

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DELORES JARMON,)
) No. 249, 2006
 Respondent Below,)
 Appellant,) Court Below: Family Court
 v.) of the State of Delaware in
) and for New Castle County
)
 DEPARTMENT OF SERVICES) File No. 05-05-04TN
 FOR CHILDREN, YOUTH AND)
 THEIR FAMILIES,)
)
 Petitioner Below,)
 Appellees.)

Submitted: October 4, 2006
Decided: November 2, 2006

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

ORDER

This 2nd day of November 2006, on consideration of the briefs of the parties, it appears to the Court that:

(1) The respondent-appellant, Delores Jarmon (Mother) filed an appeal from the Family Court order terminating her parental rights in her minor daughter, Raimyia Jackson. Mother argues that the trial judge abused his discretion by finding that terminating Mother's parental rights was in Raimyia's best interest.¹ Department of Services for Children, Youth and Their Families argues that the

¹ See 13 Del. C. § 1103 (a); 13 Del. C. § 722.

Family Court's judgment terminating Mother's parental rights should be affirmed because it was in Ramyia's best interests. Because the Family Court's decision is supported by the record and is not clearly erroneous, we AFFIRM.

(2) Mother is the natural parent of Raimyia,² who was born on June 4, 2001 and is the sole subject of this action.³ On October 22, 2004, DSCYF removed Raimyia and another child from the care and custody of their Mother because of Mother's active drug use and lack of appropriate housing.⁴ Mother admitted that while the children were in her care she did not work, could not provide stable housing, and used illegal drugs. On November 9, 2004, Mother spoke with a DSCYF treatment worker, and they scheduled a meeting for the purpose of developing a case plan for reunification. They planned to hold the meeting at an address that Mother gave the DSCYF worker. Mother, however, did not attend the meeting and the address that the Mother had provided turned out to be a vacant house.⁵

² Raimyia's father is unknown. In this same action, the Family Court also granted DSCYF's petition to terminate the rights of the unknown father.

³ Mother testified that she has three children, but she does not care for any of them. Hospital records show Mother had a fourth child that died in a choking accident.

⁴ The other child is not involved in this action. The child has a different father than Raimyia and DSCYF placed him in his father's care.

⁵ Mother called the DSCYF case worker and left messages giving excuses about why she was unable to attend meetings but did not left a phone number or address where DSCYF could reach her.

(3) Mother did not attend any of the hearings in connection with Raimyia's removal and, despite DSCYF's efforts, she never met with DSCYF to devise a reunification plan.⁶ DSCYF placed Raimyia in foster care on October 27, 2004 and later moved her to Charlotte Bush's home on February 2, 2005.⁷ Mother did not visit Raimyia in the first three months after Raimyia's removal. Mother claimed that she visited Raimyia while she was in Bush's care; however, at trial there was no evidence corroborating Mother's visitation.

(4) On March 19, 2005, Bush permitted Raimyia to leave her home with Raimyia's maternal grandmother. Later that day, the police arrested Mother and Grandmother in a "crack house" raid. Police found Raimyia in the house walking around barefoot in a room filled with broken glass, crack pipes, and animal feces. Police arrested Mother and ordered her to have no contact with Raimyia.⁸

(5) While Mother was incarcerated, she had a meeting with DSCYF on May 26, 2005. DSCYF informed Mother that they had changed their goal of

⁶ Mother did not appear for the Preliminary Protective Hearing on October 27, 2004, the Adjudication Hearing held on November 18, 2004, the Dispositional Hearing on January 24, 2005, and the Permanency Hearing on May 23, 2005. Mother was incarcerated on March 19, 2005 and the Department of Corrections did not transport her to the Permanency Hearing.

⁷ Charlotte Bush is a member of Mother's extended family. Raimyia was living in the Bush home at the time of trial.

⁸ Mother was convicted of possession with intent to deliver. DSCYF returned Raimyia to Bush who agreed to a "Safety Plan" prohibiting Raimyia from leaving the Bush home except in the care of Bush or her long term domestic companion.

reunification to termination of parental rights. DSCYF advised Mother to confer with her attorney and contact DSCYF when she was released from prison. DSCYF also instructed Mother to advise DSCYF regarding whether the no contact order was still in effect.⁹

(6) The Family Court held Mother's Termination of Parental Rights Hearing on November 28, 2005. At that time, Mother was still serving time for the March 19, 2005 incident and had just been sentenced to three months in the Crest program followed by three months of work release. Mother remained under a no contact order at the time of trial. Mother testified that during her incarceration, she planned for Raimyia's care by receiving her GED and completing a job readiness program and parenting class. Mother also sent Raimyia books that Mother had read onto a tape as part of the prison's Read Aloud program. Mother also trained in food service, and she testified that she planned to work as a cook upon her release.

(7) Mother testified that after work release she wanted to move into the Friendship House program. That program allows eligible applicants to find independent housing that is suitable for reunification with their children upon completion of their sentence. Mother maintains that she can remain sober and provide appropriate care for all of her children.

⁹ As a result of this instruction, Mother testified that she believed this meant she could not contact DSCYF until after the no contact order was lifted.

(8) The trial judge held that DSCYF had established a statutory ground for termination of parental rights by clear and convincing evidence because Mother has failed to plan adequately for Raimyia’s physical needs as well as her mental and emotional health and development, and continues to be unable to so plan under 13 *Del. C.* § 1103 (a)(5).¹⁰ The trial judge also found that it was in Raimyia’s best interests to terminate Mother’s parental rights and granted the termination petition. Mother argues on appeal that the trial judge’s decision that it is in Raimyia’s best interests to terminate Mother’s parental rights is not sufficiently supported by the record and is clearly erroneous.

(9) “On appeal from the Family Court’s termination of parental rights, this Court will uphold the Family Court’s factual findings if they are sufficiently

¹⁰ At the termination hearing, DSCYF argued for termination of Mother’s parental rights under 13 *Del. C.* § 1103 (a)(5) or in the alternative, 13 *Del. C.* § 1103 (a)(2). Because the trial judge found that that the statutory factor in 13 *Del. C.* § 1103 (a)(5) was satisfied, he did not address the alternative.

13 *Del. C.* § 1103, in pertinent part:

(a) The procedure for termination of parental rights for the purpose of adoption or, if a suitable adoption plan cannot be effected, for the purpose of providing for the care of the child by some other plan which may or may not contemplate the continued possibility of eventual adoption, may be initiated whenever it appears to be in the child’s best interests and that 1 or more of the following grounds exist...

(5) The parent or parents of the child, or any person or persons holding parental rights over the child, are not able, or have failed, to plan adequately for the child’s physical needs or mental and emotional health and development...

supported by the record and are not clearly wrong.”¹¹ This Court will not disturb inferences and deductions that are supported by the record.¹² “If the trial court has correctly applied the pertinent law, our review is limited to abuse of discretion.”¹³

(10) In Delaware, the trial judge must conduct a multistep analysis when making the decision to terminate parental rights. First, under 13 *Del. C.* § 1103, the trial judge determines whether Mother has failed to plan and whether there is clear and convincing proof of at least one of the enumerated statutory grounds for termination.¹⁴ Here, the trial judge found that DSCYF had established a statutory ground for termination, and Mother does not challenge the trial judge’s ruling under this first prong.

(11) The next inquiry requires a “determination that severing the parental right is in the best interests of the child.”¹⁵ Under the Best Interest standard, there must be “clear and convincing evidence that termination of parental rights is

¹¹ *Newton v. Division of Family Services*, 2006 WL 2852409 (Del.) (citing *In re Stevens* 652 A.2d 18, 23 (Del. 1995)).

¹² *Id.* (citing *Solis v. Tea*, 468 A. 2d 1276, 1279 (Del. 1983)).

¹³ *Parson v. Parson*, 793 A.2d 310 (Del. 2002) (citing *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983)).

¹⁴ *See Div. of Family Services v. Hutton*, 765 A.2d 1267, 1272 (Del. 2000). See also 13 *Del. C.* § 1103 (listing eight grounds for which parental rights may be terminated).

¹⁵ *See Shepherd v. Clemens* (citing 13 *Del. C.* § 1303 (a)(2)).

essential to the child's welfare."¹⁶ The factors enumerated in 13 *Del. C.* § 722(a)¹⁷ govern the Family's Court's Best Interest determination in a termination of parental rights proceeding.¹⁸ The Family Court weighs each factor as appropriate and considers all relevant evidence in order to arrive at a decision that reflects the child's best interests.¹⁹ Mother argues that the trial judge did not weigh these factors properly.

(12) The first statutory factor to be considered is the wishes of the child's parents.²⁰ The trial judge considered Mother's wishes weighed against the

¹⁶ *Div. of Family Services v. Hutton*, 765 A.2d 1267, 1272 (Del. 2000).

¹⁷ 13 *Del. C.* § 722 (a) The Court shall determine the legal custody and residential arrangements for a child in accordance with the best interests of the child. 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 custodial and residential arrangements;
- (2) The wishes of the child as to her 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 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.

¹⁸ *In Re Hanks*, 553 A.2d 1171, 1179 (Del. 1989).

¹⁹ *Holmes v. Wooley*, 788 A.2d 131 (Del. 2002).

²⁰ 13 *Del. C.* § 722 (a)(1).

termination of parental rights. Mother argues that this factor should have been given more weight. The interests of the child, however, must prevail where the interests of the child conflict with those of the parents.²¹ Although Mother claims she does not want her parental rights terminated, her actions reflect otherwise. Mother has been repeatedly incarcerated since Raimyia's birth. While Mother was caring for Raimyia, Mother used drugs and committed criminal offenses, including the March 19, 2005 offense. The trial judge's decision that Raimyia's interests must prevail over Mother's interests is correct as a matter of law.

(13) The Family Court next considered the second factor, the child's wishes.²² The trial judge determined that four-year-old Raimyia was too young to express an opinion and correctly deemed this factor neutral.²³

(14) Third, the trial judge considered Raimyia's other significant relationships, including those with parents, grandparents, or siblings.²⁴ Mother argues that the trial judge failed to consider Raimyia's bond with her maternal family members and erred by deciding that this factor weighed heavily in favor of

²¹ *In re Burns*, 519 A.2d 638, 644 (Del. 1986) (citing 13 *Del. C.* § 1113).

²² 13 *Del. C.* § 722 (a)(2).

²³ The child's guardian *ad litem* supports the petition to terminate the Mother's parental rights.

²⁴ 13 *Del. C.* § 722 (a)(3).

termination. The trial judge found that Raimyia did not have a significant relationship with Mother because Raimyia has been in foster care since October 2004. Before that, Raimyia lived with her Grandmother. The trial judge properly concluded that Raimyia did not have a positive, significant relationship with her Grandmother because of her Grandmother's chronic substance abuse and Raimyia's exposure to that environment.²⁵

(15) The trial judge then considered Raimyia's adjustment to home, school and community under the fourth factor.²⁶ The trial judge found this factor to be neutral or slightly favorable to termination. The court noted that Raimyia is well adjusted in Bush's home although there was no evidence indicating Raimyia would not be able to adjust to another placement, if necessary. Mother argues that this factor should have been deemed neutral, but cites no law or facts to support her argument. This Court will not give conclusory arguments, without more, any weight.

²⁵ The trial judge found that Raimyia did not have a relationship with her siblings; however, this is unclear from the record. Raimyia was living with her brother at the time DSCYF removed them from Mother's custody, but the nature and depth of their relationship is not apparent. In light of the record's vagueness, the negative effect of Raimyia's Mother and Grandmother outweigh Raimyia's relationship with her minor siblings.

²⁶ 13 *Del. C.* § 722 (a)(4).

(16) The trial judge next considered the mental and physical health of all persons involved under the fifth factor.²⁷ The trial judge noted Mother's chronic drug history, but deemed this factor neutral, because Raimyia is healthy and the parties did not present any evidence indicating that Mother's health would render her incapable of caring for Raimyia. Mother argues that this factor should have weighed against termination of parental rights because DSCYF did not present any evidence that Mother has any physical or mental health issues. Mother also contends that her recent sobriety should weigh in her favor. In his finding of fact, however, the trial judge noted that Mother has only been drug-free since her incarceration and has never voluntarily sought treatment.²⁸ Because Mother asserts no other factual basis to support her contention that the trial judge abused his discretion, we will not disturb his findings.

(17) Sixth, the trial judge considered the parents' past and present compliance with their rights and responsibilities to their child under 13 *Del. C.* § 701.²⁹ The trial judge found that this factor weighed heavily in favor of

²⁷ 13 *Del. C.* § 722 (a)(5).

²⁸ When pregnant with her son, Mother did enroll in a methadone program but did not follow through with the recommended counseling.

²⁹ See 13 *Del. C.* § 722 (a)(6); The relevant portion of 13 *Del. C.* § 701 provides, "The father and mother are the joint natural guardians of their minor child and are equally charged with the child's support, care, nurture, welfare and education."

termination of parental rights.³⁰ Mother argues that the trial judge failed to consider her relationship with Raimyia before Mother's incarceration. Specifically, Mother contends that the trial judge did not give proper weight to evidence presented regarding Mother's visitation. The argument is without merit. The issue is Mother's credibility, and the trial judge did not believe Mother's testimony regarding her visitation with Raimyia.³¹ "When determination of facts turns on a question of credibility and the acceptance or rejection of the testimony of witnesses appearing before him, those findings of the [t]rial [j]udge will be approved upon review, and we will not substitute our opinion for that of the trier of fact."³² In this case, the trial judge made specific findings, did not find Mother credible, and we must approve his findings.

³⁰ The trial judge found that the Mother's "transient life style, homelessness, and chronic drug abuse have led to her abrogation of her obligations to support, care, nurture, educate, and provide for the welfare of this child."

³¹ The trial judge stated that he did not believe Mother because (1) Mother did not once visit Raimyia in her first three and a half months of foster care; (2) Mother failed to inform her DSCYF case worker of any visitation, despite instruction that visits with Raimyia must be supervised; (3) Mother did not present any testimony from Bush corroborating these visits; and (4) Mother repeatedly provided false information regarding her identity to DSCYF and law enforcement.

³² *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

(18) Under the seventh factor, the trial judge considered any evidence of domestic violence.³³ The trial judge deemed this factor neutral because the parties did not present any evidence at trial regarding this factor.

(19) The trial judge then weighed the criminal history of any party or member of the child's household.³⁴ The trial judge logically concluded that this factor weighs heavily in favor of termination of parental rights. That conclusion is supported by the record. Both Mother and Grandmother have criminal histories and committed criminal drug offenses in Raimyia's presence. Mother argues that the trial judge improperly balanced her criminal history against her upcoming release from prison.³⁵ The trial judge properly noted that Mother has been incarcerated for most of Raimyia's life, and Mother's total history of substance abuse and neglect overrides the mere possibility of rehabilitation or reunification with Raimyia.

(20) Mother's contentions are focused on issues of fact, which this Court reviews for abuse of discretion. Because the trial judge's decision is supported by the record and is not clearly erroneous, we must conclude that he did not abuse his discretion.

³³ 13 *Del. C.* § 722 (a)(7).

³⁴ 13 *Del. C.* § 722 (a)(8).

³⁵ Mother's earliest expected release from prison is in the end of 2006. At trial, Mother admitted that she was not prepared to care for Raimyia.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice