

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD TAYLOR AND)
NANCY STANLEY,) No. 18, 2010
)
Respondent Below,) Court Below: Family Court of
Appellants,) the State of Delaware in and for
) New Castle County
v.)
) File Nos. 07-11-06TN
DIVISION OF FAMILY SERVICES,) CN07-35699
)
Petitioner Below,)
Appellee.)

Submitted: September 8, 2010

Decided: October 22, 2010

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

ORDER

This 22nd day of October 2010, it appears to the Court that:

1. Richard Taylor and Nancy Stanley (the “Parents”), appeal from the Family Court’s granting of the Division of Family Services’ Termination of Parental Rights Petition related to the Respondents-Appellants’ two children. Parents argue that the Family Court violated Parents’ Due Process rights under the Fourteenth Amendment of the United States Constitution by finding probable cause to terminate at the Preliminary Protective Hearing (the “PPH”) on May 9, 2007. We find no merit to the Parents’ argument and **AFFIRM** the judgment of the Family Court.

2. N.T. and A.T. are the Parents' children.¹ In early May 2007, after a social worker at Wilmington Hospital alerted the Division of Family Services to troubling circumstances, DFS questioned the Parents at Wilmington Hospital.

3. On May 3, 2007, the Family Court granted DFS's emergency *ex parte* request for custody of the Children. On May 9, 2007, the Family Court held a PPH, during which Stanley indicated that she currently earned \$100 per week, a job she held for approximately a week-and-a-half. Taylor indicated that he left Children's birth certificates at a previous residence, which caused Children's medical benefits to lapse. Also, at the PPH, DFS counsel relied on several other facts, including the Parents' flight from Wilmington Hospital, a Wilmington Police chase after the Parents, and the Parents resisting arrest.

4. The Family Court found that probable cause existed to believe that the children continued to be dependent as defined by 10 *Del. C.* §901(8) because:

[T]he parents appear to be homeless although they deny it. They had been living in North Carolina and went to Minnesota in late November, 2006. They went to New York to get mother's birth certificate. They then went to North Carolina to make funeral arrangements for mother's grandfather and were driving through Delaware on the way to or from New York on May 1, 2007. They took their daughter, [N.T.], who had an infected finger and who is diabetic to the Christiana Hospital who then sent them to the Salvation Army. They were then sent to Wilmington Hospital. There are allegations, which the parents deny, that they left the hospital during an interview at

¹ These are the pseudonyms assigned on appeal pursuant to SUPR. CT. R. 7(d).

the hospital. The parents say they are now living in North Carolina.²

5. The Family Court further explained: “Mother is pregnant. The parents’ stories are confusing, complicated and raise questions about the parents’ ability to provide for these children.” The Family Court granted DFS continued custody of Children.³

6. On August 16, 2007, the Family Court held an Adjudicatory Hearing. Parents failed to appear. They had not visited the children over the last three and one-half months that DFS had custody of them. The Family Court found the Children to be dependent or neglected as defined by 10 *Del. C.* §901(8) or (11) and granted DFS continued custody of Children.

7. On November 20, 2007, the Family Court held a Dispositional Hearing and found that DFS had made reasonable efforts to reunify Parents and Children, but that Parents had failed to reciprocate in efforts to reunify the family. Parents did not provide an address to DFS. The Family Court granted DFS continued custody of Children, ordered DFS to continue efforts to reunify if the Parents cooperated and scheduled a termination of parental rights hearing for

² App. to Ans. Br. at B1.

³ App. to Ans. Br. at B1-B2.

March 14, 2008. Parents arrived late for the TPR hearing on March 14, 2008. The Court rescheduled the hearing until August 12, 2008.

8. On August 12, 2008, the Family Court held a Termination of Parental Rights Hearing. Parents did not appear. After hearing testimony, the Family Court terminated the Parents parental right on the grounds of abandonment and failure to plan.

9. Parents appealed to this court contending that they received inadequate notice of the TPR hearing. This Court remanded the case to the Family Court based on publication in the wrong newspaper.

10. On Remand, the Family Court conducted a new TPR Hearing before a different Judge. Parents attended most of the TPR hearing. On December 11, 2009, the Family Court entered an order terminating Parents' rights on the grounds of abandonment and failure to plan.

11. Parents contend that the Family Court violated their Due Process rights under the Fourteenth Amendment of the U.S. Constitution by finding probable cause at the PPH on May 9, 2007.

12. When reviewing a Family Court's order, our standard and scope of review involves a review of the facts and law, as well as the inferences and

conclusions made by the trial court.⁴ To the extent that the issues on appeal implicate rulings of law, we conduct a *de novo* review.⁵ To the extent that the issues on appeal implicate findings of fact, we conduct a limited review of the factual findings of the trial judge to assure that the record supports them and are not clearly wrong.⁶ This Court will not disturb inferences and conclusions the record supports and that are not clearly wrong.⁷ If the trial court has correctly applied the law, our review is limited to abuse of discretion.⁸

13. Family Court Rule 212(b) provides that: “Upon a finding by the Court that probable cause exists to believe that a child . . . continues to be dependent, the Court shall continue the custody order in effect if an ex parte order has been entered granting custody to the Department.” Family Court Rule 212(a) further provides that “[t]he finding of probable cause may be based upon hearsay evidence in whole or in part.” The term, “dependent,” as defined by 10 *Del. C.* §901(8) at the time of the PPH, means “a child whose physical, mental or emotional health and well-being is threatened or impaired because of inadequate

⁴ *Powell v. Dep’t of Serv. for Children, Youth, & Their Families (Powell)*, 963 A.2d 724, 730 (Del. 2008); *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

⁵ *Powell*, 963 A.2d at 730-31; *In re Heller*, 669 A.2d 25, 29 (Del. 1995).

⁶ *Powell*, 963 A.2d at 731; *In re Stevens*, 652 A.2d 18, 23 (Del. 1995).

⁷ *Id.*

⁸ *Powell*, 963 A.2d at 731; *Solis v. Tea*, 468 A.2d 1276, 1279.

care and protection by the child's custodian, who is unable to provide adequate care for the child . . .”

14. Here, the record sufficiently supports the Family Court's finding that probable cause existed to believe that Children's physical, mental, or emotional health and well-being were threatened or impaired because of inadequate care and protection by Parents. As permitted by Family Court Rule 212, the Family Court relied on Parents' statements and the hearsay statements of DFS counsel at the PPH. The Family Court did not abuse its discretion by granting DFS' continued custody of the Children in its order after the PPH. The record shows that by clear and convincing evidence that DFS made reasonable efforts to reunify the Parents with the Children and that the Parents parental rights were subject to termination for failure to plan and abandonment.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice