IN THE SUPREME COURT OF THE STATE OF DELAWARE

LORI D. BRENNER,	)	
	)	No. 403, 2001
Respondent Below,	)	
Appellant,	)	Court Below: Family Court
	)	of the State of Delaware in
v.	)	and for Sussex County
	)	
DEPARTMENT OF FAMILY SERVICES,	)	File No. 97-22264
	)	
Petitioner Below,	)	
Appellee,	)	
	)	
and	)	
	)	
COURT APPOINTED SPECIAL ADVOCATE (CASA), and GUARDIAN AD LITEM,	)	
	)	
Appellees.	)	

Submitted: August 6, 2002
Decided: September 16, 2002

Before **VEASEY**, Chief Justice, **BERGER** and **STEELE**, Justices.

O R D E R

This 16th day of September 2002, on consideration of the briefs of the parties, it appears to the Court that:

1) In July 1997, the Division of Family Services (DFS) filed a Petition for the Termination of Parental Rights of Appellant, respondent-below, Lori D. Brenner. After a hearing in Family Court concluded in September 2001, the trial judge issued a decision terminating Brenner's parental rights to her three children.

Since the filing of Brenner's direct appeal of the Family Court's decision, the parties have reached an agreement concerning Brenner's parental rights to her oldest son, Jordan, age fifteen. For this reason, we now address only the decision of the Family Court to terminate Brenner's parental rights to her youngest two children: William, age thirteen, and Lacy, age eleven.

2) Brenner contends in this appeal that the trial judge's finding that she had failed to plan adequately for the physical needs and the mental and emotional health and development of her children was not the result of an orderly and logical deductive process and that it was not supported by clear and convincing evidence. The "failure to plan" is one of the statutory grounds upon which DFS may seek termination of parental rights.[1] As with every element required for the termination of parental rights, the Family Court must find that clear and convincing evidence exists in order to grant the DFS motion.[2]

3) A close review of the record reveals ample evidence to support the Family Court's determination that Brenner could not meet her responsibilities as a parent. As noted by the trial judge, the evidence showed that Brenner either refused or was unable to comply with a serious of case plans initiated by DFS in an attempt to reunify Brenner with her children; in 1993 the three children had been removed from her custody and placed in foster care due to Brenner's apparent

[1] Del. Code Ann. tit. 13 § 1103(a)(5).
[2] *Division of Social Servs. v. Tusiki*, 446 A.2d 1109 (Del. Fam. Ct. 1982).

inability to care adequately for them. Specifically, Brenner failed to complete required counseling, was inconsistent in maintaining her scheduled visitations with her children, had difficulty controlling her temper and compulsive behaviors, maintained an essentially transient lifestyle, and refused to either seek assistance or accept offered help when she became "overwhelmed" by her life, as often happened. According to one expert, even though Brenner had good intentions toward her children, she simply did not have the skills necessary to implement these intentions.

4) Because the best interests of the child are paramount in any termination proceeding, the Family Court is also required to make a determination, by finding clear and convincing evidence that granting or denying the DFS motion is in the best interest of the children.[3] The statutory criteria for determining the best interests of a child in custody proceedings, enumerated in Del. Code Ann. tit. 13 § 722(a), are equally applicable to termination proceedings.[4] We find it clear from the trial judge's opinion that he considered each of these factors in evaluating the best interests of each of Brenner's children. In addition, substantial evidence exists to support his conclusions, including William's and Lacy's wishes regarding placement, their relationships with their other relatives and foster caretakers, and

[3] Del. Code Ann. tit. 13 § 1108(a).
[4] *Matter of Burns*, 519 A.2d 638, 644 (Del. 1986) (citing *Daber v. Division of Child Protective Services*, 470 A.2d 723, 727 (Del. 1983)).

Brenner's own deficiencies as a parent. Indeed, only regarding Jordan does the evidence even remotely support a best interest finding in Brenner's favor. His interests, as noted above, are no longer at issue in this appeal.

5) Brenner similarly challenges the Family Court judge's finding that DFS made reasonable efforts to reunify Brenner with her children before moving for termination of parental rights.[5] As noted *supra*, over a period of several years DFS established numerous detailed case plans, all with the ultimate goal of reuniting Brenner with her family. These plans included visitation sessions, counseling programs, and parental assistance programs, each designed to enable Brenner to establish parental bonds with her children and to be able to fully nurture them upon their return to her care. Brenner contends that DFS did not make the requisite reasonable effort because the plans it provided were not properly tailored for her circumstances. This argument is rooted in the inclusion of Brenner's mother as a participant in many of the case plans. Brenner contends that this made the DFS case plan unworkable from its inception because of what Brenner describes as an adversarial relationship with her mother.

6) Her claimed inability to comply with some of the aspects of the plans because of her mother is belied by substantial evidence that Brenner had allowed the children's grandmother to be actively involved in rearing the children before

[5] *Burns*, 519 A.2d at 649.

DFS took custody of them and the apparent lack of conflict between Brenner and her mother during unscheduled visitations during the period that Brenner's mother was serving as a foster parent to her grandchildren. Moreover, it is clear on this record that Brenner failed to comply with numerous provisions of her case plan, many of which had no connection to her mother whatsoever. Thus, we find that the Family Court judge had sufficient evidence before him to conclude that DFS complied with its responsibility to provide meaningful reunification services.

7) Finally, Brenner argues that the Family Court erred by allowing a single individual to proceed as Guardian *ad Litem* for all three children, in violation of the conflict prohibitions of the Delaware Rules of Professional Conduct. Because the duty of the Guardian *ad Litem* is to present the *best interests* of the child to the court[6] and not represent the child himself or herself, there is no inherent conflict when representing multiple children, even when the Guardian *ad Litem's* position differs for each child. Since the circumstances of each child are different and the best interests determination is to be made based on those individual circumstances,[7] the Guardian *ad Litem* is quite capable of arguing contrasting positions for each child with equal zeal. Thus, disregarding the questions of whether Brenner lacks standing to raise this claim or the potential

[6] Del. Code Ann. tit. 29 § 9007A(c) (2000 Supp.).
[7] *See Burns*, 519 A.2d at 644 (best interest analysis "necessarily depends upon the facts in the context in which the petition is presented") (citations excluded).

estoppel issue arising out of Brenner's failure to raise this concern during the trial, we are unable to discern any true conflict.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court regarding the termination of Lori D. Brenner's parental rights to her son William and daughter Lacy be, and hereby is, **AFFIRMED**.

BY THE COURT:

_/s/ Myron T. Steele_____
Justice