IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID RHINEWAY, SR.,[1]	§	
	§	No. 23, 2005
Petitioner Below,	§	
Appellant,	§	Court Below: Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
DEPARTMENT OF SERVICES for	§	File No. 99-06-3TK
CHILDREN, YOUTH and their	§	
FAMILIES,	§	
	§	
Respondent Below,	§	
Appellee.	§	

Submitted: August 24, 2005
Decided September 8, 2005

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

O R D E R

This 8th day of September 2005, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

(1) The respondent-below appellant, David Rhineway, appeals from an order of the Family Court terminating his parental rights in his four children. On appeal Rhineway argues that the Division of Family Services did not sufficiently prove the statutory elements required to terminate his parental rights. Because the Family Court correctly found that the Division of Family Services had proved all of the required elements by clear and convincing evidence, we affirm.

[1] The Court, *sua sponte*, has assigned pseudonyms to the parties under SUPR. CT. R. 7(d).

(2) The Division of Family Services ("DFS") has been involved with the Rhineway family since 1990. Between 1990 and 1997, DFS investigated claims against Rhineway and his wife of child abuse, neglect, and deplorable living conditions, as well as claims that Rhineway had sexually abused the children. DFS took custody of the four children—David, Jr., Christopher, Teresa and Jonathan—in December 1997, and placed them in foster care. In 2001, the Family Court denied DFS's first petition to terminate Rhineway's parental rights, finding that DFS had not used reasonable efforts to reunite the family. After that ruling, DFS and Rhineway agreed to a "case plan" designed to reunite Rhineway and the children. Rhineway failed to satisfy all the terms of that case plan, however, and all four children consistently refused to see their father.

(3) In March 2004, DFS filed a second petition to terminate Rhineway's parental rights in his four children. The petition also sought to terminate the parental rights of the childrens' biological mother, Ruby Williams. At the termination hearing, the mother consented to a permanent guardianship for Jonathan and David and to alternative permanent planned living arrangements for Christopher and Teresa. The mother was then dismissed from the action, and DFS proceeded against the father, Rhineway.

(4) At the hearing, the Family Court heard evidence that, despite having agreed to do so in the case plan, Rhineway had not obtained housing that would

accommodate the needs of the children, nor had he provided DFS with proof of his employment. Rhineway met with two doctors, both of whom testified that he had a personality disorder and that he was unwilling or unable to understand his childrens' needs.

(5) The Family Court also heard testimony about each child's living situation and emotional problems. David, the oldest and the most stable of the four children, was living in a foster home, together with his brother, Jonathan. David recalled being physically abused by his father, but after being placed in the foster home he had blossomed. David stated that he never wanted to see his father again. Teresa was in a group home, and suffered from severe emotional and behavior issues. She told her counselors that her father had sexually abused her, and her therapist testified that in his opinion, such sexual abuse had occurred. Teresa told one of the counselors at the group home that when she turns 18 she plans to buy a gun and kill her father. One of her counselors testified that Teresa became suicidal because of the memories of the abuse. Christopher, Teresa's twin brother, was also residing in a group home and suffers from post-traumatic stress disorder. Christopher recalled being sexually abused by his father, and his therapist testified that Christopher would have to be institutionalized if he has any contact with his father. Finally, Jonathan was happy and comfortable in his foster home. His counselors testified that Jonathan was beginning to "open up" about the abuse that

Rhineway allegedly perpetrated against him, and that he was terrified of his father. Dr. Zingaro, who met with Jonathan, testified that Jonathan would suffer emotional harm if he were reunited with his father.

(6) After a three day hearing, the Family Court determined that DFS had proved the statutory elements for termination by clear and convincing evidence. Based on those findings, the Family Court terminated Rhineway's parental rights in all four children. Rhineway appeals from that order.

(7) The parental rights termination statute, 13 *Del. C.* § 1103, requires DFS to prove the statutory elements for termination by clear and convincing evidence. In this case, DFS was required to prove that: (a) DFS used reasonable efforts to reunite Rhineway and the children; (b) Rhineway failed to plan for the childrens' needs; and (c) termination was in the best interests of the children. Rhineway claims that DFS did not prove those elements by clear and convincing evidence. We disagree.

(8) On appeal from an order terminating parental rights, this Court will uphold the Family Court's factual findings if they are sufficiently supported by the record and are not clearly wrong.[2] To the extent that the Family Court's rulings implicate questions of law, this Court exercises *de novo* review.[3]

[2] *In re Stevens*, 652 A.2d 18, 23 (Del. 1995); *Harris v. State*, 305 A.2d 318, 319 (Del. 1973).

[3] *In re Heller*, 669 A.2d 25, 29 (Del. 1995).

(9) Because DFS sought termination based on Rhineway's failure to plan adequately for his childrens' needs, the trial court was required to find that DFS made *bona fide* reasonable efforts to reunify the family.[4]

(10) Here, DFS developed a plan with Rhineway, under which Rhineway agreed to: (a) meet with Dr. Zingaro and complete a psychiatric examination as Dr. Zingaro recommended; (b) obtain appropriate housing; (c) participate in counseling as recommended by the childrens' counselors; (d) visit the children as recommended by their counselors; and (e) present proof of employment to the Department of Services for Children, Youth, and their Families ("DSCYF").

(11) Pursuant to that plan, DFS provided a psychiatrist (Dr. Raskin) and a psychologist (Dr. Zingaro) to meet with Rhineway. During their meetings, Rhineway told both doctors that the childrens' allegations of abuse were false, and that DFS was drugging the children and coaching them to make false allegations against him. Rhineway told them that the Delaware Family Court and the federal government were conspiring to take his children away from him. Both doctors concluded that Rhineway had a personality and/or delusional disorder.

(12) Rhineway argues that the above-described plan did not constitute a reasonable effort to reunite the family, because DFS did not provide permanent

[4] *In re Hanks*, 553 A.2d 1171, 1179 (Del. 1989); *In re Burns*, 519 A.2d 638, 649 (Del. 1986). See 29 *Del. C.* § 9003(3), (13) regarding the Department's obligation to provide reunification services. See also "Adoption Safe Family Act" 42 U.S.C. § 671 (a)(15)(d), which requires states to attempt safe reunification of the child and family.

counseling opportunities for Rhineway, which might have helped improve his psychological disorders. That argument fails, because the two doctors who met with Rhineway concluded that he was not amenable to treatment, and because any counseling would have been futile since the children refused to be reunited with their father.

(13) Drs. Zingaro and Raskin both testified that they did not believe Rhineway would be amenable to counseling. Dr. Zingaro did not believe any treatment plan could be developed that would remedy Rhineway's own mental health problems or educate him about the childrens' needs. Dr. Raskin testified that Rhineway's fixation that there was a conspiracy against him, left Rhineway unable to consider the needs of his children—needs that were extensive because of the childrens' psychological trauma. Because two doctors testified that Rhineway was not amenable to treatment, it was reasonable for DFS not to provide further counseling services for him.[5]

(14) Even if DFS had provided further counseling for Rhineway, that would not have changed the fact that none of his children wanted to see him. After meeting with the children, Dr. Zingaro testified that "all the children without

[5] Dr. Raskin recommended that Rhineway undergo the Minnesota Multiple Personality Inventory 2 ("MMPI 2") to diagnose his disorder more accurately. That test was never given to Rhineway. On appeal, Rhineway argues that DFS should have issued the test as part of a reasonable effort to reunite the family. That contention lacks merit, however, because the test would only have provided an additional diagnosis of Rhineway's problems, but would not have provided any treatment for those problems.

hesitation do not want a relationship" with Rhineway, and that reunification would emotionally harm the children. Because further counseling of Rhineway would not change the childrens' feelings toward their father, it was reasonable for DFS not to provide those services.

(15) In short, DFS proved that it established a case plan for Rhineway, and that Rhineway failed to complete it. The testimony of Drs. Raskin and Zingaro established that Rhineway was not amenable to treatment and that even if treatment were provided, reunification with the children would be emotionally harmful to them. Thus, DFS proved by clear and convincing evidence that it had made *bona fide* reasonable efforts to reunite the family.

(16) In addition to proving that it made reasonable efforts toward reunification, DFS must prove at least one of the six statutory grounds for termination by clear and convincing evidence.[6] DFS sought to terminate Rhineway's parental rights under 13 *Del. C.* § 1103(a)(5), which requires DFS to prove that "the parent … [is] not able, or [has] failed, to plan adequately for the child's physical needs or mental and emotional health and development.…"

(17) The Family Court found that Rhineway had failed to plan adequately for his childrens' physical, mental, and emotional needs; and the evidence supported that finding. Rhineway depended upon his mother and girlfriend for

[6] 13 Del. C. § 1103(a).

financial support, and was already several thousand dollars behind in child support. Despite having agreed to do so in the case plan, Rhineway did not obtain, nor did he have a strategy to obtain, adequate housing. Rhineway testified that if he received custody of the children, they would live with his mother, who was 78 years old and had told DFS that she was unable to care for the children. Rhineway also acknowledged during the hearing that his mother's home did not have enough space to accommodate the children. Both Drs. Zingaro and Raskin testified that Rhineway's own mental problems and his preoccupation with "clearing his name" prevented him from understanding and caring for the childrens' psychological needs. That evidence was clear and convincing that Rhineway had failed to adequately plan for his childrens' physical and emotional needs.

(18) Besides proving a general failure to plan, DFS must prove one or more additional statutory elements, which include:

> 1. The child has been in the care of the Department for a period of 1 year.…;
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> ***
>
> 4. The respondent is unwilling or unable 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 the relationship of parent and child will result in continued emotional instability or physical risk to the child.[7]

[7] 13 *Del. C.* § 1103(a)(5).

(19) The Family Court found that DFS had proved each of those elements. It is undisputed that the children had been in the care of the Department since 1997. Because of his lack of adequate housing and his inability to provide financial support for his children, Rhineway was unable to assume prompt custody of the children. Finally, the Family Court credited the testimony of all the childrens' counselors that reunification would be harmful to any progress the children had made.

(20) Finally, Rhineway argues that DFS did not prove by clear and convincing evidence that termination was in the childrens' best interests. 13 *Del. C.* § 1103(a) requires DFS to prove that termination is in the childrens' best interests, weighing eight factors listed in 13 *Del. C.* § 722(a), as follows:

> (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 relationships;
>
> (3) The interaction and interrelationship between the child with his or her parents, grandparents, siblings … [and 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 Section 701;

> (7) Evidence of domestic violence as provided for in [13 *Del C.* § 701, *et. seq.*]; and
>
> (8) The criminal history of any party or other resident in the household.…

(21) After considering each factor, the Family Court found that factors (2) through (7) favored termination, factor (1) disfavored termination, and factor (8) did not apply. Specifically, the Family Court found that the children uniformly wanted no contact with their father, whom they had not seen since 1998. David, Jr. and Jonathan, who lived in a foster home, were well adjusted to that home and family, and were performing well academically. Christopher was doing well in his group home environment, and Teresa was beginning to adjust to the group home where she was living. The childrens' counselors and social workers who testified, all stated that it would be psychologically harmful to Christopher, Teresa, and Jonathan if they had any contact with their father. The Family Court noted that Rhineway had not complied with his parental responsibility to pay child support. Finally, the Family Court found credible evidence that Rhineway had physically and/or sexually abused the children, even though he had not been criminally charged with abuse. In sum, the Family Court concluded that all of those factors supported termination.

(22) The Family Court found that Rhineway wanted to retain his parental rights and take custody of the children, and that factor disfavored termination. The

other factors favoring termination outweighed Rhineway's wishes, however. On appeal Rhineway argues that the Family Court placed too much emphasis on the childrens' wishes, but the record belies that argument. The Family Court found that six of the eight factors favored termination, and it did not place greater emphasis on one factor than any other.

(23) Rhineway also argues that the Family Court should have interviewed David, Jr. before deciding that termination was in his best interests. The Family Court did not need to interview David directly, however, because the Court heard the testimony of David's foster parent, and because the court-appointed-special-advocate testified about David's current situation and his wishes regarding contact with his father. Rhineway does not articulate how interviewing David, Jr. would have changed the Family Court's analysis of the childrens' best interests.

(24) The Family Court found that DFS proved by clear and convincing evidence that termination was in the childrens' best interests. The evidence amply supports that finding.

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

BY THE COURT:

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Justice