

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM JAMISON,)	
)	
Respondent Below,)	No. 107, 2000
Appellant.)	
)	Court Below: Family Court
v.)	of the State of Delaware in
)	and for New Castle County
DIVISION OF FAMILY SERVICES,)	
)	File No.: 99-06-26TN
Petitioner Below,)	
Appellee.)	

Submitted: November 21, 2000

Decided: March 8, 2001

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

ORDER

This 8th day of March, 2001, it appears to the Court that:

1. William Jamison¹ appeals the February 23, 2000 judgment of the Family Court terminating his parental rights. Jamison argues that the Family Court wrongfully granted the Division of Family Services (“DFS”) custody of his children when it violated his constitutional due process rights by holding a

¹ Pseudonyms have been used pursuant to Del. Supr. Ct. R. 7(d).

dependency/neglect hearing² that he did not attend.³ Jamison also argues that the Family Court erred in finding that DFS satisfied the statutory requirements of 29 *Del. C.* § 9003(3)(a)(3) to provide preventive services and reunification services with him because DFS did not contact him or attempt to arrange visitation of the children with him while he was incarcerated, despite Family Court orders, while his children were in the custody of DFS.⁴

2. Jamison and Candace McColley are the natural parents of six children who were born between 1989 and 1995.⁵ Before the Family Court terminated the parental rights of Jamison, the children had been in and out of the custody of DFS since approximately 1994. During this period, Jamison was incarcerated and had little contact with the children.

3. Jamison was incarcerated from March 1989 to sometime in 1994. Three months after his release in 1994, he was again incarcerated, then released on October 28, 1997. On November 26, 1997, only one month after his release,

² Once DFS shows probable cause pursuant to *Fam. Ct. Civ. R.* 202 that a child is in imminent risk of physical, mental or emotional danger, the Family Court conducts an adjudicatory hearing pursuant to *Fam. Ct. Civ. R.* 203 to determine whether a child is dependent, neglected or abused. In this case, once the Family Court found the children dependent and neglected, it granted custody of the children to DFS pursuant to 10 *Del. C.* § 1009(b), which lists eleven actions the Family Court may take to serve best the needs of the children.

³ Rule 203 does not require that the parents be present at the hearing.

⁴ Although Jamison contends that DFS disregarded a 1998 Family Court order ordering DFS to establish visitation with him and his children, he neither cites with specificity nor includes a copy of the order in his opening brief, reply brief or appendix.

⁵ Jamison and McColley were never married.

Jamison was convicted of first degree robbery, sentenced to twenty years imprisonment and is not scheduled to be released until 2019. In 2019, his youngest child will be twenty-four years old.

4. In 1994, DFS received four complaints between January and May regarding physical neglect of the children. On October 11, 1994, DFS took the children into custody because McColley left them unsupervised for forty-five minutes in an unfit dwelling. In March 1995, DFS received a complaint regarding physical neglect of the children. In November 1996, DFS again received a complaint regarding physical neglect of the children. At that time, McColley and the children were homeless, and the children had missed several days of school. DFS obtained emergency custody of the children. Approximately two years later on October 28, 1998, the Family Court returned custody to McColley.

5. On May 25, 1999, DFS received a complaint about physical neglect of the children. An investigation revealed that the children's home was uninhabitable because of trash, the smell of urine and inadequate plumbing facilities. Two days later, on May 27, 1999, the Family Court granted an *ex parte* order granting DFS emergency custody of the children. DFS maintained custody through June 4, 1999 when the Family Court held a probable cause hearing pursuant to Fam. Ct. Civ. R. 202 at which Jamison and McColley appeared *pro se*. During the hearing, Jamison

and McColley received notice of a dependency/neglect hearing scheduled for July 2, 1999.⁶

6. On July 2, 1999, the Family Court held the dependency/neglect hearing. McColley failed to appear despite notice of the hearing at the June 4, 1999 probable cause hearing.⁷ The Department of Corrections did not bring Jamison to the hearing. The Family Court ruled that DFS would retain custody of all six children, that DFS had made reasonable efforts towards reunification with the parents and that it would not be necessary for DFS to continue making efforts towards reunification.⁸

7. Jamison argues that the Family Court violated his due process rights when it granted DFS custody of his six children, in his absence, at the July 2, 1999 dependency/neglect hearing. Jamison cites *In re Heller*⁹ for the proposition that “[n]atural parents possess a fundamental liberty interest in the care, custody and management of their children ... [and] before the State can intercede and deprive a parent of this fundamental liberty interest, it must afford the parent with the requisite due process protection.”¹⁰ Jamison contends that, through no fault of his

⁶ See *supra* n. 2.

⁷ The Family Court noted that McColley knew at that time that DFS had filed a Termination of Parental Rights Petition on June 30, 1999.

⁸ The Family Court terminated McColley’s parental rights on October 6, 1999.

⁹ Del. Supr., 669 A.2d 25 (1995).

¹⁰ *Id.* at 30.

own, the Department of Corrections did not transport him to the July 2, 1999 hearing. Jamison argues that the State's failure to transport him to the hearing denied him due process and deprived him of his fundamental liberty interest in the custody of his children. Jamison contends that DFS wrongfully and unlawfully gained custody of his children in violation of his due process rights. Because DFS did not have a legal basis to file a Termination of Parental Rights Petition until it had lawfully been granted custody of the children, Jamison urges this Court to reverse the judgment of the Family Court terminating his parental rights on February 23, 2000.

8. In a termination of parental rights proceeding, we analyze the due process standards in accordance with the factors established by the United States Supreme Court in *Mathews v. Eldridge*.¹¹ These factors are:

(1) the private interest that will be affected by the official action; (2) the risk that there will be an erroneous deprivation of the interest through the procedures used and the probable value of any additional or substitute procedural safeguard; and (3) the government interest involved, including the added fiscal and administrative burdens that additional or substitute procedures would require.¹²

Here the interests of Jamison and the State, through DFS, are equally compelling.¹³

¹¹ 424 U.S. 319, 335 (1976).

¹² *In re Burns*, Del. Supr., 519 A.2d 638, 645 (1986).

¹³ See *In Re Heller*, at 31 (comparing the sufficiency of the termination of parental rights proceedings to the possible additional safeguards that may have protected the mother against the possible erroneous deprivation of her parental rights).

9. In *In re Heller*, this Court held that the Family Court did not violate the due process rights of an incarcerated mother who participated in a termination of parental rights hearing by telephone. This Court found that “an incarcerated parent does not have a constitutional right to be physically present at a termination of parental rights hearing.”¹⁴ That the decision “allowing a parent who is incarcerated or otherwise confined in custody of a government to attend the termination hearing is within the discretion of the trial court, whose decision on appeal will be upheld in the absence of an abuse of discretion.”¹⁵

10. In *In re Heller*, this Court also found that the mother had received ample notice of the termination of parental rights hearing, that the mother had adequate opportunity to consult with counsel and prepare for trial, that the mother knew the ramifications of the termination of her parental rights, that the mother showed no prejudice in not being present at the termination hearing and that the mother did not show that had she been present, the Family Court would have decided the case the other way.¹⁶

11. In this case, the Family Court found that although Jamison did not attend the dependency/neglect hearing, that fact alone did not prejudice him or

¹⁴ *Id.* at 32.

¹⁵ *Id.* (quoting *In re Interest of L.V.*, Supr., 240 Neb. 404, 482 N.W.2d 250, 258 (1992)).

¹⁶ *See Id.* at 31-32.

prevent him in any way from objecting to the placement of his children with DFS. On June 4, 1999, one month before the dependency/neglect hearing, Jamison attended a probable cause hearing in the Family Court. He received notification at that time about the future dependency/neglect hearing. The Family Court found that Jamison knew that his children were in the custody of DFS and could have challenged that placement at any time before the termination of parental rights hearing. DFS filed a petition for termination of parental rights on June 30, 2000. Jamison received a copy of the Termination of Parental Rights Petition. Family Court appointed counsel for Jamison at the termination of parental rights hearing. Moreover, the Family Court noted that while Jamison had filed several *pro se* appeals regarding his criminal matters, he did not petition the Family Court for a review of the July 2, 1999 dependency/neglect order or for visitation with his children.

12. Based on the facts in this case and our decision in *In re Heller*, we find that the Family Court afforded Jamison due process despite the fact that he did not appear at the dependency/neglect hearing. Under the facts of this case, the mere fact that the Department of Correction did not bring Jamison to the hearing, did not deprive him of due process. We find that Jamison failed to take advantage of the entire process for objecting to the placement with DFS despite knowledge of

that possibility, the opportunity to challenge the action and an understanding that it served as a precursor to the termination of his parental rights.

13. Jamison argues that the Family Court erred in finding that DFS met the statutory requirement to provide preventive services and reunification services pursuant to 29 *Del. C.* § 9003. Jamison contests DFS's determination that because of his anticipated lengthy incarceration, any attempts at reunification were not feasible. Jamison contends that by not involving him in any manner regarding the custody of his children, DFS could not have any knowledge of whether the children could be placed with one of Jamison's family members. Specifically, Jamison asserts that the children could have been placed with his mother, noting that during the termination hearing a social worker acknowledged that she was not aware that Jamison's mother may have been a placement option.

14. The clear and convincing standard of proof must be met when the termination of parental rights is sought.¹⁷ On appeal from a decision of an order terminating parental rights, this Court will conduct a limited review of the factual findings to "assure that they are sufficiently supported by the record and result from an orderly and logical deductive process."¹⁸ Absent those assurances, or if the factual findings are clearly erroneous, this Court can make independent

¹⁷ *Patricia A.F. v. James R.F.*, Del. Supr., 451 A.2d 830 (1982).

¹⁸ *In Interest of Kelly Stevens*, Del. Supr., 652 A.2d 18, 23 (1995).

findings.¹⁹ Additionally, as to appellate issues which “implicate rulings of law, [this Court’s] review is *de novo* and this Court will set aside erroneous interpretations of applicable law.”²⁰

15. Under Delaware law, termination of parental rights can only occur if the Family Court is satisfied that DFS exerted all reasonable efforts to prevent removal of the children from their natural parent and to reunify them with their natural parent.²¹ Once DFS has satisfied this requirement, it must show, by clear and convincing evidence, at least one statutory ground under 13 *Del. C.* § 1103(a). DFS must then show that the termination of parental rights would be in the best interests of the child.

16. In *In re Heller*, this Court upheld the Family Court’s holding that DFS had no statutory obligation to attempt reunification between an incarcerated father and his son because “it would not have been feasible.”²² The Family Court also found that the father had attempted to contact his son on only two occasions before the termination of his parental rights.

¹⁹ *Levitt v. Bouvier*, Del. Supr., 287 A.2d 671, 673 (1972).

²⁰ *In Interest of Kelly Stevens*, 652 A.2d at 23 (citing *Black v. Gray*, Del. Supr., 540 A.2d 431, 432 (1988)).

²¹ See *In the Matter of Derek W. Burns, a Minor Child*, Del. Supr., 519 A.2d 639, 644 (1986).

²² See *In re Heller*, at 29 (discussing that while 29 *Del. C.* § 9003(3)(a)(2) provides that DFS will provide reunification services, subsection (13) clarifies that provision that DFS will provide “*whenever feasible*, reunification services for children and their families). 29 *Del. C.* § 9003(13) (emphasis added).

17. In this case, the Family Court found that DFS had exhausted all possible means of keeping the children with their natural parents. DFS provided McColley several opportunities to demonstrate that she could properly care for the children, but she failed each time. McColley's parental rights were terminated only after showing that the children were severely neglected and possibly abused.

18. The Family Court found that DFS met its statutory obligation of reunifying Jamison with his children, finding that DFS made efforts to arrange visitation for the children with Jamison but to no avail. The Family Court found that Jamison had no contact with any of the children for the two years preceding the termination of parental rights hearing and that Jamison had made no efforts to contact the children. The Family Court found that these reasons coupled with Jamison's lengthy incarceration showed that DFS had met its statutory obligation to provide reunification services.

19. Contrary to Jamison's argument that DFS made no efforts to place the children with one of his family members, specifically his mother, the record shows that DFS, in fact, attempted reunification efforts with Jamison's relatives, but that option was not available. DFS discussed placement options with Jamison's

mother, but she stated to a DFS social worker that she was not in a position to care for the children because she was in a drug and alcohol center.²³ The Family Court found that Jamison had previously stated that he knew of no family members available to care for the children.

20. Having reviewed the decision of the Family Court, we find the factual findings of the Family Court are sufficiently supported by the record and result from an orderly and logical deductive process. We find that Jamison's physical absence from the dependency/neglect hearing did not violate his due process rights, and we find that DFS met its statutory obligation pursuant to 29 *Del. C.* § 9003 in its efforts at reunifying Jamison with his children.

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

BY THE COURT:

/s/ Myron T. Steele
Justice

²³ App. to Appellant's Op. Br. at A-46 – A-47.