect to this factor do not assist the [c]ourt in making its decision.
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> Factor three indicates that [M]other has a close relationship with at least two of the children. This factor might support placement of those children in [M]other's care, in order to further that relationship. However, the closeness of the relationship between a parent and children is not a sufficient basis for placing the children with that parent, if the parent is unable to provide care.
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> Factor four indicates that the children have been well adjusted to their homes in foster care. No parent has provided a home to which the children can be adjusted. This factor supports a termination of parental rights. . . .
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> [G.H.]'s medical problems would not prevent his placement with [M]other. Otherwise, factor five does not assist the [c]ourt in making its decision.
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> The [c]ourt's findings with respect to factor six strongly support a termination of parental rights.

> With respect to factor seven, since there were no findings of domestic violence, this factor does not assist the [c]ourt in making its determination.[11]

As for factor eight, the Family Court determined that Father's criminal record raised "serious questions about [his] ability to care for [his child]."[12] The Family Court granted DFS's petition to terminate the parental rights of Mother in D.D., J.P. and G.H., and the parental rights of Father in D.D.[13] This appeal followed.

(14) When reviewing a Family Court's order, we review the facts and law, as well as the inferences and deductions made by the Family Court.[14] We will not disturb the Family Court's factual findings if they are sufficiently supported by the record and are not clearly wrong.[15] We will not disturb inferences and deductions that are supported by the record and that are the product of an orderly and logical deductive process.[16] We conduct a *de novo* review of issues on appeal that implicate rulings of law.[17]

(15) In Delaware, the statutory standard for terminating parental rights provides for two separate inquiries.[18] In the first inquiry, the Family Court must

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[11] *Id.* at 30–33.
[12] *Id*. at 33.
[13] *Id*.
[14] *Powell v. Dep't of Servs. for Children, Youth, & Their Families*, 963 A.2d 724, 730 (Del. 2008); *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).
[15] *Powell*, 963 A.2d at 731; *accord In re Stevens*, 652 A.2d 18, 23 (Del. 1995).
[16] *Id.*
[17] *Powell*, 963 A.2d at 730–31; *In re Heller*, 669 A.2d 25, 29 (Del. 1995).
[18] *Green v. Div. of Family Servs.*, 2010 WL 1114928, at *3 (Del. Mar. 25, 2010) (quoting *Shepherd v. Clemens*, 752 A.2d 533, 536–37 (Del. 2000)).

find a statutory basis for termination under 13 *Del. C.* § 1103.[19] In the second inquiry, the Family Court must determine whether termination is in the best interest of the child.[20] The Family Court is required to consider all relevant factors, including:

> (1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;
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> (2) The wishes of the child as to his or her custodian or custodians and residential arrangements;
>
> (3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;
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> (4) The child's adjustment to his or her home, school and community;
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> (5) The mental and physical health of all individuals involved;
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> (6) Past and present compliance by both parents with their rights and responsibilities to their child under [section] 701 of this title;
>
> (7) Evidence of domestic violence as provided for in Chapter 7A of this title; and
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> (8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.[21]

DFS must satisfy both inquiries by clear and convincing evidence.[22]

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[19] *Green*, 2010 WL 1114928, at *3; *Shepherd*, 752 A.2d at 537.
[20] *Id.*
[21] 13 *Del. C.* § 722(a).

(16) Mother first argues that the Family Court erred as a matter of law by terminating her parental rights "based solely on the issue of poverty." Mother cites to *In the Matter of Five Minor Children*, a case which involved a termination of parental rights based on the statutory ground of unfitness.[23] In *Five Minor Children*, this Court held that "unfitness cannot be based on poverty and lifestyle which do not reflect a lack of concern for and ability to care for the children or an unwillingness to receive the child as part of a family."[24] Mother also cites to authorities from other states for the proposition that poverty alone does not provide sufficient grounds for terminating parental rights.[25] But, the Family Court here expressly stated that its finding of failure to plan was not based on Mother's poverty:

> Instead, [the finding] is based on the fact that [m]other, over a period in excess of two years, has had numerous opportunities to find employment and obtain adequate housing. During that period of time, [m]other has actually had jobs for short periods of time. Yet despite the passage of time, the numerous [c]ourt hearings, the assistance of appointed counsel, and efforts of the Division of Family Services and related agencies, [M]other

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[22] *In re Stevens*, 652 A. 2d at23.
[23] 407 A.2d 198 (Del. 1979) (*rev'd on other grounds, Patricia A.F. v. James R.F.*, 451 A.2d 830 (Del. 1982)).
[24] *Id*. at 200.
[25] *See In re G.S.R.*, 72 Cal. Rptr. 3d 398, 405 (Cal. Ct. App. 2008) ("[P]overty alone, even abject poverty resulting in homelessness, is not a valid basis for assertion of juvenile court jurisdiction.); *see also In re J.R.*, 347 S.W.3d 641, 647 (Mo. Ct. App. 2011) (finding abuse of discretion where Juvenile Court may have terminated parental rights "based solely on [the parents'] failure to comply fully with the service agreement," due to parents' poverty).

> remains unable to provide housing and unable to secure income necessary for the raising of three children.[26]

(17) Moreover, this case is analogous to *Powell v. Department of Services For Children, Youth and their Families*,[27] where this Court upheld a termination of parental rights. In *Powell*, the mother had unstable housing and had been "employed for only seven of the twenty-three months the children had been in DFS custody."[28] This Court found that this was sufficient evidence to support the Family Court's finding that "she has not provided a regular source of income sufficient to provide for her family's basic needs" and was unable to provide the children with adequate housing.[29] Accordingly, there was sufficient evidence to support the finding that Powell failed to plan adequately for her children's basic needs.[30]

(18) Similar to the mother in *Powell*, Mother was employed for only five months in a two-year period while her children were in DFS custody. Mother was unable to provide any evidence that she had been employed since July 2010. Mother further testified that she was unsure of what her living arrangements would be after May 31, 2011 when the People's Place support ended.

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[26] Family Court Order, at 26 (footnotes omitted).
[27] 963 A.2d 724 (Del. 2008).
[28] *Id*. at 732.
[29] *Id*.
[30] *Id*. at 732–33.

(19) The Family Court was clear in its conclusion that Mother's parental rights were not terminated because of poverty, but rather because she had failed to plan adequately for the Children, despite numerous opportunities and extensions of time. The Family Court's conclusion that Mother failed to plan adequately for the Children is supported by the record, and not clearly erroneous.

(20) Appellants also argue that the Family Court "committed clear error by misinterpreting and misapplying the best interest of the child factors contained in 13 *Del. C.* § 722." Specifically, Appellants argue that the Family Court's analysis of the first and second factors of section 722 was "inherently flawed as the [Family Court] substituted findings that exceed the scope of the best interest factors in place of clearly presented facts that are directly responsive to the statutory best interest factors."

(21) In *Powell*, this Court held that the Family Court may weigh each factor differently when balancing pursuant to section 722.[31] We explained:

> The amount of weight given to one factor or combination of factors will be different in any given proceeding. It is quite possible that the weight of one factor will counterbalance the combined weight of all other factors and be outcome determinative in some situations.[32]

[31] *Powell*, 963 A.2d at 735 (citing *Snow v. Richards*, 2007 WL 3262149, at *2 (Del. Nov. 6, 2007)).
[32] *Powell*, 963 A.2d at 735 (quoting *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997)).

Like the mother in *Powell*, Mother argues that her wishes and the wishes of D.D. were not given proper weight. But in its decision, the Family Court properly determined which of the eight factors weighed for or against reunification and which were neutral. The Family Court concluded that neither factor one nor factor two—the wishes of the parents and the child respectively—were helpful in making its decision. Appellants have not shown that, had the Family Court weighed factors one and two in favor of reunification, its conclusion would have changed. The Family Court found that factors five and seven were of no assistance, and that factors four, six and eight all supported termination.

(22) The Family Court's conclusion that termination of parental rights was in the Children's best interests is supported by the record and is the product of an orderly and logical deductive process. Accordingly, the judgment must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice