

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LISA MILLER,)
) No. 311, 2010
 Respondent Below,)
 Appellant,) Court Below: Family Court
) of the State of Delaware
 v.) in and for New Castle County
)
 DEPARTMENT OF SERVICES) File No. 09-11-05TN
 FOR CHILDREN, YOUTH AND) Petition No. 09-36835
 THEIR FAMILIES,)
)
 Petitioner Below,)
 Appellee.)

Submitted: October 13, 2010

Decided: January 10, 2011

Before, **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 10th day of January 2011, it appears to the Court that:

1. The appellant, Lisa Miller,¹ filed this appeal from an April 28, 2010 Family Court order, which terminated her parental rights with respect to her two children, Latia and La'Maijah for failure to adequately plan for the needs of her children. We find no merit to the Miller's argument and **AFFIRM** the judgment of the Family Court.

¹ This pseudonym is assigned on appeal pursuant to Supr. Ct. R. 7(d).

2. Lisa Miller is the biological mother of Latia and La'Maijah, born July 30, 2004 and December 24, 2006, respectively.

3. In March 2007 DFS substantiated that Miller committed Level 2 physical neglect after a referral from AI DuPont Hospital following an incident where La'Maijah fell out of a stroller. In September 2007, DFS helped Miller and the Children move into a shelter. However, three days after moving in, on September 28, 2007, police arrested Miller for fighting while intoxicated with the staff at the shelter.

4. After Miller's arrest, the Children went to live with their maternal grandfather until October 9, 2007, when he requested DFS to remove the Children from his home. On October 9, 2007, the Family Court granted DFS's emergency *ex parte* request for custody of the Children. DFS placed the Children in a foster home and they have remained in the same home since November 23, 2007.

5. On November 2, 2007, Miller signed a case plan requiring her to: (1) find suitable housing; (2) obtain and maintain stable employment; (3) choose appropriate caregivers; (3) attend all medical and developmental appointments for the Children; (5) attend and complete a parenting class; (6) not exhibit a negative attitude towards parenting; (7) communicate appropriately; (8) complete an anger management program; (9) complete substance abuse evaluation and treatment; (10)

complete a mental health evaluation and treatment; and be compliant with all conditions of probation and parole.

6. DFS held custody of Miller's children more than two years before the Family Court held a hearing to terminate her parental rights.² On March 18-19, 2010 and March 29, 2010, the Family Court held a termination hearing.

7. In an order terminating Miller's parental rights, a Family Court judge found that DFS had established by clear and convincing evidence that Miller's rights should be terminated because she was not able or had failed to plan adequately for the Children's physical needs and their mental and emotional health and development.³ In support of that conclusion, the judge noted that Miller failed to maintain stable and appropriate housing, failed to maintain stable employment,⁴

² Latia and La'Maijah's father's rights were also terminated at the same trial.

³ 13 *Del. C.* § 1103(a)(5).

⁴ Evidence in the record establishes that Miller has lied to the Court regarding both housing and employment.

and failed to regularly visit with the Children.⁵ Additionally, the judge noted Miller's failure to address her mental health issues as required by her case plan.⁶

8. The judge also concluded that DFS had established by clear and convincing evidence that the Children's best interest required termination of Miller's parental rights.⁷ The judge found that Miller's inconsistent visitation and interaction with the Children, her ongoing mental health issues, her failure to meet her parental responsibilities, and her criminal record weighed in favor of terminating her parental rights. The Children are in a stable, nurturing home where they have positive interactions with their foster mother and sister.⁸ The Children are doing well in school daycare. Because of Miller's unwillingness or inability to successfully complete her Case Plan, the foster family is the only home environment the Children know.

⁵ From November 2007 through June 2009, Miller attended approximately 60% of her scheduled visits with the Children. During the months of September-October of 2009 she attended 50% of the scheduled visits and she failed to attend any visits during the months of December 2009 and January 2010. Miller claims she was not able to attend all of the scheduled visits because she gave birth to another baby during this time.

⁶ Miller was required to follow up with SODAT to assess whether she had an issue with alcohol but she failed to follow through with the required sessions. Miller was also required to attend mental health evaluations but was discharged from Christiana Counseling due to multiple cancellations and no-shows. Miller was seeing Dr. Palmer for her mental health issues but the court found she was manipulating him to excuse her from her required sessions.

⁷ 13 *Del. C.* § 722.

⁸ The foster mother is a potential adoptive resource.

9. This Court's review of a Family Court decision to terminate parental rights entails consideration of the facts and the law as well as the inferences and deductions made by the Family Court.⁹ To the extent that the Family Court's rulings of law are implicated, our review is *de novo*.¹⁰ To the extent that the issues on appeal implicate findings of fact, we conduct a limited review of the factual findings of the trial judge to assure that they are sufficiently supported by the record and are not clearly wrong.¹¹

10. In reviewing a petition for termination of parental rights, the Family Court must employ a two-step analysis.¹² First, the court must determine, by clear and convincing evidence, whether a statutory basis exists for termination.¹³ Second, the court must determine, by clear and convincing evidence, whether termination of parental rights is in the Children's best interest.¹⁴

11. In this case, we have reviewed the parties' contentions and the record below carefully. We conclude that there is ample evidence on the record to

⁹ *Wilson v. Div. of Family Serv.*, 988 A.2d 435, 439-40 (Del. 2010).

¹⁰ *Id.* at 440.

¹¹ *Powell v. Dep't of Serv. for Children, Youth, & Their Families*, 963 A.2d 724, 731 (Del. 2008).

¹² 13 *Del. C.* § 1103(a).

¹³ *Shepherd v. Clemens*, 752 A.2d 533, 537 (Del. 2000).

¹⁴ *Id.*

support the Family Court's termination of Miller's parental rights on the statutory basis that she failed to plan and because the Children's best interest required termination. We find no abuse of discretion in the Family Court judge's factual findings and no error in his application of the law to the facts.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice