

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS WALKER, ¹	§
	§ No. 439, 2012
Respondent Below,	§
Appellant,	§ Court Below—Family Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§
DIVISION OF FAMILY SERVICES,	§ File Nos. CN11-01525 and
	§ 12-01-06TN
Petitioner Below,	§ Pet. Nos. 11-03730 and
Appellee.	§ 12-02660

Submitted: October 15, 2012
Decided: November 28, 2012

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

ORDER

This 28th day of November 2012, upon consideration of the appellant's brief filed under Supreme Court Rule 26.1, his attorney's motion to withdraw, and the responses filed by the Division of Family Services (“DFS”) and the guardian *ad litem* (“GAL”), it appears to the Court that:

(1) The respondent-appellant, Thomas Walker (“Father”), appeals from a Family Court opinion, dated July 11, 2012, which terminated his parental rights regarding his minor daughter (“Child”). Father’s counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26.1. Counsel asserts that she has

¹ The Court previously assigned a pseudonym to the appellant under Supreme Court Rule 7(d).

made a conscientious review of the record and the law and finds no arguable ground for appeal. Father has responded to his counsel's motion and brief, and the DFS and the GAL have each filed a response to the brief and a motion to affirm the judgment below.

(2) The Child was born in January 2001. Her mother is deceased. Between October 2001 and February 2011, Father was in the custody of the Department of Correction at Level IV or Level V supervision for various parole violations. The Child's paternal aunt ("Paternal Aunt") had guardianship over the Child. In February 2011, Paternal Aunt requested that her guardianship be terminated, because of her difficulties in managing the Child's behavioral issues and because the Child had caused a fire that significantly damaged Paternal Aunt's home. DFS was granted temporary custody of the Child, who was placed in the Terry Center for treatment of her significant mental health issues. On February 16, 2011, the Family Court appointed counsel to act as the GAL for the Child, and also appointed counsel to represent Father. Following a preliminary protective hearing, the Family Court found that the Child was dependent based on the termination of Paternal Aunt's guardianship² and Father's stipulation of dependency.

² Although Paternal Aunt had continued significant involvement with the Child after her placement in DFS' custody, Paternal Aunt indicated that she could not be considered a resource for permanent placement of the Child.

(3) On March 28, 2011, after an adjudicatory hearing, the Family Court concluded that the Child remained dependent because Father, who had recently been released from incarceration, did not have appropriate, stable housing. The court further found that, given the Child's significant mental health issues, planning for reunification with Father must occur at a careful pace. DFS offered Father a reunification plan that required him to: maintain adequate employment; arrange a backup plan for appropriate caregivers when Father was unavailable to be with the Child; participate in meetings with the program director of the Terry Center; undergo mental health and substance abuse evaluations and follow any recommendations for treatment; obtain and maintain stable housing; comply with all terms of parole/probation; and participate in the Child's mental health treatment. On May 3, 2011, the Family Court approved this reunification plan with two changes: Father's mental health and substance abuse evaluations were deferred, and Father was ordered to authorize the release of his mental health and substance abuse evaluations and treatment records.

(4) After holding review hearings in June and September of 2011, the Family Court noted that Father had several visits with the Child, which went well, but that Father missed several scheduled visits and failed to engage consistently in parent training or the Child's counseling. The Child's therapist indicated that

Father and the Child's relationship was progressing, but the Child was not ready to be placed in Father's home.

(5) On December 20, 2011, DFS moved to change the goal from reunification to termination of parental rights. DFS claimed that Father had been incarcerated in September 2011 on a violation of parole charge, and that he was not making the progress necessary to achieve the goals of his case plan. Father lacked stable income, lacked appropriate housing, consistently failed to attend family counseling, and failed to complete parenting education. Following a permanency hearing in January 2012, the Family Court approved the goal of termination of parental rights for the purposes of adoption. It also found that a concurrent permanency goal of reunification with Father remained appropriate.

(6) On June 19, 2012, the Family Court held a hearing on DFS' petition to terminate Father's parental rights. The evidence at that hearing reflected that Father had been arrested on new drug charges, as a result of which he was charged with violating parole. Father remained incarcerated as of the date of the hearing and had been in prison since February 10, 2012, awaiting the disposition of the new charges. Because of his incarceration, Father had not completed his case plan with DFS. The Child's treatment workers testified that the Child had made significant progress in her mental health treatment during her fifteen-month stay at the Terry Center, and that she was continuing to make progress in dealing with her

emotional issues after moving into a group home in March 2012. The Child was extremely anxious about the possibility of being placed with Father because she felt she could not trust him to stay out of jail. The testimony established that, with continued treatment, the Child could be a candidate for adoption.

(7) Father testified at the hearing. He acknowledged that he has been incarcerated for most of the Child's life, and that, as a result of his most recent incarceration, he had not completed his case plan with DFS. Father claimed, however, that he and the Child love each other and that it was not in the Child's best interest for his parental rights to be terminated.

(8) Following the hearing, the Family Court issued an opinion, dated July 11, 2012, granting DFS' petition to terminate Father's parental rights. Based on the testimony provided by numerous witnesses, the Family Court found that DFS had established by clear and convincing evidence that Father's parental rights should be terminated because he had failed to plan adequately for the Child, and because the Child had been in DFS' custody for seventeen months.³ The Family Court further concluded that DFS had established by clear and convincing evidence that termination of Father's parental rights was in the Child's best interests.⁴ The Family Court noted Father's multiple parole violations since the

³ See DEL. CODE ANN. tit. 13, § 1103(a)(5) (2009).

⁴ See DEL. CODE ANN. tit. 13, § 722 (2009).

Child's birth in 2001, for which Father was incarcerated for most of the Child's life. The Family Court concluded that, given Father's most recent arrest on drug charges and his resulting incarceration pending the resolution of his parole violation charge, Father was unable to demonstrate how and when, if ever, he could provide the degree of care and emotional support that the Child needed.

(9) In response to his counsel's opening brief, Father contends that he has a loving relationship with the Child, that his most recent parole violation was the result of misinformation, and that he has been drug-free since 2001. He argues that he would have been able to complete his DFS case plan had he not been wrongfully arrested and charged with violating his parole. Father also takes issue with the treatment that the Child has received while in DFS' custody. He asserts that he will be able to provide love and support to the Child once he finds a stable home, and that it was premature for the Family Court to terminate his parental rights. He further contends that it was improper for the Family Court not to interview the Child but, instead, to rely on the therapist's statements that the Child wants no contact with Father.

(10) This Court reviews a Family Court decision to terminate parental rights by considering the facts and the law as well as the inferences and deductions made by the Family Court.⁵ To the extent that the Family Court decision implicates

⁵ *Wilson v. Div. of Family Serv.*, 988 A.2d 435, 439-40 (Del. 2010).

rulings of law, our review is *de novo*.⁶ To the extent that the issues on appeal implicate findings of fact, we conduct a limited review of those factual findings to assure that they are sufficiently supported by the record and are not clearly wrong.⁷

(11) In reviewing a petition for termination of parental rights, the Family Court must employ a two-step analysis.⁸ First, the court must determine by clear and convincing evidence whether a statutory basis exists for termination.⁹ Second, the court must determine by clear and convincing evidence whether termination of parental rights is in the child's best interests.¹⁰

(12) We have carefully reviewed the parties' positions and the record below, and conclude that there is ample evidence to support a Family Court termination of Father's parental rights on the statutory basis that he had failed to plan adequately for the Child's physical needs and mental and emotional health and development, and because termination was clearly in the Child's best interests. We find no abuse of discretion in the Family Court's factual findings and no error in its application of the law to the facts. Accordingly, the judgment below shall be affirmed.

⁶ *Id.* at 440.

⁷ *Powell v. Dep't of Serv. for Children, Youth & Their Families*, 963 A.2d 724, 731 (Del. 2008).

⁸ DEL. CODE ANN. tit. 13, § 1103(a) (2009).

⁹ *Shepherd v. Clemens*, 752 A.2d 533, 537 (Del. 2000) (citing *In re Kelly Stevens*, 652 A.2d 18, 24 (Del. 1995)).

¹⁰ *Id.*

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice