

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DOROTHY K. HOWARD,	§	
	§	No. 184, 2004
Respondent Below,	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware, in
v.	§	and for Kent County
	§	File No. 03-08-1
DIVISION OF FAMILY SERVICES,	§	
	§	
Petitioners- Below,	§	
Appellees,	§	
	§	
AND	§	
	§	
COURT APPOINTED SPECIAL	§	
ADVOCATE	§	
	§	
Appellee.	§	

Submitted: August 30, 2004
Decided: October 14, 2004

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

ORDER

This 14th day of October, 2004, on consideration of the briefs of the parties, it appears to the Court that:

(1) Dorothy K. Howard appeals a Family Court decision terminating her parental rights with respect to James Miller, Jr. (“James”), her eight-year old child. Howard argues that the trial judge failed to find by clear and convincing

evidence that she failed to plan for the physical and emotional needs of James, and that termination of her parental rights was in James' best interest. Because the trial judge's decision to terminate Howard's parental rights was based on findings of fact supported by the record and was the product of an orderly and logical deductive process, we affirm.

(2) Howard is the biological mother of six children. Five of the six children live with their biological fathers. The youngest, James, who is the subject of this appeal, is presently in the custody of a family that wishes to adopt him.¹

(3) Howard has a long history with the Division of Family Services ("DFS"), spanning back to November 1994. In fact, DFS has conducted approximately sixteen investigations regarding the improper care of Howard's children. Howard has a history of physical neglect, inappropriate physical care and medical neglect, which primarily results from the fact that James was born cocaine positive. In addition, DFS has provided Howard with rent money, furniture, a washing machine, clothing and food. DFS has also provided Howard with the services of social workers, a family preservation specialist,

¹ The Family Court decision also terminated the parental rights of James' father, James L. Miller, Sr., who did not seek an appeal.

protective daycare and intensive reunification specialists.

(4) On July 10, 2002, Howard was arrested for possession of drug paraphernalia and two counts of child endangerment. A few days prior to her arrest, Howard and her minor children, James and his older sister Jamie,² moved in with Ms. Baldwin, a family friend. On the morning of the arrest, Ms. Baldwin discovered that Howard had disappeared. James told Ms. Baldwin that he did not know where his mother had gone, but he explained that he observed her smoking crack and marijuana the night before. James thereafter gave Ms. Baldwin a bag containing drug paraphernalia, which included a plastic bong, some steel wool, a small metal pipe and a rubber band gun. At that point Ms. Baldwin contacted the police.

(5) The police reported that when they arrived at Ms. Baldwin's residence, James was not dressed or bathed, nor did he have any appropriate clothes to wear. Additionally, when the police found Howard's drug paraphernalia, specifically the plastic bong, James, then six years old, offered to show police how the bong was used. Upon returning to Ms. Baldwin's residence, Howard was arrested by the police. The children were thereafter

² Jamie Padgett is Howard's fifth child. Jamie is currently in the custody of her biological father and is not the subject of this appeal.

transported to the custody of DFS, where a DFS employee also observed the children's poor hygiene. As a result of Howard's arrest, James was placed in a foster home. James remained in the foster home until February 2004, when he was placed in the home of the family that wishes to adopt him.

(6) In August 2002, Howard and DFS developed a plan for Howard to regain custody of James. The plan, which Howard signed, required her to secure and maintain stable employment, secure and establish safe and appropriate housing, complete parenting classes, follow through with the recommendations of DFS, maintain contact with DFS, complete a drug evaluation and receive treatment, and complete a mental health evaluation and receive treatment.

(7) Howard was also under the supervision of a probation officer with whom she had to regularly report. Howard was placed in Level III incarceration after she was arrested. After missing twelve out of thirteen appointments with her probation officer, capiases were issued for her arrest. Howard also failed to appear in Family Court for the hearings regarding custody of James because she knew she would be arrested. Howard was later arrested on June 13, 2003. Her probation was then revoked and she was placed in the CREST program with Level III CREST Aftercare. However, Howard did

not successfully complete the CREST program. Howard was subsequently discharged from probation as “unimproved” on April 6, 2004.

(8) DFS filed a petition to terminate Howard’s parental rights with respect to James. In support of its petition, DFS argued that it is in James’ best interest for Howard’s parental rights to be terminated because Howard failed to comply with the case plan and thereby failed to plan for her child. On April 7, 2004, the trial judge granted DFS’s petition and entered an Order terminating Howard’s parental rights. The trial judge found that DFS met the statutory grounds for termination of parental rights and that termination of Howard’s parental rights was in James’ best interest.³

(9) In a termination of parental rights proceeding in the Family Court, the standard of proof is one of clear and convincing evidence.⁴ Our standard and scope of review for an appeal from the grant or denial of a termination petition is limited to a review of the factual findings as well as a review of the inferences and deductions made by the trial judge.⁵ A review of the factual findings made by the trial judge is to assure that they are supported by the

³ DEL. CODE ANN. tit. 13, § 1103(a)(5)(a) (2004).

⁴ *In the Interest of Stevens*, 652 A.2d 18, 23 (Del. 1995) (citing *Patricia A.F. v. James R.F.*, 451 A.2d 830 (Del. 1982)).

⁵ *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983) (citing *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979)).

record and are the product of an orderly and logical deductive process.⁶ This Court will not disturb findings of fact unless they are clearly wrong or justice requires their overturn.⁷ If the factual findings are clearly wrong, we may make independent factual findings.⁸ To the extent that the trial judge’s decision implicates rulings of law, our review is *de novo* and we shall review the decision to assure that the trial judge properly applied the pertinent law and we will set aside any erroneous interpretations of applicable law.⁹

(10) In a termination of parental rights proceeding, the burden is on the petitioners to prove the required elements by clear and convincing evidence.¹⁰ “In Delaware, the statutory standard for terminating parental rights provides for two separate inquiries.”¹¹ First, the petitioner must articulate a statutory basis for the termination.¹² Second, the termination of parental rights must be in the best interest of the child.¹³ “This Court has consistently held that the best interest element of the statute can be considered only *after* there has been a

⁶ *In the Interest of Stevens*, 652 A.2d at 23.

⁷ *Solis*, 468 A.2d at 1279.

⁸ *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

⁹ *In the Interest of Stevens*, 652 A.2d at 23.

¹⁰ *Wife (J.F.V.)*, 402 A.2d at 1204.

¹¹ *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000) (citing *In the Interest of Stevens*, 652 A.2d at 24).

¹² *Id.*

¹³ *Id.* (citing DEL. CODE ANN. tit. 13, § 1103(a)(2) (2004)).

finding of an enumerated statutory basis for termination.”¹⁴

(11) Delaware law provides that when a child has been in the care of DFS for one year, the best interest of the child is served by terminating the rights of a parent who, inter alia, is not able or fails to “plan adequately for the child’s physical needs or mental and emotional health and development”¹⁵

(12) Based on the evidence in the record, we find that there was a statutory basis for terminating Howard’s parental rights. There was also sufficient evidence in the record to support the trial judge’s finding that termination of Howard’s parental rights was in James’ best interests. After agreeing to the DFS case plan, Howard failed to make any significant steps toward adequately planning for James: (i) Howard failed to appear at Family Court Judicial Review hearings regarding James because of outstanding capiases; (ii) Howard failed to receive the requisite substance abuse evaluation and treatment; (iii) Howard failed to attend parenting classes; (iv) Howard failed to maintain contact with DFS; (v) Howard failed to secure adequate housing; and (vi) Howard failed to comply with the terms of her probation, which ultimately led to her incarceration. Accordingly, we find that the trial

¹⁴ *Id.* (citing *In the Interest of Stevens*, 652 A.2d at 24).

¹⁵ DEL. CODE ANN. tit. 13, § 1103(a)(5) (2004).

judge's decision that Howard failed to plan for her child because she did not comply with the DFS case plan is logically supported by clear and convincing evidence in the record.

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice