

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HELLEN ELLEN WARD, <sup>1</sup>	§	
	§	No. 307, 2007
Respondent Below-	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
DEPARTMENT OF SERVICES	§	No. CN06-01270
FOR CHILDREN, YOUTH AND	§	
THEIR FAMILIES,	§	
	§	
Petitioner Below-	§	
Appellee.	§	

Submitted: January 7, 2008

Decided: March 14, 2008

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

***ORDER***

This 14<sup>th</sup> day of March 2008, it appears to the Court that:

(1) Appellant Hellen Ellen Ward (“Mother”) appeals the Family Court’s termination of her parental rights in her two children,<sup>2</sup> who were born on July 28, 2004 and January 7, 2006. The Family Court found that Mother had failed to plan adequately and that termination was in the children’s best interest.<sup>3</sup> Mother argues that the Family Court’s holding is not sufficiently supported by the record, and is

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<sup>1</sup> The Court assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

<sup>2</sup> Mother also has two older children that are not in her custody.

<sup>3</sup> The Family Court also terminated the rights of the children’s father in the action below; however, he did not appeal that decision.

not the result of an orderly and logical deductive process. We find no merit to her argument and affirm.

(2) On January 20, 2006, less than two weeks after the youngest child's birth, the Division of Family Services ("DFS") discovered that Mother, Father, and the children were living in a condemned apartment without heat or an operable toilet, among other things, and took emergency custody of the children. As a result, Mother and Father were both charged with Endangering the Welfare of a Child.

(3) Between January and October, five hearings were held in the Family Court regarding the children's dependency status, as defined by 10 *Del. C.* § 901(8).<sup>4</sup> At each hearing, the court found the children to be dependent and determined that it was in the best interest of the children to remain in the custody

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<sup>4</sup> Per 10 *Del. C.* § 901(8), a "Dependent child" means that a person:

- (a) is responsible for the care, custody, and/or control of the child; and
- (b) does not have the ability and/or financial means to provide for the care of the child; and
  - a. fails to provide necessary care with regard to: food, clothing, shelter, education, health care, medical care or other care necessary for the child's emotional, physical or mental health, or safety and general well-being; or
  - b. the child is living in a non related home on an extended basis without the consent and approval of the Department of Services for Children, Youth, and their Families or any agency or court licensed or authorized to place children in a non related home; or
  - c. the child has been placed with a licensed agency which certifies it cannot complete a suitable adoption plan.

of DFS.<sup>5</sup> In March, DFS implemented a case plan, with the primary goal of reunifying the children, to address issues related to, among other things, domestic violence, finances, unemployment, and housing. At the October hearing, the court found that although Mother had generally complied with the case plan, her housing had not become stable and she was unemployed. The court also ordered Mother to apply for food stamps, Section 8 housing, and Medicaid.

(4) On November 13, 2006, DFS filed a petition for Termination and Transfer of Parental Rights, on the grounds that Mother was not able, or failed to plan adequately for the children's physical needs or mental health and development.<sup>6</sup> On January 4, 2007, a Review/Permanency hearing was held and the court found that Mother had not complied with the case plan. By this date, Mother was living with her grandparents, had not applied for Medicaid, and missed appointments with her probation officer and scheduled visits with the children. The court then scheduled a Termination of Parental Rights ("TPR") hearing.

(5) By the time of the TPR hearing, Mother had obtained an apartment and a job; however, the court determined that her expenses exceeded her income and that she still had not complied with the case plan. In its written decision, the

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<sup>5</sup> At three of the hearings, Mother stipulated dependency of the children because of unstable housing.

<sup>6</sup> On this date, DFS also filed a motion for a permanency hearing and to change the goal in the case plan from reunification to termination of parental rights and adoption.

court found that Mother would be “unlikely” to be able to sustain her current standard of living and was forced to live paycheck to paycheck. The court also found that Mother failed to comply with the requirement of the case plan to procure stable housing for at least one year.<sup>7</sup> All six caseworkers and the guardian *ad litem* testified that Mother failed to comply with the requirements of the case plan and that reunification was not recommended. The court terminated Mother’s parental rights. This appeal followed.

(6) Mother argues that the Family Court’s holding is not sufficiently supported by the record and is not the result of an orderly and logical process. We review termination of parental rights determinations “to ensure that (i) they are supported by clear and convincing evidence of record, and (ii) that the trial judge’s conclusions are the result of an orderly and logical reasoning process.”<sup>8</sup> This Court will not disturb inferences and deductions that are supported by the record.<sup>9</sup> “If the

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<sup>7</sup> While Mother produced evidence that she had lived in an apartment for three months, the Family Court accepted testimony from all six caseworkers that “three months is simply not enough time to prove stability.”

<sup>8</sup> *Waters v. Div. of Family Servs.*, 903 A.2d 720, 724 (Del. 2006); *accord Chase v. Dept. of Servs. for Children, Youth & their Families*, 2006 WL 2787427, at \*2 (Del. Supr.); *Arthur-Lawrence v. Div. of Family Servs.*, 2005 WL 2397523, at \*5 (Del. Supr.); *Div. of Family Servs. v. Hutton*, 765 A.2d 1267, 1272 (Del. 2001).

<sup>9</sup> *Jarmon v. Dept. of Servs. for Children, Youth & their Families*, 2006 WL 3113122, at \*2 (Del. Supr.); *accord Howard v. Div. of Family Servs.*, 2004 WL 2419092, at \*2 (Del. Supr.).

trial court has correctly applied the pertinent law, our review is limited to abuse of discretion.”<sup>10</sup>

(7) In Delaware, the statutory standard for terminating parental rights provides for two separate inquiries: first, there must be proof of an enumerated statutory basis for the termination under 13 *Del. C.* § 1103; and second, there must be a determination that severing the parental right is in the best interests of the child.<sup>11</sup> Where termination is based on a failure to plan, “DFS also must prove by clear and convincing evidence the existence of at least one additional statutory element [under 11 *Del. C.* § 1103(a)(5)], and that DFS made bona fide, reasonable efforts to reunite the family.”<sup>12</sup>

(8) In this case, Mother makes a conclusory assertion that the Family Court failed to find that at least one of the enumerated statutory factors of 13 *Del. C.* § 1103 had been met.<sup>13</sup> She also contests the court’s findings in consideration

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<sup>10</sup> *Jarmon*, 2006 WL 3113122, at \*2 (quoting *Parson v. Parson*, 2002 WL 442399, at \*1 (Del. Supr.)).

<sup>11</sup> *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000); accord *Jarmon*, 2006 WL 3113122, at \*2; *Howard*, 2004 WL 2419092, at \*2.

<sup>12</sup> *Newton v. Div. of Family Servs.*, 2006 WL 2852409, at \*2 (Del. Supr.) (citations omitted).

<sup>13</sup> Simply stating that “Mother contests the Family Court’s finding that at least one of the enumerated statutory factors of 13 *Del. C.* § 1103 had been met,” without more, does not “fairly present” the argument on appeal. See *Jarmon*, 2006 WL 3113122, at \*3 (Del. Supr.) (“This Court will not give conclusory arguments, without more, any weight.”). Therefore, pursuant to Supreme Court Rule 8, the argument is waived. Even assuming that the argument has been fairly presented, however, it is without merit. There is clear and convincing evidence in the record supporting the Family Court’s finding that Mother failed to plan as well as the existence of at

of the best interest factors enumerated in 13 *Del. C.* § 722.<sup>14</sup> With respect to the second argument, she acknowledges that the Family Court considered each factor in turn, but contends that the court gave improper weight to them.

(9) The first factor looks to the wishes of the parents. At the hearing, Mother testified that she loved her children and that she was in a position to care for them. The trial judge acknowledged this testimony by noting that Mother believed she was capable of caring for the children without Father and she believed she was in a position to take custody of the children. The trial judge also noted that she inferred from Father's absence from the TPR hearing and from comments he made to various caseworkers that he had given up his desire for reunification.

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least one other required statutory factor under 13 *Del. C.* § 1103(a)(5) and that DFS made bona fide, reasonable efforts to reunify the family or prevent out of home placement.

<sup>14</sup> 13 *Del. C.* § 722 states, in part:

In determining the best interests of the child, the Court shall consider all relevant factors including:

- (1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;
- (2) The wishes of the child as to his or her custodian(s) 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;
- (4) The child's adjustment to his or her home, school and community;
- (5) The mental and physical health of all individuals involved;
- (6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title;
- (7) Evidence of domestic violence as provided for in Chapter 7A of this title; and
- (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.

(10) On appeal, Mother does not argue that the trial judge's finding is not supported by the record. Instead, she argues that the trial judge did not give this factor enough weight. We infer that the trial judge rejected any inference that Mother truly wished to continue as a parent. To the extent that the trial judge weighed this factor against Mother based on her conduct and evaluation of the credibility of her testimony, the trial court's decision in weighing this factor in favor of termination of the parental rights was not an abuse of discretion. Even assuming an error in weighing this factor against Mother, the ultimate outcome does not change.

(11) The second factor looks to the wishes of the children. Mother contends that the court erred in not considering this factor. However, when the children are "very young, immature, or unable to articulate a sound basis for [their] wishes as to custody[,] the preference is not entitled to great weight."<sup>15</sup> Given the ages of the children, the trial judge correctly deemed this factor neutral.

(12) The third factor looks to the children's interaction with family and others with whom they reside. Mother contends that the trial judge failed to give proper weight to the bond she shares with her children. However, in assessing this factor, the trial judge focused upon the children's interaction with foster mother.

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<sup>15</sup> *Chase v. Dept. of Servs. for Children, Youth & their Families*, 2006 WL 2787427, at \*2 (Del. Supr.) (quoting *William H.Y. v. Myrna L.Y.*, 450 A.2d 406, 409 (Del. 1982)).

According to testimony, the children have adjusted well to her home, but the oldest child seems to need constant reassurance. The trial judge did not abuse her discretion in weighing this factor against Mother.

(13) The fourth factor looks to the children's adjustment to their home, school, and community. Mother argues that this factor should have been neutral because the foster home was not guaranteed to be the final placement for the children. In assessing this factor, the trial judge relied upon the testimony of two caseworkers, one of who visits the children in their foster home once a week. Both testified that the children have bonded well to their foster mother. The trial judge also noted the foster mother's interest in adopting the children and, in her discretion, found that this factor weighed in favor of termination.

(14) The fifth factor considers the mental and physical health of all involved individuals. The trial judge found that Mother suffers from mental health issues that can impair her ability to care for the children and that Mother's conduct demonstrates that she is not mentally prepared to care for the children.<sup>16</sup> The trial judge did not abuse her discretion in weighing this factor in favor of termination of parental rights.

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<sup>16</sup> The trial judge also found that Father is suffering from a substance abuse addiction and has failed to complete a drug treatment program.



(15) The sixth factor considers both parents' compliance with 13 *Del. C.* § 701, as it relates to their parental rights and responsibilities. The trial judge determined that neither parent demonstrated any willingness to assume responsibility for the care, support, welfare, or education of the children and did not abuse her discretion in weighing this factor in favor of termination of parental rights.

(16) The seventh factor considers evidence of domestic violence. The trial judge noted that there was circumstantial evidence indicating domestic violence between Mother and Father, that Mother may be in denial regarding the abuse she suffers, and that Mother's credibility regarding physical injuries she has sustained was questionable. Accordingly, the trial judge did not abuse her discretion in weighing this factor in favor of termination of parental rights.

(17) The eighth factor considers the criminal history of any party or any other resident of the household. The court acknowledged that Mother's only criminal history is charges for endangering the welfare of the children. However, in weighing the factor in favor of termination, the court also considered recent criminal charges incurred by Father. These considerations were not an abuse of discretion.

(18) Mother's contentions are focused on issues of fact, which this Court reviews for abuse of discretion. Because the trial judge went through a logical and

orderly analysis of the best interest factors, and these inferences and conclusions are supported by clear and convincing evidence of record, the trial judge's factual findings are not an abuse of discretion and should not be disturbed on appeal.

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

BY THE COURT:

/s/Henry duPont Ridgely  
Justice