

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AMY ARTHUR-LAWRENCE, )  
 ) No. 133, 2005  
 Respondent Below, )  
 Appellant, ) Court Below: Family Court of  
 v. ) the State of Delaware in and  
 ) for Sussex County  
 )  
 DIVISION OF FAMILY SERVICES, ) File No. 04-04-03TS  
 )  
 Petitioner Below, )  
 Appellees. )

Submitted: September 7, 2005  
Decided: September 27, 2005

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

***ORDER***

This 27th day of September 2005, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

(1) The respondent below, appellant, Amy Arthur-Lawrence,<sup>1</sup> appeals from an order of the Family Court terminating her parental rights to two of her children. On appeal Lawrence argues that the Division of Family Services did not prove by clear and convincing evidence that Lawrence failed to plan for her minor children. Lawrence also argues that DFS failed to provide reasonable effort towards reunification. Because the Family Court correctly found that the

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<sup>1</sup> This court has assigned pseudonyms to the parties under Supr. Ct. R. 7(d).

DFS proved the required elements in a termination action by clear and convincing evidence, we affirm.<sup>2</sup>

(2) On March 24, 2003 the Family Court granted an *ex parte* motion granting temporary custody of Lawrence's two children, to DFS. The Court did so because Lawrence did not have the basic parenting skills necessary for the care of her children and because she did not have a stable residence. At this time, Shelly Jimenez Domingo also applied for temporary custody on the same grounds. Prior to the hearing, Lawrence and her children had been living with Domingo, a family friend, and her two children, ages four and thirteen. After an argument with Domingo, Lawrence and her children moved out of Domingo's residence. At that point, Lawrence was receiving SSI in the amount of \$575 per month because she was considered mildly mentally retarded with a tested IQ of 65.

(3) The Family Court held an adjudicatory hearing on May 6, 2003. At that hearing, Lawrence admitted that she was unable to provide adequate care for her two children because of her lack of parenting skills and lack of stable housing. She further admitted that she had lived in five different residences in the six months since the birth of her children. By the date of the hearing,

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<sup>2</sup> The Family Court also terminated the parental rights of the children's father on abandonment grounds. The father did not appear in any of the dependency/neglect or termination proceedings, and is not a party to this appeal.

Lawrence had resumed residing with Domingo and DFS had placed the children with her.

(4) Before a June 10, 2003 dispositional hearing in the Family Court, Lawrence and DFS entered into a case plan with the goal of ultimately reunifying Lawrence and her children. After reviewing the case plan, the Family Court adopted it as part of the order at the dispositional hearing.

(5) The Case Plan required Lawrence to (a) ensure that her children's medical needs were satisfied; (b) participate in a parenting class; (c) cooperate with a DFS referral to the Association of Retarded Citizens ("ARC") of Delaware and the Delaware Division of Disability Services ("DDDS")<sup>3</sup>; (d) schedule an appointment to begin counseling services with People's Place, an organization with counselors trained in dealing with people who suffer mental disability; (e) apply for and maintain eligibility for food stamps, Medicaid, and other State assistance; and (f) cooperate with DFS on arranging the services outlined in the plan.

(6) Jennifer Hudson, a DFS treatment worker, made referrals to ARC and DDDS for Lawrence to obtain services to assist her with her mental disability. Hudson also made Lawrence an appointment to speak with a counselor at People's Place and signed Lawrence up for a parenting class

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<sup>3</sup> DDDS is a state agency that provides services for mentally retarded Delawareans.

scheduled to start on July 1. Domingo agreed to attend the parenting classes with Lawrence to help her understand the class work. During this time, Lawrence and her children continued to reside with Domingo.

(7) On June 23, 2003, with no notice to the Family Court, Lawrence left Delaware to return to New York. Lawrence was originally from New York and two of her other minor children lived there with their maternal grandmother. Lawrence moved out of Domingo's residence because she had a disagreement with Domingo concerning Lawrence's failure to take more responsibility for the children and how Lawrence managed her finances. Before moving, Lawrence discussed the move with Hudson. Hudson informed Lawrence that DFS would not be able to provide services to her in New York and that Lawrence could not take her children with her if she moved. Thus, after Lawrence moved, the children remained at Domingo's residence in her care.

(8) Shortly thereafter, Domingo advised DFS that she could no longer care for Lawrence's children and asked that DFS take custody. On June 25, the children were placed in foster care.

(9) The Family Court held a hearing on September 9, 2003 to review the first case plan. The court found that Lawrence had not made significant progress on the case plan largely due to the fact that she moved to New York.

Because she was in New York she was unable to attend the children's medical visits. She did not begin parenting classes or become involved with DDDS as required by the order, again because she was in New York. Finally, Lawrence did not begin the process of evaluating her mental health issues.

(10) Hudson prepared a second case plan for Lawrence after she moved to New York. This case plan set forth means for Lawrence to obtain services in New York and to be reunified with her children there. At the hearing on September 9, the Family Court reviewed this second plan and made it a part of its order. The second plan was more comprehensive. It required that Lawrence (a) manage her finances so that she could financially support herself and her children (this included obtaining Medicaid and food stamps from New York State); (b) keep in contact with her children's medical providers in Delaware; (c) successfully complete a parenting class in New York; (d) undergo a substance abuse evaluation including a urinalysis by an agency in New York; (e) contact the New York Developmental Disability Services to assist her in coping with her everyday living needs; (f) undergo mental health counseling regarding her feelings of being overwhelmed by the children, wanting to harm herself, and other issues; and (g) establish stable housing so that a home study of her residence could be conducted by the New York agency under the Interstate Compact on the Placement of Children.

(11) The Family Court also advised Lawrence that the move to New York would make it more difficult for DFS to monitor the case plan. Moreover, the Family Court judge noted that he could not “state strongly enough to [Lawrence] the difficulties that she seems to be facing in successfully completing her case plan and having her children returned to her care.”<sup>4</sup>

(12) Hudson testified at trial that Lawrence’s move to New York created many additional difficulties with the reunification plan. Hudson was often unable to make contact with the Lawrence by phone. She also sent Lawrence a series of letters to various different New York addresses regarding services under the case plan. Many of the letters were intended to keep Lawrence informed of her children’s medical appointments and concerns.

(13) During the time she lived in New York, Lawrence never established a permanent residence. She advised DFS that she was staying at three different homes in different counties. Despite Lawrence’s lack of a permanent residence, DFS made a referral through ICPC for New York to consider approving placement of the children in New York. On October 7, 2003, Susan Thurston of the Cayuga County Department of Health and Human Services in Auburn, New York, commenced a home study on Lawrence’s purported New York residence where she resided with her current boyfriend.

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<sup>4</sup> Family Court Order of September 9, 2003.

Lawrence missed the first scheduled appointment with Thurston on October 29<sup>th</sup>. On the second scheduled visit on November 7, Lawrence was present, but less than cooperative. She refused to allow Thurston to see certain parts of the house allegedly because the rooms were locked or someone was sleeping inside. Moreover, Lawrence's boyfriend and his roommate were not present. This was a large concern for Thurston because these individuals would be living with the children. Thurston also noticed several specific safety hazards around the house, and that there was virtually no furniture in the rooms she was allowed to see. To make things worse, Lawrence informed Thurston that she planned to find another apartment and that she did not intend to live in the residence Thurston was currently evaluating.

(14) After evaluating Lawrence's living situation and discussing the situation with her, Thurston recommended against approving placement of the children in New York. She based this recommendation on Lawrence's lack of stable housing, lack of basic parenting skills, and lack of means for supporting her children.

(15) During the course of Lawrence's six month stay in New York, Hudson arranged for Lawrence to visit her children in Delaware on a monthly basis. DFS paid the bus fare. Nonetheless, Lawrence only visited three times while she was living in New York; in September, October and December.

(16) After being informed that the ICPC request to place the children in New York had been denied, Lawrence decided to move back to Delaware.

(17) The Family Court conducted a review hearing on December 16, 2003. The Family Court judge concluded that while Lawrence had made progress in some areas of the second case plan, she nevertheless failed satisfy several elements of the case plan by failing to (a) obtain food stamps from New York; (b) contact the New York DDDS during the six months she lived there; (c) obtain mental health counseling; and (d) establish stable housing. More importantly, the judge informed Lawrence that the CASA had filed a motion for the change of the goal from reunification to termination of parental rights.

(18) Lawrence returned to Delaware on January 13, 2004. DFS again paid the bus fare.

(19) Despite the fact that the next Family Court hearing was a permanency hearing in which the court would determine whether to terminate Lawrence's rights, Hudson prepared a third case plan for Lawrence. This plan was essentially the same as the second, but it provided that Lawrence would obtain services through the state of Delaware instead of New York. Although Hudson created a third revised case plan, Lawrence never signed it.

(20) Shortly after she returned to New York, Lawrence moved back in with Domingo. She was paying \$375 per month out of her \$575 Social Security



Check for rent. Hudson told Lawrence that DFS would not approve placement of the children in the home of Domingo because of the previous problems Lawrence and Domingo encountered.

(21) After Lawrence moved back to Delaware, Hudson resumed her efforts in helping Lawrence fulfill the goals of her most recent case plan. On January 19, 2004, Lawrence attended a medical appointment with her children. Hudson also arranged for Lawrence to receive a substance abuse evaluation with Rose Basher, a certified drug and alcohol counselor. Basher completed her evaluation on January 27, 2004. She recommended that Lawrence attend weekly group education sessions and monthly individual sessions to gain an understanding of alcoholism. Lawrence signed a treatment plan on January 30, 2004. Between February 6<sup>th</sup> and March 30<sup>th</sup>, Lawrence, however, only sporadically attended the individual and group sessions on alcoholism. She attended four of the sessions and missed six.

(22) Basher also recognized that Lawrence had certain mental health issues. She therefore arranged for Lawrence to attend a mental health assessment to be performed by a Dr. Centers. Basher scheduled an appointment for February 13, 2004, but Lawrence did not attend. The appointment was rescheduled for March 4, 2004, but Lawrence apparently did not go. Basher never received a report from Dr. Centers.

(23) On January 27, 2004, in an attempt to obtain stable housing, Lawrence mailed an application for Section 8 housing that Hudson had aided her in completing.

(24) On February 4, 2004, Susan Morrison-Smith, the intake coordinator at Delaware's DDDS, received Lawrence's application for services from Hudson. The four-part application was missing two parts as well as copies of Lawrence's birth certificate, social security card and Medicaid card. Smith estimated that at least half of the applications received are not complete. Thereupon, Smith sent a letter of incompleteness to Lawrence on February 5<sup>th</sup>. Having received no response containing the missing information, Smith sent another letter to Lawrence on March 9<sup>th</sup>. Smith, however, never called Lawrence or Hudson.

(25) On March 1, 2004, the Family Court conducted a permanency hearing. At this hearing, the judge found that the children were dependent and that it was in their best interests to remain in the care of DFS. The judge then ordered that the permanency goal for the children should be changed from reunification to termination of parental rights and adoption.

(26) On May 12, 2004, Hudson filed a second application with DDDS for Lawrence. Again, this application was incomplete. The next day, Smith sent a letter to Lawrence. After receiving no response, she mailed another letter six

weeks later. Again, she received no response. The letters were not returned to Smith as undeliverable.

(27) After a three day trial in October and November of 2004, and a thorough review of the facts and the law, taking into account the best interests of the children, the Family Court judge found that Lawrence's parental rights should be terminated on the basis of a failure to plan. On March 14, 2005, the Family Court entered an order to this effect. Lawrence appealed.

(28) In an appeal from a termination of parental rights in the Family Court, our review is limited to the trial judge's factual findings as well as the inferences and deductions made by the trial judge.<sup>5</sup> We will not disturb a trial judge's factual findings unless they are clearly erroneous and justice requires that they be overturned.<sup>6</sup> If the trial judge's factual findings are supported by the record "and are the product of an orderly and logical deductive process, in the exercise of judicial restraint we accept them, even though independently we might have reached opposite conclusions."<sup>7</sup> To the extent that a trial judge's

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<sup>5</sup> *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)).

<sup>6</sup> *Id.*

<sup>7</sup> *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

decision implicates rulings of law, our review is *de novo* to determine whether the trial judge properly applied the law.<sup>8</sup>

(29) Under Delaware’s statutory scheme the standard for terminating parental rights requires two separate inquiries.<sup>9</sup> The court must determine, by clear and convincing evidence, that one of the statutory grounds for termination has been met.<sup>10</sup> Second, after finding a ground for termination, the court must determine that severing the parental rights is in the best interests of the child.<sup>11</sup> In addition to finding a statutory basis for termination and concluding that termination is in the best interest of the child, the Court must also find that the DFS has made “reasonable efforts” to reunite the family through written case plans or reunification services.<sup>12</sup>

(30) Delaware law provides that when a child has been in the care of DFS for one year, the best interest of the child is served by terminating the rights of a parent who is not able or fails to “plan adequately for the child’s

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<sup>8</sup> *Reed v. Dillard (In the Interest of Stevens)*, 652 A.2d 18, 23 (Del. 1995).

<sup>9</sup> *Division of Family Servs. v. Hutton*, 765 A.2d 1267, 1271 (Del. 2001).

<sup>10</sup> *Id.* (citing *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000) (*en banc*)).

<sup>11</sup> *Id.*

<sup>12</sup> *In re Hanks*, 553 A.2d 1171 (Del. 1989).

physical needs or mental and emotional health and development....”<sup>13</sup>

Lawrence concedes that her children have been in the care of DFS for in excess of one year. She does not contest the trial court’s finding concerning the best interests of the child. On appeal, Lawrence contends only that DFS failed to prove by clear and convincing evidence that she did not plan for her children. She also contends that DFS failed to offer reasonable efforts towards reunification. Accordingly, this court will address these issues and leave undisturbed the trial Court’s ruling that terminating Lawrence’s parental rights is in the best interests of the children.

(31) Lawrence claims that she completed most portions of her case plans and was prevented from completing all portions due to her failure to receive services from the ARC and DDDS. She claims that the services the plan required either did not exist or were never delivered due to mishandling by DFS. Because DFS allegedly failed to ensure that the services to be provided by ARC and DDDS were accessible, Lawrence claims that DFS failed to offer reasonable reunification efforts. Lawrence’s position is not persuasive.

(32) In each of Lawrence’s two signed case plans, and the third unsigned case plan, Lawrence never attended the required mental health assessments, which would have allowed DFS to better accommodate her mental

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<sup>13</sup> 13 *Del. C.* § 1103(a)(5).

disorders. Moreover, when DFS attempted to assist Lawrence in receiving services for her mental disorders, Lawrence either left the state or did not respond to letters from DDDS sent to her last known residence. Furthermore, Lawrence never obtained a stable residence.

(33) The record supports the trial judge's finding that DFS made reasonable efforts to reunify Lawrence with her children. Hudson drafted three case plans for Lawrence. DFS arranged a drug and alcohol evaluation, enrolled Lawrence in parenting classes, albeit unsuccessfully, and assisted in applications for Section 8 and DDDS. Hudson worked with various agencies in the State of New York in an attempt to tailor the second case plan to Lawrence's decision to move to New York. Moreover, DFS arranged an ICPC study in an unsuccessful attempt to obtain placement of the children in New York. DFS paid for bus tickets for Lawrence to visit her children in Delaware while she was living in New York. After Lawrence moved back to Delaware, Hudson again worked with various Delaware agencies in an attempt to get Lawrence the help she needed so that she could complete her plan.

(34) The record also supports the trial judge's finding that Lawrence failed to plan adequately for her children's physical needs or mental and emotional health and development. Lawrence failed to obtain safe, stable

housing. Lawrence also failed to attend appointments and failed to respond to mailings precluding the possibility of her completing portions of her case plan.

(35) The trial judge's findings are supported by the record, are not clearly erroneous, and are supported by an orderly logical and deductive process.

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

BY THE COURT:

/s/Myron T. Steele  
Chief Justice