

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAUREN WARD, ¹	§
	§ No. 276, 2010
Petitioner Below-	§
Appellant,	§
v.	§ Court Below—Family Court
	§ of the State of Delaware
	§ in and for New Castle County
DFS,	§ File No. CN09-03985
	§ Petition No. 09-22870
Respondent Below-	§
Appellee.	§

Submitted: December 3, 2010

Decided: January 10, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 10th day of January 2011, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The petitioner-appellant, Lauren Ward (“Grandmother”), filed an appeal from the Family Court’s April 22, 2010 order denying her petition for guardianship of her grandson, Quinn Mason, Jr. (“Quinn”). We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that Quinn was born on June 9, 2008. During the first year of his life, he lived with his parents and, at times,

¹ The Court *sua sponte* assigned a pseudonym to the appellant by Order dated May 12, 2010. Supr. Ct. R. 7(d). In this Order, we also assign pseudonyms to the minor child and his parents.

Grandmother. The Division of Family Services (“DFS”) became involved in his case after receiving reports that he was not gaining weight and his parents were not properly addressing his special needs. Quinn has been in the custody of DFS since July 7, 2009. On that date, the Family Court entered an *ex parte* order granting custody to DFS and scheduling a preliminary protective hearing for July 15, 2009. At that hearing, the Family Court found Quinn to be dependent as to Jenny Patton (“Mother”) based upon her stipulation regarding Quinn’s numerous medical issues and her lack of housing. Quinn’s father, Quinn Mason, Sr. (“Father”) was incarcerated at the time of the hearing. After DFS obtained custody, Grandmother filed a petition for guardianship of Quinn.

(3) A dispositional hearing was held on August 11, 2009. Following the hearing, the Family Court ordered that custody of Quinn would remain with DFS. Review hearings were held in November 2009 and January 2010. DFS opposed Grandmother’s guardianship petition on both occasions. The Family Court did not rule on Grandmother’s petition until after an April 20, 2010 review hearing. At that hearing, both Mother and Father supported Grandmother’s guardianship petition and DFS and the Court Appointed Special Advocate (“CASA”) opposed it.

(4) Based upon the evidence presented at the hearing, the Family Court made the following findings of fact. Quinn has numerous medical issues. He was born with epilepsy, cerebral palsy and asthma. He must be fed with a special stomach tube for 2½ hours during the day and 10 hours during the evening because he is able to ingest only 20 calories at a time by mouth. He can neither walk nor talk. Quinn receives physical therapy twice a week, occupational therapy once a week, speech therapy once a week, feeding therapy once a week, early education once a week and services from the Division of Visual Impairment once a month. Quinn currently is living with two foster parents with approximately 30 years experience caring for children with special needs. Quinn will be receiving a wheelchair in the near future. The wheelchair weighs 40 to 50 pounds.

(5) Grandmother recently moved from Chester, Pennsylvania, to Wilmington, Delaware, and currently resides in a third-floor, 3-bedroom apartment. There are 50 steps between the ground floor and the third floor of her building. Quinn's wheelchair would have to be disassembled before carrying it up the stairs. The wheelchair cannot be left in the hallway because, if it is stolen, it would cost \$10,000 to replace and Medicaid would not likely cover the cost. Quinn would have to be carried up the stairs to the apartment. He now weighs 32 pounds, but will continue to grow and gain

weight. Grandmother has recently found part-time employment at Pizza Hut. She earns \$200 per week gross. Her rent is \$750 per month. Her son lives with her and is going to high school. He currently helps with expenses, but is planning to move to Rehoboth Beach after he finishes high school.

(6) Mother, who is currently living with Grandmother, is not complying with her case plan for reunification with Quinn and is not a dependable source of additional income for Grandmother. Father has a history of incarceration and has not demonstrated that he is a dependable source of additional income for Grandmother. An organization called Nurses and Kids currently provides care and therapy for Quinn during the week. Grandmother must work at least 30 hours a week in order for those services to be available. Grandmother does not consistently work 30 hours a week in her current job.

(7) Grandmother does not presently hold a valid driver's license. She, therefore, cannot drive Quinn to his many medical and therapy appointments. Although Grandmother has stated that friends of hers will provide transportation and insurance, she has provided no evidence to support that assertion. Grandmother has mental health issues. Although she is currently addressing those issues by taking medication for bipolar disorder, she has a history of failing to take her medication.

(8) Grandmother has a history of involvement with DFS. Several of her previous relationships with men have involved physical violence toward her and her children. Members of her household have been involved in criminal activity. Her son was on probation for robbery when they were living in West Chester and her husband had pending drug charges when he was murdered in 2007.

(9) In this appeal, Grandmother argues that the Family Court erred and abused its discretion when it denied her petition for guardianship of Quinn.

(10) This Court's review of a decision of the Family Court entails consideration of the facts and the law as well as the inferences and deductions made by the Family Court.² This Court will not disturb the Family Court's findings of fact unless they are clearly wrong and justice requires that they be overturned.³ Moreover, this Court will not substitute its own opinion for the inferences and deductions made by the Family Court where those inferences are supported by the record and are the product of an orderly and logical deductive process.⁴ If the Family Court has properly

² *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

³ *Id.*

⁴ *Id.*

applied the law, our standard of review is abuse of discretion.⁵ To the extent that the Family Court's rulings of law are implicated, our review is *de novo*.⁶

(11) The grounds for the Family Court's grant of an order of guardianship are contained in Del. Code Ann. tit. 13, §2330(a)(2). Under that section, the Family Court must determine, by a preponderance of the evidence, and after a hearing on the merits, that a) the child is dependent and/or neglected; and b) it is in the best interests of the child for the guardianship to be granted. The best interests of the child factors are contained in Del. Code Ann. tit. 13, §722 and may be summarized as a) the wishes of the parents; b) the wishes of the child; c) the interaction of the child with his parents, grandparents, siblings and other relevant individuals; d) the child's adjustment to his home, school and community; e) the mental and physical health of the individuals involved; f) past and present compliance of the parent with his rights and responsibilities; g) evidence of domestic violence; and h) the criminal history of any party.

(12) We have carefully reviewed the parties' submissions as well as the record below, including the transcript of the April 20, 2010 hearing. We conclude that there is ample evidence in the record supporting the Family Court's denial of Grandmother's guardianship petition on the ground that it

⁵ *Jones v. Lang*, 591 A.2d 185, 186 (Del. 1991).

⁶ *In re Heller*, 669 A.2d 25, 29 (Del. 1995).

is not in Quinn's best interests that the petition be granted. We find no error or abuse of discretion on the part of the Family Court.

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

BY THE COURT:

/s/ Carolyn Berger
Justice