

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PRUDENCE REYNOLDS and	§ Nos. 282/287, 2002
CHAD LENNON,	§ (CONSOLIDATED)
	§
Respondents Below,	§
Appellant,	§ Court Below: Family Court of
	§ the State of Delaware in and for
v.	§ New Castle County
	§
DIVISION OF FAMILY SERVICES,	§ File No. CN00-10-02TN
	§ File No. CN98-06124
Petitioner Below,	§
Appellee.	§

Submitted: November 19, 2002

Decided: December 27, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

**ORDER**

This 27<sup>th</sup> day of December 2002, upon consideration of the briefs of the parties it appears to the Court that:

(1) Golden Clifford Owens is the child of Prudence Reynolds and Chad Lennon.<sup>1</sup> Golden was born on December 2, 1996, and is currently 6 years old.

(2) On December 31, 1997, the Division of Family Services received a hot-line call regarding Golden. The phone call was later found to be without merit. Two weeks later, on January 10, 1998, DFS responded to another hot-line call regarding Golden.

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<sup>1</sup>The use of pseudonyms has been provided for mother and father pursuant to Supreme Court Rule 7(d).

This hot-line call was also found to be without merit, but DFS removed the child from the home and placed him. At the time DFS obtained custody and care of Golden he was thirteen months old.

(3) In February 1998, Lennon and Reynolds entered into a case plan with DFS. The plan required the parents to secure housing, participate in psychological, drug and alcohol evaluations, attend parenting classes, and visit with Golden. In April 1998, DFS formed a new case plan with the parents to address concerns from the evaluations.

(4) In August 1998, Lennon and Reynolds secured housing in Elkton, Maryland. One month later, Maryland child protective authorities notified DFS that Reynolds had given birth to a girl, Sabrina. The family was referred to the Cecil County Department of Social Services as a result of the problems Sabrina, who was premature, was experiencing. Maryland opened a case for Sabrina.

(5) By January 1999, Golden remained in the custody of Delaware DFS. As a result of an unsubstantiated allegation by his current caretaker, Golden was placed in a foster home. DFS did not place Golden with his parents out of concerns for their hygiene, their inability to control Golden, and their financial instability. In September 1999, however, Golden was returned to the care of his parents in an attempt to intensify reunification efforts. The family continued to reside in Maryland so the two

states operated together to monitor the family. DFS provided services in the home, including a parent aide, visiting nurse, and financial assistance. DFS also set up daycare for Golden at a local Head Start program. Despite the efforts of DFS the deplorable conditions of the home remained a problem. DFS also continued to have concerns about the parent's failure to follow through with counseling and their lack of consistent employment.

(6) In June 2000 the Maryland agency removed both children from the home. The decision was due to the dangerously unsanitary and unsafe conditions in the home. Golden was returned to Delaware DFS and placed with a family. Sabrina remained in Maryland.

(7) One month later, in July 2000, DFS instituted its termination of parental rights petition against Lennon and Reynolds. In September 2000, Lennon and Reynolds had their last visit with Golden.

(8) On October 1, 2000, DFS placed Golden in his current home. He was found to have behavioral and psychological problems that required counseling. After he injured a classmate, Golden's pre-adoptive parents took him to receive medication and therapy from Dr. Victoria Kelly. Golden is still Dr. Kelly's patient.

(9) Some time after the removal of his children, Lennon separated from Reynolds in an attempt to regain custody. In February 2001, Lennon moved in with relatives whose home was approved as suitable for the placement of Sabrina. Lennon obtained full time employment in Lewes, Delaware, and enrolled in college. He completed another parenting course and obtained medical insurance for his daughter. As a result of his improvements and his present condition, Maryland returned Sabrina to the custody of her father on March 21, 2001.

(10) The termination petition for Golden continued. Hearings on the termination petition began on July 31, 2001, and continued on November 5, 6, and 7, 2001, and January 11, 2002. Closing arguments occurred on February 1, 2002.

(11) At the Court's request, DFS's witness, Dr. Kelly, Gordon's psychologist, gave supplemental testimony on March 28, 2002, after the close of evidence. Lennon and Reynolds objected at trial but the court overruled their objection. They then requested additional time to supplement the record in response to Dr. Kelly's testimony. The court granted their request but never received a motion from either party.

(12) The court approved the termination of parental rights petition in both Lennon and Reynolds. Reynolds does not request custody of Golden but wishes Lennon to have custody. The Family Court acknowledged Reynolds' request but found

that there was no reason to terminate the mother's rights unless they also terminated the father's rights. Therefore we will analyze the appeal in the same manner.

(13) On appeal Lennon and Reynolds raise two issues: (a) whether the Family Court erred by finding that DFS proved by clear and convincing evidence that both parents failed to adequately plan for the physical and emotional needs of Golden and that termination is in Golden's best interests, and (b) whether the trial court erred by recalling and questioning an expert witness after the close of evidence. We will first address whether DFS met its burden at trial and whether termination is in Golden's best interests.

(14) This Court's review of a termination petition where the Family Court conducted an evidentiary hearing is limited to a review of the court's factual findings to assure they are logical and supported by the record.<sup>2</sup> The Court will not disturb the Family Court's findings of fact unless they are clearly erroneous and justice requires they be overturned.<sup>3</sup>

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<sup>2</sup>*In the Interest of Stevens*, 669 A.2d 33, 34 (Del. 1995).

<sup>3</sup>*Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

(15) A court may grant a termination of parental rights petition if two requirements are met: (a) facts exist that show proof of an enumerated statutory ground, and (b) such termination is in the best interests of the child.<sup>4</sup> In addition, when termination is based primarily on grounds of failure to plan, DFS must prove it has made bona fide efforts to assist the parents in caring for their child.<sup>5</sup> Termination proceedings require DFS to meet its burden by clear and convincing evidence.<sup>6</sup>

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<sup>4</sup>*Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

<sup>5</sup>*In re Hanks*, 553 A.2d 1171, 1179 (Del. 1989) quoting *In re Burns*, 519 A.2d 638, 649 (Del. 1986).

<sup>6</sup>*In the Matter of Baby Girl T*, 715 A.2d 99, 102 (Del. Fam. Ct. 1998).

(16) Delaware statutory law sets forth the grounds for terminating parental rights.<sup>7</sup> DFS, in Lennon and Reynold's case, sought termination on grounds of failure to adequately plan for the child's physical, mental, or emotional needs pursuant to 13 *Del. C. § 1103(a)(5)a*.<sup>8</sup> We find DFS met its burden by establishing four of the five statutory grounds for termination by clear and convincing evidence. (17) Golden, at the time of the termination petition, had been in the care of DFS for over one year, satisfying the first statutory condition. Both mother and father had a history of neglecting to maintain minimally adequate standards in their home which also satisfies a condition. The court correctly found that although Lennon is willing to promptly assume legal and physical custody of Golden, he is not able to. He is currently living

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<sup>7</sup>13 *Del. C. § 1103*.

<sup>8</sup>13 *Del. C. § 1103(a)(5)a* states in pertinent part that parental rights may be terminated if the parent of the child is not able, or has failed, to plan adequately for the child's physical needs or mental or emotional health and development, and one or more of the following conditions is met:

a. In the case of a child in the care of the Department or a licensed agency:

1. The child has been in the care of the Department or licensed agency for a period of 1 year;
2. There is a history of neglect, abuse or lack of care of the child or other children by the respondent;
3. The respondent is incapable of discharging parental responsibilities due to extended or repeated incarceration, except that the Court may consider post-conviction conduct of the respondent;
4. The respondent is not able or willing to assume promptly legal and physical custody of the child and to pay for the child's support, in accordance with the respondent's financial means; ...; or
5. Failure to terminate will result in continued emotional instability or physical risk to the

with another family and sleeping on their couch. He fails to state how there is adequate room under these conditions for Golden. Lennon has a very busy schedule as he both works and attends school. It is unclear how he has adequate time to devote to his daughter, let alone to another child with serious psychological needs and behavioral problems. Furthermore, Lennon has yet to prove how he will have the time to continue to take Golden to his appointments with Dr. Kelly who is two hours away from where Lennon currently resides. Finally, failure to terminate will result in continued emotional instability for Golden. Golden has lived in a number of different foster homes. He has resided at his current home for two years, the longest he has ever lived in any one place. The court found that his behavioral problems and aggression increase when he is moved or experiences changes. In addition, the court found that moving Golden again would be psychologically and emotionally difficult on him. The testimony of Golden's psychologist supports these findings.

(18) Lennon asserts that DFS did not meet its statutory burden of demonstrating failure to plan. He argues that his present condition indicates that he is capable of parenting Golden. He further asserts that the fact that Maryland returned Sabrina to his custody indicates he is able to parent Golden. The Family Court found

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child.



this argument to be without merit. Although Lennon was given custody of his daughter, the experiences of the two children differ. Golden has been placed in several different foster homes at an early age. Sabrina is still quite young and has not been in nearly as many placements. Sabrina has spent more time with her father whereas Golden has spent the longest time with the foster family he currently resides with. In addition, Golden has serious psychological needs and behavioral problems which his sister does not exhibit. Given the testimony of Golden's psychologist, Dr. Kelly, the DFS reports, and the entire record the court did not err in finding DFS met its burden with respect to the statutory requirement of Section 1103 by clear and convincing evidence.

(19) DFS must also prove it provided bona fide efforts to reunite Golden with his parents. After Golden's first removal, DFS entered into a case plan agreement with Lennon and Reynolds. The agreement required the parties to obtain housing, participate in a psychological evaluation, submit to drug and alcohol evaluations, participate in parenting classes and visit with Golden. Both mother and father completed most of the case plan. As a result of the psychosocial and drug and alcohol evaluations conducted, DFS formed a new case plan with Lennon and Reynolds in April 1998, one month after the first plan. This new case plan required mother and

father to gain financial stability, secure housing, and participate in individual and couples therapy. Although Lennon and Reynolds did take the parenting classes, they very rarely attended counseling and made no significant progress in obtaining stable housing.

(20) In addition to the case plan, DFS provided Lennon and Reynolds with many services. They were given a parent aide, a nurse, and directions on keeping the house in a sanitary condition. DFS placed Golden back in the care of his parents for a period of time. While there, Golden was registered in Head Start so that he would not be home all day. Testimony also indicated that the social workers spent money on cleaning supplies for the parents and arranged for rental assistance each month to help them maintain housing. A parent aide also purchased a washer and dryer for Lennon and Reynolds. Despite all this assistance mother and father failed to acquire the stability they needed to care for Golden. Lennon, in fact, admits that the public agencies provided him with many resources to assist in his reunification with his children.

The court did not err in finding DFS proved, by clear and convincing evidence, it made bona fide efforts to assist Lennon and Reynolds in reclaiming care and custody of Golden.

(21) Once DFS has met the statutory burden of proving by clear and convincing evidence parental rights should be terminated, it still has the burden of showing termination is in the best interests of the child.<sup>9</sup> This Court's inquiry into the issue depends on the facts in the context in which the petition is presented.<sup>10</sup> The statutory guidelines used in determining the best interests of the child are found in 13 *Del. C.* § 722.<sup>11</sup>

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<sup>9</sup>*Daber v. Division of Child Protective Services*, 470 A.2d 723, 726 (Del. 1983).

<sup>10</sup>*Id.*

<sup>11</sup>*Id.* at 726-27. 13 *Del. C.* § 722 states in pertinent part:

(a) The Court shall determine the legal custody and residential arrangement for a child in accordance with the best interests of the child. In determining the best interests of the child, the Court shall consider all relevant factors including:

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- (1) The wishes of the child's parent ... as to his or her custody and residential arrangements;
  - (2) The wishes of the child as to his or her custodian(s) and residential arrangements;
  - (3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, ..., and any other ... persons who may significantly affect the child's best interests;
  - (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 § 701 of this title;
  - (7) Evidence of domestic violence as provided for in Chapter 7A of this title.

(22) In determining the child's best interests the court seeks to insure the child will not be denied a stable family life.<sup>12</sup> DFS proved by clear and convincing evidence that neither Lennon nor Reynolds is able to provide Golden with a stable family life. Although Lennon has obtained a job and is attending school, his housing is not entirely stable. He is currently residing with another family and sleeping on their couch. He barely has adequate time to devote to his daughter let alone a child with psychological and behavioral problems. Furthermore, Lennon resides approximately two hours away from Golden's psychologist which may make it difficult for Golden to attend sessions. Testimony indicates missing sessions for Golden is problematic and having to adjust to a new psychologist would be even more difficult for him.

(23) The court also found that several of the statutory elements support terminating Lennon and Reynolds' parental rights. Although both Lennon and Reynolds oppose the termination and wish for Lennon to have custody, Golden has indicated some apprehension towards his father and mother. Dr. Kelly's testimony indicates he may possibly even fear them. Furthermore Golden fails to have good interaction or interrelationship with his parents. At his last visitation with Lennon and Reynolds, Golden refused to interact with them and ended up crying inconsolably.

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<sup>12</sup>*Shepherd*, 752 A.2d at 538-39.

(24) The court found that Golden has adjusted to his current residence although he has had some difficulty. Dr. Kelly testified that Golden is showing improvement and that a current change in his placement would have a destabilizing effect on him. The court also found that both parents have provided limited care and support for Golden.

(25) Given the testimony taken in this case, specifically that of Golden's psychologist, Dr. Kelly, and the entire record the court reasonably concluded DFS proved, by clear and convincing evidence, that termination was in Golden's best interests.

(26) Accordingly, the Family Court did not err in granting the termination of parental rights petition of Lennon and Reynolds. Justice does not require that the court's ruling be disturbed.

(27) Lennon and Reynolds' final contention is that the trial court erred by recalling and questioning Dr. Kelly, Golden's psychologist, after the close of evidence. This Court reviews a trial judge's ruling on the admissibility of expert testimony under an abuse of discretion standard.<sup>13</sup>

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<sup>13</sup>*Price v. Blood Bank of Delaware, Inc.*, 790 A.2d 1203, 1210 (Del. 2002) citing *M.G. Bancorporation v. LeBeau*, 737 A.2d 513, 522 (Del. 1999).

(28) Delaware Rule of Evidence 614 states that a trial court may, “on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.”<sup>14</sup> In addition, the court may interrogate witnesses, whether they are called by the court or not.<sup>15</sup>

Expert testimony must be relevant and reliable in order to be admissible.<sup>16</sup> A court may call a witness and depart from usual procedure if the interests of justice require.<sup>17</sup> The court is, “properly interested in seeing that all salient facts are presented ... to bring about a just result.”<sup>18</sup>

(29) The Family Court judge did not err by recalling and questioning Dr. Kelly regarding Golden’s current psychological state. The judge felt it necessary, in making an accurate decision, to determine the current state of mind of the child at issue.

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<sup>14</sup>DEL. R. EVID. 614(a).

<sup>15</sup>DEL. R. EVID. 614(b).

<sup>16</sup>*Price*, 790 A.2d at 1210.

<sup>17</sup>*United States v. Ramos*, 291 F.Supp. 71, 74 (D. R.I. 1968).

<sup>18</sup>*Id.* at 73.

Although the judge did recall and question Dr. Kelly after the close of evidence, the actions of the court were not investigative. The court believed the interests of justice required knowledge of the current psychological conditions of Golden and it recalled the witness that would best be able to answer its questions. The court did question the witness after the close of evidence but it did not abuse its discretion by doing so.

(30) Furthermore, the judge gave both Lennon and Reynolds the opportunity to supplement the record with a response to Dr. Kelly's testimony. The court, therefore, took the necessary measures to give the parties an opportunity to respond to any testimony they felt was damaging or untrue. Neither party, however, took the opportunity to do so.

(31) Accordingly, the Family Court did not abuse its discretion by recalling and questioning Dr. Kelly on her expert opinion with regards to the psychological state of Golden.

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

BY THE COURT:

/s/ E. Norman Veasey  
Chief Justice