

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTINE WALSH, ¹	§
	§ No. 362, 2011
Respondent Below-	§
Appellant,	§ Court Below—Family Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ File Nos. 09-11-02TN and
DIVISION OF FAMILY SERVICES,	§ CN08-04021
	§ Petition Nos. 09-36101 and
Petitioner Below-	§ 08-38909
Appellee.	§

Submitted: December 23, 2011

Decided: January 23, 2012

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

ORDER

This 23rd day of January 2012, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26.1, her attorney's motion to withdraw, and the Division of Family Services' response thereto, it appears to the Court that:

(1) The respondent-appellant, Christine Walsh ("Mother"), filed this appeal from the Family Court's opinion, dated June 20, 2011, which terminated her parental rights with respect to four² of her minor children.³

¹ The Court previously assigned a pseudonym to the appellant pursuant to Supreme Court Rule 7(d).

² Mother has three other children who were not part of the termination proceedings below. Mother's two oldest children are not in her custody. Her youngest child, who was born in the autumn of 2009 during the course of the Family Court proceedings, has been in Mother's custody since birth.

Mother's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26.1. Counsel asserts that she has made a conscientious review of the record and the law and can find no arguable grounds for appeal. Mother responded to her counsel's motion and brief. DFS also filed a response to the brief and a motion to affirm the judgment below.

(2) The record reflects that the children were born in December 2001, January 2003, November 2004, and February 2006, respectively. The Children were taken into DFS custody in December 2008, pursuant to an emergency ex parte Family Court order, after the children's non-relative guardian stated that she could no longer care for the children. Mother had left them in the guardian's care before she was incarcerated. Following a preliminary protective hearing in January 2009, the Family Court found that the children were dependent because Mother was still incarcerated and the father had failed to appear. The Family Court appointed counsel to represent Mother and also appointed a special advocate (CASA).

(3) Upon her release from incarceration, Mother entered into a case plan with DFS, which included the requirements that Mother obtain employment, consistently attend visitation with the children, obtain stable and secure housing, and follow all recommendations arising out of a

³ The Family Court's order also terminated the father's rights with respect to the four children. The father is not a party to this appeal, however. This appeal thus does not extend to the Family Court's ruling as it relates to the father.

substance abuse evaluation. Following a review hearing in May 2009, the Family Court found that Mother had made little progress on her case plan and that the children remained dependent. Mother lacked stable housing, was unemployed, and had tested positive for marijuana use. She also was not consistently participating in visitation.

(4) In September 2009, DFS filed a motion to change the goal from reunification to termination of parental rights. Mother filed a response in opposition, arguing that she had a strong bond with the children and had participated in parenting classes. The Family Court held a permanency hearing in October 2009. The Family Court found that Mother had failed to meet the goals of her plan because she lacked stable housing, had missed 12 of 25 scheduled visits with the children, and had used marijuana while she was pregnant. Following the hearing, the Family Court changed the permanency goal to termination of parental rights with concurrent planning for reunification.

(5) DFS filed its petition for termination of parental rights in November 2009. A hearing was scheduled for February 4, 2010. DFS requested a continuance because Mother had made progress on her case plan, and DFS wanted to give Mother additional time to complete her plan. The Family Court held the hearing but treated it as a review hearing. The

Family Court found that Mother had made progress on her case plan by finding stable housing and having consistent visitation with the children. DFS indicated that it intended to begin a trial reunification by allowing Mother to have overnight visits with the children and by allowing the two younger children, who were not yet school-aged, to begin transitioning into residing with Mother. The termination hearing was rescheduled to July 2010. In June, however, DFS again requested a stay of the termination hearing. The Family Court thus treated the July 2010 hearing as a review hearing. At that hearing, the Family Court found that the children continued to be dependent. The trial reunification had not succeeded and the two younger children had been moved back into foster care. Mother had not completed her case plan and was not in a position to assume custody of the children. The termination hearing was continued until November 2010.

(6) Following the November 2010 hearing, the Family Court ordered that Mother complete a specific list of tasks in order for reunification to occur. Namely, Mother agreed that: (i) she would have her brother move out of her residence by November 12, 2010; (ii) she would allow DFS unfettered access to her home during any unannounced visits; (iii) she would provide her parent aide with her work schedule every other week so that visitation with the children could be arranged; (iv) she would

not allow the father to have access to the children; (v) she would undergo a substance abuse evaluation and follow any recommendations for treatment; (vi) she would participate in home-based therapy; (vii) she would participate in sessions with the oldest child and his therapist; and (viii) she would schedule and attend a budget meeting, bringing her paystubs, copies of current bills and other documentation of income. The termination hearing was continued until February 2011.

(7) The Family Court held a two-day termination hearing on February 3rd and 4th. Thereafter, at the parties' request, the Family Court continued the hearing for a third day to allow the parties to present additional testimony. At the conclusion of the third day of the hearing on March 31, 2011, the Family Court ordered the parties to submit additional closing arguments by April 29, 2011. Thereafter, the Family Court issued a fifty-three page opinion, dated June 20, 2011, granting DFS's petition to terminate Mother's parental rights.

(8) Based on the testimony provided by numerous witnesses involved in the case, including therapists, treatment workers, parent aides, case managers, and foster parents, as well as the testimony of Mother, the father and the CASA, the Family Court found that DFS had established by clear and convincing evidence that Mother's parental rights should be

terminated because she had failed to plan adequately for the children, and the children had been in DFS' custody for more than two years.⁴ In support of that conclusion, the Family Court noted that Mother had been unable to complete the first two case plans that she signed. After the trial reunification with her younger children failed due to Mother's refusal to abide by DFS's rules for trial reunification, Mother was offered a third case plan, which was made part of a Family Court order and included very specific requirements for reunification. Mother failed to complete the majority of that plan. She failed to have her brother move out of her home. She refused to allow DFS to have unfettered access to her home during an unannounced visit. Mother failed to timely schedule a budget hearing. When a budget meeting was finally scheduled, Mother failed to bring all of the necessary paperwork.

(9) The Family Court found that Mother was at least \$1000 behind on her rent and \$1000 in arrears on her utilities, thus calling into question the stability of her living situation. Her income was insufficient to meet her monthly expenses, and it was clear that she did not have the financial means to support four more children in her home. Mother failed to participate in her older child's therapy sessions and failed to complete a substance abuse evaluation as required by the November 2010 agreement. Mother had been

⁴ DEL. CODE ANN. tit. 13, § 1103(a)(5) (2009).

inconsistent in her visitation with the children. She also sometimes appeared indifferent to the children when she did visit with them. The Family Court found that DFS had offered Mother a reasonable case plan and had given her additional time and opportunities to complete the plan to effectuate reunification. Despite numerous opportunities, Mother had failed to take advantage of the resources provided to her and had failed to comply with the terms of the case plan.

(10) The Family Court also concluded that DFS had established by clear and convincing evidence that termination of Mother's parental rights was in the children's best interests.⁵ Specifically, the trial judge noted that Mother's inconsistent visitations, her indifferent attitude during many visits, her unwillingness to participate in her oldest child's therapy, her uncaring attitude about who was residing in or passing through her home, her placement on the Child Protective Registry, and her criminal record all strongly weighed in favor of terminating her parental rights.

(11) Mother filed a letter in response to her counsel's opening brief pursuant to Rule 26.1. Mother does not take issue with any of the Family Court's findings of facts or rulings of law. Instead, she simply contends that

⁵ DEL. CODE ANN. tit. 13, § 722 (2009).

she is on a better path in her life and that, if reunified, she will be sure to keep a home for her children and provide them food in the future.

(12) 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.⁶ To the extent that the Family Court's rulings of law are implicated, our review is *de novo*.⁷ To the extent that the issues on appeal implicate rulings of fact, we conduct a limited review of the factual findings of the trial court to assure that they are sufficiently supported by the record and are not clearly wrong.⁸

(13) In reviewing a petition for termination of parental rights, the Family Court must employ a two-step analysis.⁹ First, the court must determine, by clear and convincing evidence, whether a statutory basis exists for termination.¹⁰ Second, the court must determine, by clear and convincing evidence, whether termination of parental rights is in the child's best interests.¹¹

(14) In this case, we have reviewed the parties' positions and the record below very carefully. We conclude that there is ample evidence on the record to support the Family Court's termination of Mother's parental

⁶ *Wilson v. Div. of Family Serv.*, 988 A.2d 435, 439-40 (Del. 2010).

⁷ *Id.* at 440.

⁸ *Powell v. Dep't of Serv. for Children, Youth & Their Families*, 963 A.2d 724, 731 (Del. 2008).

⁹ 1 DEL. CODE ANN. tit. 13, § 1103(a) (2009).

¹⁰ *Shepherd v. Clemens*, 752 A.2d 533, 537 (Del. 2000).

¹¹ *Id.*

rights on the statutory basis that she had failed to plan and because termination was clearly in the children's best interests. We find no abuse of discretion in the Family Court's factual findings and no error in its application of the law to the facts. Accordingly, the judgment below shall be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice