

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CALVIN THOMAS,	§	
	§	No. 126, 2012
Respondent Below,	§	
Appellant,	§	Court Below—Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
DIVISION OF FAMILY	§	File No. 11-01-04TN
SERVICES,	§	Pet. No. 11-02166
	§	
Petitioner Below,	§	
Appellee.		

Submitted: August 2, 2012

Decided: September 6, 2012

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

ORDER

This 6th day of September 2012, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26.1 (“Rule 26.1”), his attorney’s motion to withdraw, and the responses of the appellee and the guardian *ad litem*, it appears to the Court that:

(1) The appellant, Calvin Thomas (“Thomas”), has filed an appeal from the Family Court’s order of February 10, 2012, terminating his parental rights in his child, Jason.¹ On appeal, Thomas’ counsel has filed an opening

¹ The Court hereby assigns a new pseudonym to the appellant, replacing the pseudonym previously assigned. The Court also assigns a pseudonym to the child. Del. Supr. Ct. R. 7(d).

brief and a motion to withdraw indicating that she is unable to present a meritorious argument in support of Thomas' appeal. Thomas has submitted a written response in response to the opening brief. In response to the opening brief and Thomas' written submission, the appellee, Division of Family Services (DFS), and the guardian *ad litem* (GAL) have moved to affirm the judgment of the Family Court.

(2) The background of this matter is as follows. Jason was born on June 2, 2009. DFS moved for emergency custody of Jason on June 5, 2009. In the motion and the accompanying dependency/neglect petition, DFS alleged that Jason's mother was mentally ill and unable to care for Jason and that Jason's father was unknown.

(3) DFS was granted emergency custody of Jason by *ex parte* order issued on June 5, 2009. Soon after, Jason's mother reported to DFS that Thomas was Jason's father, and that Thomas lived in Bridgeport, Connecticut.

(4) At the June 10, 2009 preliminary protective hearing, the Family Court directed that DFS make a good faith effort to locate Thomas and arrange for him to complete paternity testing. DFS located Thomas in July 2009 in Connecticut, where he resided. Through paternity testing Thomas was determined to be Jason's biological father in November 2009.

(5) At the June 10, 2009 preliminary protective hearing,² and at each of the mandated review hearings³ that followed,⁴ the Family Court found that Jason was dependent and that it was in Jason's best interest to remain in the custody of a DFS foster home.⁵ The Family Court also found that DFS had made reasonable efforts to reunify the family.⁶

(6) Thomas entered into a reunification case plan with DFS in March 2010.⁷ The plan required that Thomas provide proof of employment, secure child care, demonstrate his interest in Jason through regular visitation and contact with DFS, and cooperate in a required ICPC home study conducted by the Connecticut Department of Children & Families ("CDCF").⁸

(7) It appears that CDCF conducted an ICPC home study in March 2010 but denied Thomas as a suitable placement based on his lack of contact with Jason and lack of childcare. In July 2010, Thomas withdrew a second

² Del. Fam. Ct. Civ. R. 212.

³ See Del. Fam. Ct. Civ. R. 212-217 (governing review hearings in child dependency and neglect proceedings).

⁴ An adjudicatory hearing took place on July 21, 2009. A dispositional hearing took place on August 18, 2009. Review hearings took place on November 23, 2009 and February 18, 2010. Permanency hearings were held on June 8, 2010 and August 4, 2010. A post-permanency hearing took place on November 8, 2010.

⁵ Del. Fam. Ct. Civ. R. 212 – 217.

⁶ *Id.* Del. Fam. Ct. Civ. R. 209.

⁷ Del. Fam. Ct. Civ. R. 220.

⁸ The ICPC ("Interstate Compact for the Placement of Children") is codified in title 31, section 381 of the Delaware Code.

request for a home study after he lost his job and found himself without the financial resources to care for Jason.

(8) In July 2010, Jason was moved from his first foster home to his second and current foster home. Also in July 2010, Thomas identified a Florida relative as a potential placement option for Jason. Thomas initiated the ICPC home study to gain Florida's approval of the placement, and the approval was granted in April 2011. Nonetheless, it appears that by January 2012, the Florida relative had changed her mind about seeking placement of Jason in favor of Jason's continued placement with his current foster mother.

(9) On January 25, 2011, DFS filed a petition seeking termination of Thomas' parental rights on the ground that he had not planned adequately for Jason's physical needs or mental and emotional health and development. A two-day hearing was held on November 11, 2011 and January 10, 2012.

(10) Thomas participated by telephone during the first day of the hearing on November 11, 2011 and was scheduled to testify in person on the second day, January 10, 2012. Thomas did not appear at the January 10, 2012 hearing as scheduled, however, and he did not respond to the Family Court's efforts that day to contact him by telephone.

(11) Over the course of the termination hearing, the Family Court heard testimony from the DFS investigation supervisor, the DFS treatment

worker, two DFS permanency workers, Jason’s foster mother, who was identified as an adoptive resource, and a psychiatrist who conducted a bonding assessment of Jason and his foster mother. By order dated February 10, 2012, the Family Court terminated Thomas’ parental rights in Jason on the statutory ground that Thomas had failed to plan for Jason’s needs and that termination was in Jason’s best interest.⁹ This appeal followed.

(12) In Delaware, the termination of parental rights requires a two-step analysis.¹⁰ The Family Court must, first, identify a statutory basis for termination¹¹ and, second, determine what is in the best interest of the child.¹² Furthermore, when the statutory basis for termination is “failure to plan”¹³ there must be proof of at least one additional statutory condition¹⁴ and that DFS made *bona fide* reasonable efforts to preserve the family unit.¹⁵ It is incumbent on the petitioner to prove by clear and convincing evidence that there is a statutory basis for termination and that the best interest analysis favors termination.¹⁶

⁹ In the same order, the Family Court terminated the parental rights of Jason’s mother.

¹⁰ *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

¹¹ *Id.* at 537. See Del. Code Ann. tit. 13, § 1103(a) (2009) (listing grounds for termination of parental rights).

¹² *Shepherd v. Clemens*, 752 A.2d at 537. See Del. Code Ann. tit. 13, § 722(a) (listing best interest factors).

¹³ Del. Code Ann. tit. 13, § 1103(a)(5).

¹⁴ See Del. Code Ann. tit. 13, § 1103(a)(5)(a)-(b) (listing additional conditions).

¹⁵ *In re Hanks*, 553 A.2d 1171, 1179 (Del. 1989).

¹⁶ *Powell v. Dep’t of Serv. for Children, Youth & Their Families*, 963 A.2d 724, 731 (Del.

(13) This Court's review of a Family Court order terminating parental rights involves consideration of the facts and the law.¹⁷ Issues implicating rulings of law are reviewed *de novo*,¹⁸ and when issues implicate rulings of fact we conduct a limited review of the factual findings to assure that they are sufficiently supported by the record and are not clearly wrong.¹⁹ The Court does not disturb inferences and deductions that are supported by the record and that are the product of an orderly and logical deductive process.²⁰ If the Family Court has correctly applied the law, our review is limited to abuse of discretion.²¹

(14) Having carefully reviewed the parties' positions and the Family Court record, including the transcript of the two-day termination hearing, the Court concludes that there is clear and convincing evidence supporting the termination of Thomas' parental rights. Notwithstanding DFS' reasonable efforts in support of reunification as found by the Family Court and as reflected in the record, Thomas did not complete the major aspects of his case plan, namely provide proof of employment, secure child care, and visit regularly with Jason. Also, although he cooperated in the ICPC home study

2008) (citing *In re Stevens*, 652 A.2d 18, 23 (Del. 1995)).

¹⁷ *Wilson v. Div. of Family Serv.*, 988 A.2d 435, 439-40 (Del. 2010) (citing *Powell v. Dep't of Serv. for Children, Youth & Their Families*, 963 A.2d 724, 730-31 (Del. 2008)).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

conducted by CDCF, Thomas was not approved for placement, which was required.

(15) As found by the Family Court, and as reflected in the record, Jason has remained in the care and custody of DFS since June 5, 2009 when he was three days old. Also, Jason has developed a close bond with his current foster mother, who wishes to adopt him. These findings, as well as the court's findings of Thomas' limited contact and lack of relationship with Jason, fully support the Family Court's determination that termination of Thomas' parental rights is in the best interest of Jason.

(16) In his written submission, Thomas expresses his desire for reunification with Jason. Thomas does not, however, address the evidence of his failure to plan for Jason's physical needs or mental and emotional health and development.

(17) Having discerned no abuse of discretion in the Family Court's factual findings and no error in the court's application of the law to the facts when terminating Thomas parental rights, the Court concludes that Thomas' appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Thomas' counsel made a conscientious effort to examine the record and the law and properly determined that Thomas could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the motions to affirm filed by DFS and GAL are GRANTED. The judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Randy J. Holland

Justice