

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL ARTHUR,	§	
	§	No. 244, 2004
Respondent Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Family Court
	§	of the State of Delaware
DIVISION OF FAMILY SERVICES,	§	in and for New Castle County
	§	File No. 02-12-02TN
Petitioner Below,	§	Petition No. 02-36000
Appellee.	§	

Submitted: November 17, 2004
Decided: February 2, 2005

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

ORDER

This 2nd day of February, 2005, upon consideration of the briefs of the parties, it appears to the Court that:

1) Daniel Arthur¹ appeals a Family Court decision terminating his parental rights with respect to his daughter, Amanda. Arthur argues that the decision should be reversed because: i) the Division of Family Services (“DFS”) did not exercise reasonable efforts to reunify the family; and ii) Arthur was not appointed counsel at the outset of the dependency and neglect proceedings.

¹Pseudonyms have been assigned pursuant to Supreme Court Rule 8.

2) Amanda was born in December 2000 and lived with Mother for approximately eight months. During that time, Arthur was incarcerated. On August 30, 2001, DFS obtained custody of Amanda because Mother was addicted to drugs and allegedly was placing Amanda in dangerous situations. Arthur was not notified, and therefore did not attend the preliminary hearing held on September 7, 2001. Nonetheless, as a result of that hearing, Amanda was placed with Arthur's mother. Arthur also missed the adjudicatory hearing, held on October 24, 2001, because he was not properly notified. The Family Court continued Amanda's placement with Grandmother.

3) Arthur was out of prison and attended the January 18, 2002, review hearing. At that time he requested that counsel be appointed. Due to a clerical error, however, counsel was not appointed until March 19, 2003. Arthur returned to prison later in January 2002, and, despite proper notice, he failed to attend the next two review hearings.

4) By the summer of 2002, Grandmother "needed a break" from caring for Amanda. Although Grandmother later complained that she did not want Amanda to be permanently removed from her care, DFS placed Amanda in foster care in July 2002.

5) On September 18, 2002, after a permanency hearing, the Family Court determined that Arthur had not followed his case plan and was not addressing his drug addiction. The trial court also found that DFS had made reasonable efforts towards reunification by offering appropriate services to both parents. The court concluded that, since Amanda could not safely be returned to her parents' care within a reasonable time frame, DFS should file a petition to terminate parental rights.

6) After a hearing at which all parties were represented, the Family Court entered a decision and order terminating both parents' parental rights in May 2004. The trial court made detailed findings in support of its conclusions that: i) DFS made reasonable efforts to reunify the family; ii) DFS established the statutory grounds for termination by clear and convincing evidence; and iii) it is in Amanda's best interest to terminate parental rights. In addition, the Family Court held that the failure to appoint counsel for Arthur at the outset of the dependency and neglect proceedings was harmless error.

7) Arthur argues that DFS failed to make reasonable efforts to reunify the family in that it did not provide adequate assistance to Grandmother. The trial court carefully considered the evidence relating to Grandmother's involvement. It noted that she loves Amanda and has a good relationship with the child, but that Grandmother did not want full responsibility for the child. Grandmother took care of

Amanda with the expectation that Amanda's parents would overcome their problems and regain custody. Grandmother thought her involvement would last about six months. When Grandmother indicated to DFS that she needed a break, DFS arranged for respite care. DFS only removed Amanda from Grandmother's care when it became clear to DFS that Grandmother was relying too heavily on respite care and could not handle full time care giving. These facts support the trial court's determination that DFS made reasonable efforts to reunify the family through placement with Grandmother.

8) Arthur also contends that the termination decision should be reversed because he was not appointed counsel until 14 months after he requested counsel. In *Hughes v. DFS*,² this Court held that the failure to appoint counsel for an indigent parent during dependency and neglect proceedings is harmless error if the outcome of the termination proceedings would have been the same had counsel been appointed. In this case, Arthur's parental rights were terminated because of his repeated incarcerations and his related drug addiction. Arthur admitted that he understood what was expected of him under the case plans and that he failed to meet his responsibilities because he was taking drugs. Based on our review of the record, we conclude that the

²836 A.2d 498 (Del. 2003).

trial court correctly determined that Arthur's parental rights would have been terminated even if he had been appointed counsel at the outset.

9) Arthur maintains that the failure to appoint counsel adversely affected him because, without counsel, Grandmother did not fully appreciate what she could do to obtain custody of Amanda. The problem with this argument is that no action Grandmother might have taken would have changed the result as to Arthur. His parental rights would have been terminated in any event.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice