

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CATHRINE CHASE,	§	
	§	No. 198, 2006
Respondent Below,	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware
	§	in and for New Castle County
v.	§	
	§	
DEPARTMENT OF SERVICES FOR	§	No. 05-12-02TN
CHILDREN, YOUTH and THEIR	§	
FAMILIES, DIVISION OF FAMILY	§	
SERVICES, & CASA	§	
	§	
Petitioners Below,	§	
Appellees.	§	

Submitted: July 27, 2006  
Decided: September 26, 2006

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

**ORDER**

This 26<sup>th</sup> day of September 2006, upon consideration of the briefs of the parties, it appears to the Court that:

(1) Appellant Catherine Chase (“Mother”)<sup>1</sup> appeals the Family Court’s termination of her parental rights in one child, Zachary, who was born in December of 2003. Mother claims that the Family Court’s decision is not supported by the record and is not the result of an orderly and logical deductive process. We find no merit in her argument and affirm.

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<sup>1</sup> The Court has sua sponte assigned pseudonyms to the parties pursuant to Supr. Ct. R. 7(d).

(2) Mother is the natural parent of seven children.<sup>2</sup> Mother was incarcerated at the time of Zachary's birth and remained incarcerated until the end of January 2004. Since that time, Mother was incarcerated five additional times, and was incarcerated at the date of trial.<sup>3</sup> All of her incarcerations are drug related.

(3) On or about November 28, 2004, a call was made to the Department of Family Services ("DFS") informing DFS that Mother gave birth to a cocaine positive child. While investigating the birth of that child, DFS became concerned about Mother's drug use and living conditions.

(4) Mother has a lengthy history with DFS. This was not Mother's first child born drug positive. DFS requested Mother to complete a drug treatment program, but Mother never successfully completed one.

(5) On February 1, 2005, Zachary was placed in a Children and Families First foster home. He remained at that home until November 2005, when he was placed with a paternal cousin.

(6) From February 1, 2005, the time DFS was granted custody, until March 24, 2005, neither parent attempted to visit Zachary despite being allowed once a week visitation. Mother called on March 24 to set up a visit for that same

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<sup>2</sup> Father did not appear at the TPR hearing. He has told both his attorney and the social workers that he was willing to consent to the termination of his parental rights.

<sup>3</sup> Mother was incarcerated in April 2004, January 2005, May 2005, November 2005 and February 2006.

afternoon, but was told that it was too short notice. The social worker called Mother the next week but Mother did not respond. From that time until the TPR hearing, Mother visited Zachary at most 5 times: twice in May 2005 while she was incarcerated and two or three times while she was not incarcerated. The last visit took place in June 2005. The social worker made various attempts to contact Mother. Mother admitted at trial that she did not respond sometimes because she was afraid of getting arrested and not having her drugs.<sup>4</sup> During the time Zachary was in DFS custody, Mother never obtained employment, completed a parenting class, completed a psychological evaluation, completed a drug/alcohol program, paid child support or gave Zachary any gifts.

(7) On November 4, 2005, Zachary was placed with his father's cousin and adoptive resource, Marie Sanders. A foster care social worker for Children and Families First testified at trial that Ms. Sanders "exhibited excellent parenting skills," and that it is a good placement for Zachary. Both DFS and the Court Appointed Special Advocate ("CASA") agree that Ms. Sanders is a good placement.

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<sup>4</sup> In response to why she did not contact the social worker, Mother testified that "[a] couple of times I had capiases and warrants on me and I was just scared to get involved that I was going to get arrested and I wouldn't have my drugs anymore."

(8) We review the grant of a petition to terminate parental rights to determine if the factual findings of the trial court are “sufficiently supported by the record and result[s] from an orderly and logical deductive process.”<sup>5</sup>

(9) A two step analysis is used to determine if the parental rights of a parent should be terminated. The first inquiry requires the trial court to determine whether there is proof that one of the enumerated statutory bases for termination has been met.<sup>6</sup> If so, the trial court must find that termination is in the best interests of the child.<sup>7</sup> Both inquiries require proof by clear and convincing evidence.<sup>8</sup> In this case, Mother has conceded that a statutory basis for termination has been met.

(10) The eight factors to determine the best interests of the child are set forth in 13 *Del. C.* § 722. The first factor looks to the wishes of the parents. The trial court noted that Mother did not want the termination to be granted. This factor was properly weighed against termination.

(11) The second factor looks to the wishes of the child. The child’s wishes are an important factor in deciding the child’s best interest.<sup>9</sup> When, however, “the child is very young, immature, or unable to articulate a sound basis for his wishes

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<sup>5</sup> *Div. of Family Services v. Hutton*, 765 A.2d 1267, 1272 (Del. 2001); *In re Kelly Stevens*, 652 A.2d 18, 23 (Del. 1995).

<sup>6</sup> *Hutton*, 765 A.2d at 1272.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *R.A.D. v. M.E.Z.*, 414 A.2d 211, 212 (Del. Super. 1980).

as to custody[,] the preference is not entitled to great weight.”<sup>10</sup> Because Zachary is so young, the Family Court determined this factor to be “neutral” and not assign it any weight. Mother argues that this factor should weigh in her favor because in all of the four or five visits, Zachary seemed happy to see Mother. However, Mother has not visited Zachary since June 2005, approximately nine months before the TPR hearing. This significant length of time discounts Mother’s arguments. As the Family Court stated, any bond Mother had with the child “no doubt has deteriorated over the lack of contact.” The Family Court fully considered Mother’s arguments with respect to this factor and found that this factor should not be given any weight in this case.

(12) The third factor looks to the interaction the child will have with its family and others with whom the child resides.<sup>11</sup> The Family Court decided that this factor was also neutral. Mother contends that the Family Court should have considered this factor in her favor because Ms. Sanders will most likely not allow Child to visit with Mother’s relatives. The Family Court specifically addressed this issue. “The child is going to most likely continue to maintain some type of relationship . . . with siblings on the father’s side. And there’s no reason to think that if Ms. Sanders eventually becomes the adoptive parent that the relationship

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<sup>10</sup> *William H.Y. v. Myrna L.Y.*, 450 A.2d 406, 409 (Del. 1982).

<sup>11</sup> 13 *Del. C.* § 722(a)(3).

with relatives on the maternal side would not continue as well.”<sup>12</sup> Thus, the reason this factor did not weigh in favor of termination is precisely because Ms. Sanders is only allowing Zachary to visit with his paternal relatives and not his maternal relatives.<sup>13</sup>

(13) The child’s adjustment to his home, school and community are reviewed in the fourth factor.<sup>14</sup> The Family Court found this factor to be neutral, but Mother claims that it should be decided in her favor. The Family Court stated that the “child is well adjusted in the current placement but would no doubt likely be well adjusted in another placement if it were appropriate.” Mother presented no evidence at trial to suggest that Zachary is not well adjusted in his current placement.

(14) The mental and physical health of Mother is the fifth factor.<sup>15</sup> The Family Court found that Mother’s “substantial and extended substance abuse history which has gone untreated” and Mother’s failure “to seek an evaluation as set up on two occasions for purposes of addressing the purely mental health components” of her substance abuse, led the Family Court to believe that such abuse “may very well have a mental health component tied into it.” The court did

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<sup>12</sup> (A75-76).

<sup>13</sup> Ms. Sanders did testify, however, that she would not completely exclude Mother from visiting Child, so long as she was substance clean.

<sup>14</sup> 13 *Del. C.* § 722(a)(4).

<sup>15</sup> 13 *Del. C.* § 722(a)(5).

not find, as Mother suggests, that she in fact has mental health issues, but that she has failed to submit to an evaluation. The Family Court weighed this fifth factor in favor of termination.

(15) The sixth factor of the best interest analysis looks to the past and present compliance of both parents with 13 *Del. C.* § 701.<sup>16</sup> The Family Court weighed this factor in favor of termination. Mother argues that the Family Court failed to consider Mother’s visitation and her “plan for entering into a residential treatment program as well as her plans for employment so that she could financially support Zachary.” The Family Court did consider Mother’s visits. “[Mother and Father] have not financially supported the child. They have not done anything that one could say are the normal and required incidence of parental relationship to a child other than visiting the child . . . .” The Family Court also considered Mother’s future plans. It stated that these plans were purely speculative, and that Mother had a chance to do these things since Zachary was born and never exercised that chance.

(16) There was no evidence of domestic violence, thus the Court did not take this factor into consideration.<sup>17</sup>

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<sup>16</sup> 13 *Del. C.* § 722(a)(6). 13 *Del. C.* 701(a) imposes the responsibility of child support, care, nurture, welfare and education equally upon the mother and father.

<sup>17</sup> 13 *Del. C.* § 722(a)(7).

(17) The final factor looks to the criminal history of the parents. The Family Court found that this factor weighs in favor of termination. Mother argues that the Family Court gave improper weight to the fact that she was incarcerated at the time of trial. Mother's criminal history is substantial. She was incarcerated at the time of birth and five additional times since then.

(18) Since a statutory basis for termination of parental rights has been conceded, the only issue on appeal is whether the decision of the Family Court that it was in Zachary's best interests for Mother's parental rights to be terminated is supported by the record and is the result of an orderly and logical deductive process. We find that the record supports the Family Court's conclusion that it was in the best interests of the child to terminate Mother's parental rights. It is also clear that the decision of the Family Court is the product of an orderly and logical deductive reasoning process.

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

BY THE COURT:

/s/Henry duPont Ridgely  
Justice