

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLAY HILL,	§	
	§	No. 278, 2013
Respondent Below-	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
DIVISION OF FAMILY SERVICES,	§	ID No. CN09-03749
	§	
Petitioner Below-	§	
Appellee.	§	

Submitted: September 30, 2013

Decided: December 12, 2013

Before **HOLLAND, JACOBS**, and **RIDGELY**, Justices.

ORDER

On this 12th day of December 2013, it appears to the Court that:

(1) Respondent-Below/Appellant Clay Hill¹ (“Father”) appeals a Family Court order granting Petitioner-Below/Appellee Division of Family Services’ (“DFS”) Petition to Terminate Parental Rights (TPR) of his daughter (“Child”). Father raises one claim on appeal. He contends that the Family Court erred in concluding by clear and convincing evidence that DFS provided bona fide reasonable efforts to reunite Father and Child. We find no merit to Father’s appeal and affirm.

¹ This Court assigned pseudonyms for the parties pursuant to Supreme Court Rule 7(d).

(2) Child's mother gave birth to Child at home in February 2012. Mother and Child were later transported to Christiana Hospital. They both tested positive for cocaine and opiates upon arrival. The mother had a long history of substance abuse, unemployment, and homelessness.² Custody of Child was granted to DFS, and Child was placed in the foster home where she remains today. Father was incarcerated at the time Child was born. Father has had difficulty securing housing and employment and had periods of substance abuse. He also has a lengthy criminal history with multiple periods of incarceration, and suffers from anxiety and depression. Moreover, Father is an insulin-dependent diabetic with a history of cardiac problems, hypertension and renal failure.

(3) Father told DFS that he wanted to care for Child upon his release from prison and that he did not want her placed for adoption. He was released from prison in March 2012. DFS developed a case plan for Father focusing on housing, employment, substance abuse, mental health, parenting skills, and legal issues. Father did not successfully complete any aspect of the case plan. He missed scheduled visitations with Child. He started a parenting class but did not finish, and he was discharged from parent aide services for non-compliance. DFS referred Father to New Behavioral Network (NBN), a DFS contract agency, who provided him with parenting assistance services focused on housing, employment,

² Child's mother abandoned Child at the hospital after the birth and declined to participate in a case plan. She is not appealing the termination of her parental rights.

transportation, completing a budget, and recommending other social services. NBN reports indicate that Father missed scheduled appointments and had inappropriate interactions with staff.

(4) In May 2012, Father violated his probation for failing random drug screenings. As a result, he was incarcerated. At the time of his incarceration, father was unemployed and without stable housing. Father was released from prison on September 20, 2012. Following a mental health examination, he resumed scheduled visits with Child in November and successfully completed both a parenting class and life skills program. Although Father engaged in mental health treatment and interacted appropriately with Child, Father has never independently cared for Child, been alone with her, or been around her for longer than an hour at a time.

(5) On October 1, 2012, shortly after Father's release, the Family Court issued an Order changing the goal from reunification to a concurrent goal of Termination of Parental Rights and Permanent Guardianship with Child's Paternal Aunt. Father failed to respond to the notice issued by the Family Court or to move for reargument once the Family Court issued the Order. DFS proceeded with the new goals as ordered by the Family Court, immediately initiating the Interstate Compact on the Placement of Children ("ICPC") process for Permanent Guardianship with Child's Paternal Aunt, who lived in Maryland.

(6) Father has not had stable employment or appropriate housing for Child at any point since she was born. Moreover, Father has no long-term housing plan for himself and Child, should they be reunited. He is unemployed and receives limited public financial assistance. This state of affairs is unlikely to change because Father claims that his primary care physician advised him not to return to work for six to twelve months due to health concerns. Further, Father owes arrears on child support for his other children.

(7) Child is extremely bonded to her foster family, which is the only family she has ever known and considered a potential adoptive resource. Father's sister said she would be willing to have Father and Child in her home for about six to twelve months, but she believes that Child is bonded to her foster family and that Child's should remain with them. Based on this evidence, the Family Court found by clear and convincing evidence that Child was dependent on DFS care and that Father had failed to plan for the care of Child. As a result, the Family Court granted DFS's TPR Petition. This appeal followed.

(8) On appeal, Father argues that the Family Court erred in concluding that DFS had made reasonable bona fide efforts to reunite Father and Child. "This Court's standard and scope of review of an appeal from the Family Court extends to a review of the facts and law as well as to a review of the inferences and

deductions made by the Trial Judge.”³ Questions of law, including the interpretation of statutes, are reviewed *de novo*.⁴ “Findings of fact will be upheld unless clearly erroneous.”⁵ The judgment of the Family Court must be affirmed when the inferences and deductions upon which it is based are supported by the record and are the product of an orderly and logical reasoning process.

(9) While recognizing the fundamental liberty interest of parents, Delaware courts also must consider that the termination of parental rights statute is designed to ensure that children are not denied the opportunity for a stable family life.⁶ The statutory procedure for terminating parental rights requires two separate inquiries.⁷ First, there must be proof of an enumerated statutory basis for termination.⁸ Second, there must be a finding that a termination of parental rights is in the best interests of the child.⁹ When the statutory basis for termination is the failure to plan adequately for the child’s physical, mental, or emotional needs, there must be proof of at least one additional statutory factor. Examples of such additional factors include instances where a child is in DFS custody for an extended period of

³ *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983) (citing *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979)).

⁴ *Clark v. Clark*, 47 A.3d 513, 517 (Del. 2012).

⁵ *Id.* at 516–17 (citing *Ross v. Ross*, 992 A.2d 1237 (Del. 2010)).

⁶ *Shepherd v. Clemens*, 752 A.2d 533, 538 (Del. 2000).

⁷ *Id.* at 536–37.

⁸ *Id.* at 537; *see also* 13 *Del. C.* § 1103 (a)(1)–(8) (listing grounds for termination of parental rights). Failure to plan, per 13 *Del. C.* § 1103(a)(5), is the only statutory grounds for termination in this case.

⁹ *Shepherd*, 752 A.2d at 537; *see also* 13 *Del. C.* § 722(a)(1)–(8) (listing factors to be considered when determining best interests of the child).

time, an inability of a parent to discharge his or her responsibilities due to incarceration, or the parent's failure to support the child.¹⁰ Further, DFS must show that it made bona fide reasonable efforts to preserve the family unit.¹¹ This requires that DFS demonstrate that DFS "provide[d] or contract[ed] for services designed to maintain or provide permanent homes for children who are in out-of-home care, through . . . , whenever feasible, reunification services for children and their families."¹² All of these requirements must be established by clear and convincing evidence.¹³ But there is "no fundamental error in permitting the agency to discontinue reunification efforts if the State has acted properly to terminate parental rights."¹⁴

(10) The Family Court terminated Father's rights on the statutory basis of failure to plan adequately for the physical needs of Child and her mental and emotional health and development under 13 *Del. C.* § 1103(a)(5). Father does not dispute the trial court's finding that he failed to adequately plan. Instead, he contends that DFS failed to make a bona fide attempt to reunify Father and Child after his release from prison in September of 2012. Father's argument is without merit. The record is clear that DFS made reasonable efforts to facilitate the goal of reunification with Father since Child's birth. When he was initially released from

¹⁰ See 13 *Del. C.* § 1103(a)(5)(a) (listing additional factors).

¹¹ *In re Hanks*, 553 A.2d 1171, 1179 (Del. 1989).

¹² 29 *Del. C.* §9003(13).

¹³ *Powell v. DSCYF*, 963 A.2d 724, 731 (Del. 2008).

¹⁴ *In re Burns*, 519 A.2d 638, 649 (Del. 1986).

custody, DFS provided Father with parenting assistance services and continued towards reunifying Father with Child. Father acknowledges that he failed to progress on his initial case plan from February through May 2012. Father also concedes that he began to fully engage in case planning only after his release from incarceration in September 2012. Nevertheless, when Father was released from prison in September 2012, DFS continued to pursue reunification by providing Father with assistance services until DFS changed Child's goal to Termination of Parental Rights and Permanent Guardianship with Child's Paternal Aunt on October 1, 2012.¹⁵ Only after the Family Court's Order in October 2012 did DFS cease its reunification efforts. The record is clear that while the goal was reunification, DFS continued to make reasonable efforts to reunify Father and Child.¹⁶ Because this finding by the Family Court is not clearly erroneous, Father's claim that DFS failed to make a bona fide effort is without merit.

¹⁵ The ICPC process ended when the Paternal Aunt requested that her petition for permanent guardianship be dismissed with prejudice because she was no longer sought permanent placement. On appeal, Father argues that DFS should have considered initiating an ICPC for himself because he too was living in Maryland at his sister's residence. But Father failed to disclose his address to DFS, preventing an ICPC process. Moreover, it is unlikely that ICPC approval would be granted given Father's background and history of unemployment.

¹⁶ Father argues for the first time on appeal that DFS should have continued its efforts to reunify Father with Child until the TPR proceedings in March 2013, notwithstanding the Family Court's Order to the contrary. In addition to an apparent waiver under Supreme Court Rule 8, this argument is without merit. Father was provided with notice of DFS's intention to change the goal and had ten days following the Order to file a Motion for Reargument. Father failed to do so, leaving the ruling uncontested. Thus, DFS appropriately proceeded with the new goal as ordered by the Family Court.

(11) DFS having made a reasonable, bona fide effort to reunite Father and Child, we are also convinced that ample record evidence supports the Family Court's termination of Father's parental rights. On the statutory ground of failure to plan, Father concedes that he failed to adequately plan after his initial release from incarceration, and that that he has no employment, long-term plans or suitable housing for himself and Child. Instead, Child is in the care of her foster family—the only family she has ever known and with whom she has bonded. Termination of Father's parental rights was also in the best interests of Child, who has made positive development in her foster home and daycare. Conversely, Father's lengthy history of poor mental and physical health and periods of incarceration, together with his failure to pay child support, find suitable housing, or secure stable employment, demonstrate that termination is in the child's best interest. Because this resolution was the product of an orderly and logical reasoning process, we conclude that the trial court did not err in terminating Father's parental rights.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice