

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KAYLA CLARK,	§
	§ No. 29, 2011
Respondent Below,	§
Appellant,	§ Court Below – Family Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ File Nos. 09-08-08TN, CN08-
DIVISION OF FAMILY	§ 04072, CN08-04075
SERVICES, <sup>1</sup>	§ Petition Nos. 09-28881, 08-24449,
Petitioner Below,	§ 08-24458
Appellee.	§

Submitted: June 15, 2011

Decided: June 16, 2011

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

**O R D E R**

This 16th day of June 2011, it appears to the Court that:

1) The respondent-appellant, Kayla Clark (“Clark”), appeals from a Family Court judgment which granted a Division of Family Services (“DFS”) petition for the termination of Clark’s parental right in her two children, B.C. and K.C. (collectively “the Children”). Clark contends that the Family Court abused its discretion in concluding that termination of Clark’s parental rights was in the Children’s best interests. We find no merit

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<sup>1</sup> In January 21, 2011 Order, the Court *sua sponte* assigned a pseudonym to the respondent for purposes of this appeal pursuant to Supreme Court Rule 7(d).

to Clark's appeal. Therefore, the judgment of the Family Court must be affirmed.

2) This matter commenced approximately three years ago, when the Family Court granted DFS's *ex parte* petitions for custody of B.C. and K.C., who are approximately five years old and four years old, respectively. After the preliminary protective, adjudicatory, disposition, review, and permanency hearings that followed, the Family Court continued custody of the Children with DFS because, among other things, the Children continued to be "dependent" as defined by title 10, section 901(8) of the Delaware Code. After the permanency hearing, the Family Court also granted DFS's motion to change the goal to termination of parental rights, but continued concurrent planning for reunification with Clark.

3) The Family Court held a hearing on DFS's petition for termination of Clark's parental rights. Several witnesses testified, including Clark. The Family Court concluded that DFS had proven by clear and convincing evidence that Clark had failed to plan adequately for the Children. The Family Court also concluded that DFS had shown by clear and convincing evidence that it had made reasonable efforts to reunify Clark with the Children. Finally, the Family Court concluded that termination of

Clark's parental rights was in the best interests of the Children, and explained that conclusion, in part, as follows:

While required to consider all factors relevant to this case in determining the Children's best interest[s], the Court must specifically consider the factors enumerated in 13 Del. C. § 722.

Mother desires to have the Children returned to her care . . . . Given the young ages of the Children, the court has not interview[ed] the Children and finds their wishes are inconclusive.

Mother's interactions with the children have in general been positive. . . . This favors Mother.

While Mother's visitations with the Children have gone well, the Court is concerned that Mother does not understand how her drug use affects her children and her ability to care for them. Mother testified that she used drugs while she was pregnant with her son [] because she did not think the drugs would harm the baby. The Court finds that Mother's continued drug use without regard to how it will affect the Children demonstrates that this factor favors [t]ermination of [p]arental [r]ights.

. . . Mother has been diagnosed with major depressive disorder . . . [and there are] concerns that she might also be suffering from a bipolar spectrum disorder. Mother herself has stated that she has gone through depressive periods. Mother, however[,] has failed to consistently attend her therapy appointments and has instead chosen to self medicate with marijuana. Mother has also displayed reluctance in taking her prescribed medication. . . . [R]egardless of the label applied to Mother's mental health problems, the critical issue is whether her mental health is stabilized enough that she can effectively parent the Children. The Court finds Mother has been resistant to treatment and is not yet stabilized as reflected by her inconsistent attendance at therapy sessions, her reluctance to taking her prescribed

medication, and her lack of steady employment. . . . The Court finds these factors favors [t]ermination of parental rights.

Mother . . . ha[s] failed to meet [her] parental responsibilities. Mother has failed to provide stable housing or income for the Children. . . . The Court finds this factor favors [t]ermination of parental rights.

Domestic [v]iolence is not an issue in the present case. . . .

Accordingly, considering all these factors as whole, the Court finds Mother's inability to provide stable housing, her inconsistent participation in therapy for her mental health, her ongoing use of drugs without concern for its possible [e]ffects on the Children, and her failure to meet her parental responsibilities favor terminating her parental rights. . . .

In accordance with that analysis, the Family Court granted DFS's petition for termination of Clark's parental rights in B.C. and K.C. This appeal followed.

4) 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 deductions that the Family Court has made.<sup>2</sup> To the extent that the issues on appeal implicate rulings of law, we conduct a *de novo* review.<sup>3</sup> To the extent that the issues on appeal implicate rulings of fact, we conduct a review of the factual findings of the Family Court to assure that

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<sup>2</sup> *Powell v. Dep't of Servs. for Children, Youth & Their Families*, 963 A.2d 724, 730 (Del. 2008); *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

<sup>3</sup> *Powell v. Dep't of Servs. for Children, Youth & Their Families*, 963 A.2d at 730-31; *In re Heller*, 669 A.2d 25, 29 (Del. 1995).

they are sufficiently supported by the record and are not clearly erroneous.<sup>4</sup> We will not disturb inferences and deductions that are supported by the record and that are the product of an orderly and logical deductive process.<sup>5</sup> If the Family Court has correctly applied the law, the standard of appellate review is to determine if there has been an abuse of discretion.<sup>6</sup>

5) In Delaware, the statutory standard for terminating parental rights provides for two separate inquiries.<sup>7</sup> In the first inquiry, the Family Court must find a statutory basis for termination under title 13, section 1103 of the Delaware Code. In the second inquiry, the Family Court must determine whether termination is in the best interests of the Children. The Family Court is required to consider all relevant factors, including:

- (1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;
- (2) The wishes of the child as to his or her custodian or custodians 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 a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;

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<sup>4</sup> *Powell v. Dep't of Servs. for Children, Youth & Their Families*, 963 A.2d at 731; *In re Stevens*, 652 A.2d 18, 23 (Del. 1995).

<sup>5</sup> *Id.*

<sup>6</sup> *Powell v. Dep't of Servs. for Children, Youth & Their Families*, 963 A.2d at 731; *Solis v. Tea*, 468 A.2d at 1279.

<sup>7</sup> *Shepherd v. Clements*, 752 A.2d 533, 536-37 (Del. 2000).

(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 [section] 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.<sup>8</sup>

DFS must satisfy both inquiries by clear and convincing evidence.<sup>9</sup>

6) Clark contends that “[t]he Family Court’s decision that it is in the [C]hildren’s best interest[s] to terminate [Clark]’s parental rights is not sufficiently supported by the record and is not the result of an orderly and logical deductive process.” Specifically, Clark argues that the Family Court failed to address the fourth and eighth best interests factors -- the Children’s adjustment to their home, school and community and Clark’s clean criminal record.

7) In *Harper v. Division of Family Services*,<sup>10</sup> we emphasized that section 722 states that “[i]n determining the best interests of the child, the

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<sup>8</sup> Del. Code Ann. tit. 13, § 722(a).

<sup>9</sup> *In re Stevens*, 652 A.2d at 23.

<sup>10</sup> *Harper v. Div. of Family Servs*, 953 A.2d 719 (Del. 2008).

Court shall *consider* all relevant factors.”<sup>11</sup> The Court in *Harper* explained that “[s]ection 722 does not require the Family Court to articulate a step-by-step analysis.”<sup>12</sup> In *Harper*, we concluded that the Family Court did not abuse its discretion in independently discussing only five of the eight section 722 factors, because the three factors to which the Family Court did not draw particular attention were not as pertinent as the other factors it discussed.

8) In this case, the record reflects that the Family Court *considered* each of the section 722 factors.<sup>13</sup> Given our holding in *Harper*, Clark has not shown that the Family Court abused its discretion by independently discussing only six of the eight factors, because the two factors that the Family Court did not specifically address were not as pertinent as the other factors here.

9) Clark’s final argument essentially asks this the Court to reweigh the best interests factors in her favor. That is not this Court’s role on appeal in reviewing the Family Court’s decision.<sup>14</sup> The record reflects that the

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<sup>11</sup> *Id.* at 725 (quoting Del. Code Ann. tit. 13, § 722).

<sup>12</sup> *Id.*

<sup>13</sup> The Family Court’s decision provides: “[T]he Court must specifically consider the factors enumerated in 13 *Del. C.* § 722.”

<sup>14</sup> *Barr v. Div. of Family Servs.*, 974 A.2d 88, 98 (Del. 2009) (“The amount of weight given to one factor or combination of factors will be different in any given proceeding. It is quite possible that the weight of one factor will counterbalance the combined weight of

Family Court enumerated each of the pertinent best interests factors and recounted the evidence that it deemed relevant under each of those factors. The Family Court also weighed testimony and made factual findings, which guided its decision. The Family Court concluded that only one of the eight best interests factors -- Clark's wishes -- weighed against termination of her parental rights. The Family Court's findings are supported by the record. In these circumstances, Clark has not shown that the Family Court abused its discretion in concluding that termination of her parental rights was in the Children's best interests.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Family Court is affirmed.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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all other factors and be outcome-determinative in some situations.”) (quoting *Powell v. Dep't of Servs. for Children, Youth & Their Families*, 963 A.2d at 735).