



**THE FAMILY COURT OF THE STATE OF DELAWARE**

<b>DEPARTMENT OF SERVICES FOR</b>	)	<b>File Nos.:</b>	<b>CN16-06-03TN</b>
<b>CHILDREN, YOUTH AND THEIR</b>	)		<b>CN15-02245</b>
<b>FAMILIES/ DIVISION OF FAMILY</b>	)		
<b>SERVICES, ("DSCYF/DFS"),</b>	)		
<b>Petitioner,</b>	)	<b>Petition Nos.:</b>	<b>16-16259</b>
	)		<b>15-08372</b>
<b>vs.</b>	)		
	)		
<b>G----- S-----,</b>	)		
<b>G----- J-----H-----</b>	)		
<b>Respondents.</b>	)		

**In the Interest of:**

**G----- J-----S----- (M) (DOB 06/01/2006)**

**DECISION ON PETITION FOR TERMINATION**  
**AND TRANSFER OF PARENTAL RIGHTS**

Before the **HONORABLE ROBERT BURTON COONIN, JUDGE** of the Family Court of the  
State of Delaware:

Petition for Termination of Parental Rights is **GRANTED** as to **G----- S-----** and **DENIED** as  
to **G----- J-----H-----**.

Craig Fitzgerald, Esquire, Department of Justice, Wilmington, Delaware for Petitioner,  
Department of Family Services

David J. Facciolo, Esquire, Minster & Facciolo, LLC, Wilmington, Delaware for  
Respondent, G----- S-----

Patrick J. Boyer, Esquire, MacElree Harvey, Ltd., Centreville, Delaware for Respondent,  
G----- J-----H-----

Molly P. Shaw, Esquire, Office of Child Advocacy, Wilmington, Delaware as Guardian  
*ad litem* for Child, G----- J-----S-----

Coonin, J.

## NATURE OF THE PROCEEDINGS

This is the decision on the Petition for Termination and Transfer of Parental Rights filed by Department of Services for Children, Youth and Their Families, Division of Family Services (hereinafter “DSCYF/DFS”) against G----- S----- (hereinafter “Mother”) and G----- J-----H----- (hereinafter “Father”) regarding G----- J-----S----- born June 1, 2006 (hereinafter “Child”).

DSCYF/DFS seeks to terminate the parental rights of Mother in Child under 13 *Del. C.* § 1103(a)(5) on the grounds of “failure to plan” as she has been unable to or has failed to plan adequately for the Child’s physical needs or mental health and development, as well as under 13 *Del. C.* §1103(a)(7) on the grounds that a child has suffered unexplained serious physical injury, near death or death under such circumstances as would indicate that such injuries resulted from the intentional or reckless conduct or willful neglect of the parent, and under 13 *Del. C.* 1103(a)(1) on the grounds of consent. DSCYF/DFS seeks to terminate the parental rights of Father in Child in accordance with 13 *Del. C.* § 1103(a)(5) on the grounds of “failure to plan” as he has been unable or has failed to plan adequately for the Child’s physical needs or mental health and development.

A hearing on the Petition for Termination and Transfer of Parental Rights was held on March 6, 2017. Mother was present and represented by David Facciolo, Esquire; Father appeared by telephone and was represented by Patrick Boyer, Esquire; Molly Shaw, Esquire, served as the Guardian *ad litem* for the Child; and, Craig Fitzgerald, Esquire, served as the Deputy Attorney General for DSCYF/DFS. Testimony was taken from Mother; M----- M-----, one of the Child’s caretakers; Shanna Ruello, the DSCYF/DFS treatment social worker;

Courtney Penhollow, the DSCYF/DFS adoption social worker; and, Father. The Court also conducted an interview with the Child on March 20, 2017.

### **PROCEDURAL HISTORY**

According to the Dependency/Neglect Petition and the Emergency *Ex Parte* Order, at the time the Dependency/Neglect Petition was filed the Child was residing with Mother and two half-brothers, S----- and J---, as well as Mother's boyfriend and brothers' father, G----- R----. Mother reported that the Child's Father had been deported back to Mexico "several years ago" and that she did not have a means of contacting him.

On March 9, 2015, the Child's eleven (11) month old half-brother S----- was admitted to A.I. DuPont Hospital with an acute subdural hematoma to the head and was discovered to have suffered an old fracture to his left tibia. Mr. R---- was caring for S----- at that time and reported that S----- fell out of his crib; however, the doctors opined that the child's injury was inconsistent with that explanation. The parents were unable to provide any explanation for the older tibia fracture.

Following the hospital visit, DSCYF/DFS implemented a safety plan with the family wherein Mr. R---- would not have any contact with the children until criminal and DSCYF/DFS investigations were complete. On March 14, 2015, the child was discharged back into Mother's care. However, four days later, on March 18, 2015, S----- was again admitted to AI DuPont hospital with another subdural hematoma. This injury was so severe that the child had to undergo a left frontal parietal craniotomy, which involves opening the skull to remove blood close to the brain. While Mother claimed that this injury was caused by the prior injury, the doctors believed this resulted from a new trauma and was not caused by S-----'s prior injury but from a new event. Subsequently, DSCYF/DFS sought to implement a new safety plan which would have

required all of Mother's contact with the children be supervised. However, because all possible caretakers for the children had been in contact with S----- prior to his admittance to the hospital, DSCYF/DFS was unable to determine whether any of those caretakers were responsible for S-----'s injuries. On March 30, 2015, DSCYF/DFS filed a Dependency/Neglect Petition for Custody and an Emergency *Ex Parte* Order, seeking to take all three (3) children into custody. On March 30, 2017, the Emergency *Ex Parte* Order was granted and on March 31, 2015, Molly Shaw, Esquire, was appointed as Guardian *ad litem* for all three (3) children.

On April 8, 2015, the Court held a Preliminary Protective Hearing (hereinafter "PPH") finding probable cause that children continued to be dependent as defined by 10 *Del. C.* § 901(8) as Mother stipulated to probable cause on the basis that she had not been able to develop an appropriate safety plan for the children following S-----'s injury and hospitalization. Due to Father's deportation, his whereabouts were then unknown. The Court determined that placement of the children with a relative was not appropriate at that time. The three (3) children were placed in separate foster homes as no foster homes were then available who could take all of the children together. The Court noted that the children were extremely closely bonded. At the conclusion of the hearing, the Court found that continuing the Child's residence in the home was contrary to his welfare and that it was in the best interest of the Child and his brothers to remain in DSCYF/DFS custody. The Court appointed David Facciolo, Esquire to represent Mother in the Dependency/Neglect Petition proceedings, ordered Mother's visitation to be supervised or monitored at the discretion of DSCYF/DFS, ordered DSCYF/DFS to continue to seek a joint foster home for the three children, and ordered DSCYF/DFS to obtain substituted service of process by publication for Father at his last known residence in Mexico.

Although an Adjudicatory Hearing was scheduled for June 19, 2015, this hearing was rescheduled due to lack of available Spanish language interpreters for Mother and Mr. R---- and by request of the parties, as Mother sought to retain an independent medical expert. The parties further noted that due to anticipated extensive medical testimony, a full day should be scheduled for the Adjudicatory Hearing. A pre-trial conference was held on September 11, 2015.

On August 19, 2015, DSCYF/DFS filed a Motion for No Reasonable Efforts and a Motion to Change Goal, asserting that pursuant to 13 *Del. C.* §1103(a)(7), DSCYF/DFS was not required to use reasonable efforts for the purpose of reunification because Mother and Mr. R---- subjected S----- to torture and chronic abuse. DSCYF/DFS also requested that the goal for all three (3) children be changed from reunification to TPR/adoption. The Petition asserted that Father was, at that point, uninvolved in the Child's life. On August 27, 2015, the GAL filed a Response to the Motion, asserting support of the Motions. On August 28, 2015, Mother filed a Response to the Motion, denying that Mother subjected S----- to abuse or torture pursuant to 13 *Del. C.* §1103(a)(7) and requesting the Court deny the Motion. The Court deferred ruling on the Motion until after the conclusion of the Adjudicatory Hearing.

The Court held a bifurcated Adjudicatory Hearing on October 23, 2015 and December 4, 2015. At the hearing, extensive conflicting testimony was presented regarding S-----'s head and tibia injuries and the possible causes for those injuries. Dr. A---- D-----, S-----'s treating physician and the expert witness for DSCYF/DFS in the hearing, testified that S-----'s head injuries were inconsistent with a single event of trauma, but rather represented multiple traumas to the brain. Dr. D----- further testified that Mr. R----' and Mother's explanations of the injuries, that the child fell, were inconsistent with the child's head injuries as presented. According to Dr. D-----, the subdural hematoma suffered by S----- was very painful and could have lasting

effects such as decreased use of his arms and legs as well as learning or intellectual disabilities. Finally, Dr. D----- testified that the Child's older tibia fracture should have been treated immediately after it occurred and that such an injury would have been obvious to a parent as it would have affected the child's movement and ability to walk without pain. Based on the testimony of Dr. D-----, the Court found that S-----'s injuries were inconsistent with the explanations offered by Mother. The Court further found by clear and convincing evidence that S-----'s injuries were the result of abuse by Mother and Mr. R----, based upon S-----'s March 9, 2015 hospital admission for a healing left tibia fracture, a left acute subdural hematoma, and bilateral retinal hemorrhaging while in the care of Father and his March 18, 2015 hospital admission for a left acute subdural hematoma requiring surgical intervention and additional bilateral retinal hemorrhaging while in the care of Mother. The Court also found that the S-----'s older tibia fracture was caused by abuse of either Mother or Mr. R---- and that the parents failed to seek treatment for the child's injury. The Court further found that S-----'s injuries were so severe that DSCYF/DFS was not required to provide reunification services for Mother and Mr. R---- regarding the children. The Court granted the Motion by DSCYF/DFS for no reasonable efforts pursuant to 13 *Del. C.* §1103(a)(7), finding that Mother and Father had collectively subjected S----- to chronic abuse. The Court also granted the Motion by DSCYF/DFS to change the permanency goal for all children from reunification to TPR/Adoption.

A bifurcated Permanency Hearing was held on January 29, 2016 and February 26, 2016. On Day One of the hearing, it was determined that Father had been located in Mexico. At the hearing, Father participated by telephone. Father requested the appointment of counsel and the Court thereafter appointed Patrick Boyer, Esquire, as counsel for Father in these proceedings. On

Day Two of the Permanency Hearing, Father noted that he was currently residing in the state of Mexico, in the country of Mexico. Father also stated that he had been unaware of the DSCYF/DFS Petition for Custody. Although he had contacted Mother to speak with the Child, she had evaded contact with him and lied about the situation. Father also expressed his desire that the Child be placed with his relatives and named a paternal great-aunt, N----- H-----, who lives in Virginia, and an aunt, M----- J-----, who lives in Washington State; an Interstate Compact on the Placement of Children (ICPC)<sup>1</sup> home study request was submitted for both relatives. The Court found that due to Father's residence in Mexico, DSCYF/DFS was unable to offer him services to plan for reunification. However, the Court directed DSCYF/DFS to consult with the Consulate of Mexico to determine whether Mexico could complete a home study of Father's home. Finally, the Court noted that A----- L----- II and his husband M----- M-----, relatives of Mr. R----, had expressed interest in being an adoptive resource for all three (3) children.

The Court held a Post-Permanency Review Hearing on July 12, 2016. At the hearing, the Court found that the ICPC had been denied as to one of the Father's relatives and that the other relative had withdrawn from the process, leaving no relatives available for placement. Additionally, as DSCYF/DFS had placed the children with Mr. M----- and Mr. L----- in March of 2016, the Court was informed that they and the children had developed a strong bond and they were interested in adopting all three (3) children.

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<sup>1</sup> 31 *Del. C.* §381 provides, in part:

- (a) No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.
- (b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring or place the child in the receiving state.

On June 3, 2016, DFS filed a Petition for Termination and Transfer of Parental Rights as to all three (3) children. The petition alleged that Mother's rights should be terminated under 13 *Del. C.* §1103(a)(5) on the grounds that she was not able or had failed to plan adequately for Child's physical needs or mental health a development and under 13 *Del. C.* §1103(a)(8) on the grounds that a child has suffered unexplained serious physical injury, near death or death under such circumstances as would indicate that such injuries resulted from the intentional or reckless conduct or willful neglect of the parent. The petition further alleged that Father's rights should be terminated under 13 *Del. C.* §1103(a)(5) on the grounds that he was not able to or had failed to plan adequately for Child's physical needs or mental health and development.

On December 30, 2016, the Court entered an order terminating the parental rights of Mother and Mr. R---- as to the Child's brothers, S----- and J---, following a hearing on November 29, 2016. The Court found by clear and convincing evidence that statutory grounds for termination of parental rights had been met as to Mother and Mr. R---- on the grounds of consent by parents and that it was in the best interest of S----- and J--- that their parents' parental rights be terminated. The hearing as to the Child was continued from that proceeding and scheduled to resume at a later date.

A hearing on the Petition for Termination and Transfer of Parental Rights as to the Child was held on March 6, 2017. Testimony was taken from Mother; M----- M-----, the Child's caretaker; Shanna Ruello, the DSCYF/DFS treatment social worker; Courtney Penhollow, the DSCYF/DFS adoption social worker; and, Father, by telephone from Mexico. The Court also conducted an interview with the Child on March 20, 2017. At the hearing, the Court noted that the exhibits entered at the November 29, 2016 termination of parental rights hearing as to the Child's brothers were deemed to be continuing exhibits at this proceeding. Those exhibits



included: 1) Mother's consent to terminate her parental rights as to the Child as well as his brothers (Pet. Ex. #1); 2) Mr. R----' consent to terminate his parental rights as to the Child's brothers; and, 3) the Court's prior Orders in this matter<sup>2</sup> (Pet. Ex. #3). The Court took judicial notice of the findings of facts in the prior Court's prior Orders, as recited in summary above.

## **FINDINGS OF FACT**

The Court will not restate all of the testimony and evidence presented at the hearing, but will note the relevant evidence in support of its findings.

### ***1. G----- S-----, Mother***

Mother's consent to the herein Petition regarding the Child was entered into evidence at the termination of parental rights hearing in the interest of the Child's brothers. Therefore, Mother's testimony focused on the contact of the Child with his Father since the Child's birth. Mother stated that she and Father relocated to the U.S. from Mexico together in approximately 2005 and the Child was born on June 1, 2006. Mother stated that when the Child was an infant, Father actively cared for the Child, including changing his diapers and caring for the Child in the home. Mother stated that there were issues of domestic violence with Father during this time and that Father "hit" her and was "verbally abusive" in front of the Child. However, in 2010, when the Child was approximately four (4) years old, Father was deported back to Mexico. Mother stated that just after he left, Father would regularly call the Child and Mother approximately one (1) to two (2) times per week and wanted the Child to come visit him in Mexico. However, Mother stated that his calls became less frequent after one (1) year. Mother also stated that Father did not send the Child gifts or send any financial support for the Child. Finally, Mother testified that she

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<sup>2</sup> Preliminary Protective Hearing Order of April 9, 2015; Adjudicatory Hearing Rescheduling Order of June 25, 2015; Adjudicatory Hearing Order of December 28, 2015; Permanency Hearing (Day One) Order of February 1, 2016; Permanency Hearing Order (Day Two) of March 16, 2016; and, the Post Permanency Review Hearing Order of July 29, 2016.

did not believe Father was capable of caring for the Child and that the Child should not be relocated to Mexico, but alleged no facts in support of her opinion in this regard.

**2. M----- M-----, Caretaker**

Mr. M----- testified that the Child and his brothers have resided with him and his husband, Mr. L-----, for some time<sup>3</sup> and that he and Mr. L----- wished to adopt all three children. Mr. M----- noted that a home study had been conducted and that everything had been approved for them to pursue adoption of the children.

Mr. M----- testified that the Child was doing well in school. Although Child had been behind in reading, he is now performing at grade level. The Child has an Individualized Education Plan (IEP) for a learning disability and Mr. M----- and his husband spend extensive time working with Child in the evenings to ensure that he stays on track educationally.

According to Mr. M-----, Father has had sporadic telephone contact with the Child since Father became aware of these proceedings. Mr. M----- stated that Father was calling more often prior to November of 2016, but the frequency had since diminished. Father called the Child on November 29, 2016, the date of the last hearing in this matter, and did not call again until December 29, 2016. Mr. M----- stated that the phone was disconnected once or twice during that telephone call. Father then texted Mr. M----- on February 16, 2017 to set up a telephone call for February 17, 2017; Father did not call until February 18, 2017 and the telephone call disconnected several times. The parties also exchange photographs via texted messages. Mr. M----- stated that the telephone calls between Father and the Child had grown more positive and that Father had ceased speaking with the Child about his own issues. Mr. M----- stated that the Child does not ask to speak with Father or see Father; however, he does have some memories of

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<sup>3</sup> The record reflects that the Child and his brothers were placed with Mr. M----- and his husband, A----- L----- II, in March of 2016.

his Father. Because Father only speaks Spanish and the Child is “losing” some of his Spanish skills, sometimes the Child has a difficult time understanding his Father. Finally, Mr. M----- stated that if the TPR were granted and the Child were adopted by him and his husband, he would still allow contact between the Child and his Father and would try to set up a visit to Mexico for the Child to see Father.

### ***3. Shanna Ruello, DSCYF/DFS Treatment Social Worker***

Ms. Ruello testified that she was the DSCYF/DFS treatment social worker assigned to this case until March of 2016. She noted that at the beginning of the case, Father’s whereabouts were unknown and it was thus impossible for DSCYF/DFS to contact him. Although publication in a newspaper in Mexico was attempted, this was unsuccessful. In December of 2015, however, she finally had a telephone call with Father, who informed her that he had relatives who lived in the United States who may be able to care for the Child, including a paternal great-aunt N----- H----- who lives in Virginia and an aunt, M----- J-----, who lives in Washington State.

DSCYF/DFS submitted an Interstate Compact on the Placement of Children (ICPC) for both relatives and relative notification letters were sent to Ms. J----- and Ms. H----- (Pet. Ex. #4 and #5, respectively). DSCYF/DFS testified that the ICPC as to Ms. H----- in Virginia was withdrawn due to lack of space in her home (Pet. Ex. #6). The ICPC for Ms. J----- was denied due to lack of space and financial resources to care for the Child. However, Ms. Ruello stated that Ms. J----- and Ms. H----- visited with the Child in January and April of 2016 and that those visits went well. The current caretakers for the Child, Mr. M----- and Mr. L-----, helped facilitate the April 2016 visit. During the visits, the relatives brought photographs of the Child and Father for the Child and the Child enjoyed seeing his relatives. Ms. Ruello also testified that

the Child had telephone contact with Father from January of 2016 to March of 2016 that went well.

Following March of 2016, after the Child was moved to his current placement, this case was transferred from the treatment unit to the adoption unit at which time Ms. Ruello's involvement with the case ended.

#### ***4. Courtney Penhollow, DSCYF/DFS Adoption Social Worker***

Ms. Penhollow, the Child's DSCYF/DFS adoption social worker, testified as to the Child's current living arrangements and well-being. She noted that it had been difficult to initiate counseling for the Child; although he was seeing C---- S----, a therapist at Jewish Family Services (JFS), he was reluctant to "open up." Ms. Penhollow testified that the Child now wished to restart counseling with Mr. S----, who is no longer employed by JFS.

According to Ms. Penhollow, the Child has no medical issues and is doing very well in his current placement with Mr. L----- and Mr. M-----. She stated that he looks to his caretakers for love and affection and is very close to his brothers, who also reside with him in the home. Ms. Penhollow stated that Mr. L----- and Mr. M-----, who are married, are interested in being an adoptive resource for the Child, as well as his brothers. A Better Chance for our Children (ABC) completed a social report and approved the placement as an adoptive resource for the Child (Pet. Ex. #3).

Ms. Penhollow testified that the Child has fears and nightmares about being removed from his current residence and has stated that he does not wish to reside with Father in Mexico. Ms. Penhollow noted that the Child has never been to Mexico and has lived with his brothers their entire lives. DSCYF/DFS believes that TPR/adoption, rather than guardianship or permanent guardianship, is the most appropriate goal for the Child due to the Child's fears of being

removed, as well as the fact that his brothers are in the process of being adopted by Mr. M----- and Mr. L-----.

**5. G----- J-----H-----, *Father***

Father testified that in 2010 he failed to appear in court in the U.S. for a traffic ticket; as the result of which an arrest warrant was then issued and he was subsequently deported. Although he attempted to return to the U.S., he was unable to do so and cannot do so legally at this time.

Father stated that while he resided in the U.S. he was active in caring for the Child by “doing all the things fathers do,” such as taking him to the doctor and preparing food for the Child. Father denied Mother’s allegations regarding domestic violence between she and Father. Father stated that he had not seen the Child since he returned to Mexico in 2010 and that he had told Mother to send the Child to Mexico if she was unable to care for him.

Father has not provided any financial support for the Child since he was deported; he testified that it was difficult to send money from Mexico into the U.S. He stated that he had more frequent telephone contact with the Child initially after his deportation; however, he did not have regular telephone contact with the Child from 2011 until 2015. Father testified that Mother denied him access to the Child and that he was unable to return to the U.S.

Father lives in Mexico with his wife and his four (4) year old daughter. His parents, the Child’s paternal grandparents, live nearby. He stated that he was able to provide for his family financially and that his wife does not work. Father also testified there is a school close to his home and that the Child could receive appropriate special education services in that school. Father also testified that he has inquired as to how the Child would obtain health insurance if he was sent to live in Mexico. Father stated that he was in good health and he has no issues that impact his ability to care for the Child.

Father learned approximately one (1) year ago that the Child had come into DSCYF/DFS custody in the U.S. Father stated that “it was difficult to lose him” when he was deported and that he opposed the TPR, stating that it would be like “losing him again.” Father believes that he and the Child have a positive relationship and that they enjoy speaking on the phone. Father desires for the Child to be reunited with him in Mexico; although he acknowledges that the Child has always lived in the U.S., Father nonetheless believes that the Child could be happy in Mexico. However, Father also stated that if the Child desired to remain in the U.S., he was “willing to be okay with that.” Father also testified that he believed the Child’s current caretakers would be willing to allow him to continue telephone contact with the Child if the TPR were granted.

#### ***6. Child Interview***

The Court conducted an interview with the Child on March 20, 2017. Throughout the interview, the Court was impressed with the Child’s articulation and confidence. The Court found the interview a joy to conduct due to the Child’s intelligence, pleasant manner, and bright personality.

During the interview, the Child stated that he wanted to “stay with M----- and A--- and my brothers.” When asked about TPR, the Child stated that he thought termination of parental rights meant “taking away mom’s and dad’s rights” as parents. He stated that he did not know how he felt about taking away Mother’s or Father’s rights. The Child stated that he desired to visit his Father “sometime” and that he would like to meet his sister, who lives in Mexico with Father. However, the Child was adamant that he desired to remain “with A--- and M-----.” The Court inquired whether the Child would be “okay” with Father legally remaining his Father and being

able to visit Father, but staying in his current placement with “A--- and M-----.” The Child stated he would “like that.”

#### ***7. Socioeconomic Evaluation of Father from the Mexican Consulate (Pet. Ex. #7)***

At the Permanency Hearing on February 26, 2016, the Court directed DSCYF/DFS to contact the Mexican consulate to determine whether a home study could be done with regard to Father’s home in Mexico. On June 23, 2016, the Court received a “socioeconomic evaluation” of Father and his residence, which provided extensive details regarding Father’s home, his family, and his community. The evaluation was performed by a government agency, the “State of Mexico System for the Comprehensive Development of the Family.” The Court arranged for the document, written in Spanish, to be translated into English.<sup>4</sup>

The report reflects that Father is twenty-nine (29) years old. He currently resides with his wife, A--- C---- M----- R----, in a common law marriage, along with their daughter, K----- G---- J----- M-----, who is four (4) years old. The report stated that “Their dynamic is positive and functional, their communication is open without being assertive between the couple...[Father] takes on the role of financial provider and head of household, while his spouse... is in charge of housekeeping activities and care of their daughter.” The report notes that they maintain a good relationship with their family members and neighbors and that there have never been any issues with violence in the family.

Father lives approximately 75 kilometers from the capital city Toluca de Lerdo in the State of Mexico, in the town of Ahuacatitlan. Although the town is rural, within it there is a market, grocery stores, basic level schools, a doctor, and preventative security and public services including gas and electricity. At the time of the report, the home where Father lived was owned by his father; Father and his family have since moved into a new residence behind the original

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<sup>4</sup> The English translation is included in Pet. Ex. #3.

home. The report reflects that Father's home at that time was clean and well-built with a shower and toilet inside. The report also notes that there is space for the Child to reside in the home. The photographs attached to the report depict a clean, furnished home with modern amenities. It must be noted that at the time of the preparation of the report, Father was living in his parents' home on the grounds while his new home was under construction. No evidence was presented to suggest the newly completed home is inadequate as a residence for the Child.

Father earns approximately \$5,200 per month, derived from the sale of avocados and the purchase and sale of livestock, as well as additional work in his free time. He is able to meet the basic needs of his family, as well as purchase secondary necessities and leisure items, with his current income.

Finally, the report notes that Father's wife, as well as paternal grandparents, "broadly stated their financial and moral support for the maintenance and education of the [Child], if he is incorporated into his father's family."

## **ANALYSIS**

The United States Supreme Court has held that a parent's interest in his or her children "undeniably warrants deference and, absent a powerful countervailing interest, protection."<sup>5</sup> Likewise, the Delaware Supreme Court has found that the parental right is a sacred one that "does not depend on societal standards or mores of lifestyle, age, economic achievement, or sex."<sup>6</sup> It has also held that parental rights arise from a natural relationship, are fundamental liberties and may not be abrogated in the absence of the most compelling reasons.<sup>7</sup> While recognizing the fundamental liberty interest of the parents, the Court must consider that one of the important objectives of the termination of parental rights statute is to ensure that children are

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<sup>5</sup> *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

<sup>6</sup> *In the Matter of Burns*, Del. Supr., 519 A.2d 638, 645 (Del. 1986).

<sup>7</sup> *See id.*; *In the Interest of Stevens*, Del. Supr., 652 A.2d 18, 24 (Del. 1995).



not denied the opportunity for a stable family life.<sup>8</sup> The law recognizes parental rights as being fundamental rights which may not be abrogated absent compelling reasons.<sup>9</sup> However, the Federal Adoption and Safe Families Act of 1997 (ASFA) recognizes the countervailing importance of the child's safety and need for permanency by placing limits on the time in which parents are given to rehabilitate themselves and assume their parental responsibilities, provided the State has met its duties to provide a meaningful process and reasonable efforts to reunify the family.<sup>10</sup>

A parent's strong interest in his or her child can be terminated only upon a showing, by clear and convincing evidence, that one or more of the statutory grounds set forth in 13 *Del. C.* §1103(a) has been established and that severing the parental ties would be in the best interests of the child as defined in 13 *Del. C.* § 722.<sup>11</sup> The clear and convincing standard of proof requires greater certainty about the factual conclusions than a preponderance of the evidence standard, underscoring the important liberty interest at stake and the special loss that occurs with the termination of a parent's rights in a child.<sup>12</sup>

#### **A. Statutory Grounds for Termination of Parental Rights**

DSCYF/DFS seeks termination of Mother's parental rights in Child on the grounds of failure to plan pursuant to 13 *Del. C.* §1103(a)(5), under 13 *Del. C.* §1103(a)(7) on the grounds that a child has suffered unexplained serious physical injury, near death or death under such circumstances as would indicate that such injuries resulted from the intentional or reckless conduct or willful neglect of the parent, and under 13 *Del. C.* §1103(a)(1) on the grounds of

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<sup>8</sup> See *Shepherd v. Clemens*, Del. Supr., 752 A.2d 533 (Del. 2000).

<sup>9</sup> *Id.* See also, *In re Stevens*, 652 A.2d 18, 24 (Del. 1995).

<sup>10</sup> *In re K.L.T.*, 2001 WL 493113 (Del. Fam. Jan 22, 2001).

<sup>11</sup> *Id.*; see also *In re Hanks*, 553 A.2d 830, 833 (Del. 1982).

<sup>12</sup> See *Patricia A.F. v. James R.F.*, 451 A.2d 830 (Del. 1982).

consent. DSCYF/DFS seeks to terminate Father's parental rights in Child based on the grounds of "failure to plan" pursuant to 13 *Del. C.* §1103(a)(5).

***1. Consent-Mother***

Mother consented to the TPR petition (Pet. Ex. #1).<sup>13</sup> Mother consulted with her attorney prior to the TPR proceedings and prior to executing her consent to the herein Petition. The Court finds that Mother's consent was entered knowingly, intelligently, and voluntarily, and therefore Mother's consent is valid. Mother has consented to termination of her parental rights and to transfer those rights to DSCYF/DFS. The Court finds that the statutory grounds for termination of Mother's parental rights has been satisfied pursuant to 13 *Del. C.* §1103(a)(1) on the ground of consent.

***2. Unexplained Serious Physical Injury-Mother***

DSCYF/DFS has also alleged a second ground against Mother, that of unexplained serious physical injury to a Child in Mother's care. The Court has already found by clear and convincing evidence, in the Adjudicatory Hearing, that the Child's brother suffered an unexplained serious physical injury while in Mother's care. Therefore, the Court finds that clear and convincing evidence establishes that a second ground of termination of parental rights for Mother, that of an unexplained serious physical injury of a Child in her care.

***3. Failure to Plan-Father***

DSCYF/DFS requests the Court find that Father failed to plan for the Child pursuant to 13 *Del. C.* §1103(a)(5). DSCYF/DFS must demonstrate by clear and convincing evidence that Father failed to plan for the child's physical needs or mental and emotional health and development.

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<sup>13</sup> Entered into evidence on November 29, 2016.

Both Mother and Father testified that Father was actively engaged in caring for the Child from the time of his birth until he was four (4) years old. The record reflects that Father changed the Child's diapers, took him to school, fed and bathed the Child, and "did all the things that fathers do." There are no allegations that Father abused or neglected the Child while he was in his care. When the Child was four (4) years old, in 2010, Father was deported to Mexico following his failure to appear in court for a traffic ticket. The record reflects that Father left the Child with Mother, who maintained contact with Father for approximately one (1) year. Father had no reason to doubt at the time of his deportation that Mother was anything other than an appropriate caregiver for the Child. Following his deportation, Father also informed Mother that she could send the Child to him in Mexico if she was ever unable to care for him. Father also attempted numerous times to return to the U.S., both by legal and illegal means, but was unsuccessful at his endeavors.

Both Father and Mother testified that Father maintained telephone contact with Mother and the Child for approximately one (1) year following his deportation. Thereafter, according to Father, Mother began blocking his access to the Child, and he eventually lost contact with him. However, Mother disputes this, testifying that Father stopped contacting the Child. The Court finds that Father is more credible on this point. The evidence presented by DSCYF/DFS does not demonstrate that Father failed to contact his Child as opposed to having been blocked from contacting the Child by Mother. As Mother was at that time living with Mr. R---, she may have been unwilling to accept telephone calls from Father.

Because Father was unable to return to the U.S. and because Mother blocked his telephone access to the Child, Father was unable to ascertain the Child's whereabouts in order to contact the Child. As a result, Father lost contact with the Child for approximately five (5) years.

The record reflects that this was not due to Father's failure to plan for the Child's wellbeing, but rather due to forces then outside of his control, such as his immigration status and Mother's failure to facilitate contact between the Child and Father.

Father became aware of that the Child had been taken into the custody of DSCYF/DFS after DSCYF/DFS made contact with him in December of 2015. The record reflects that once Father became aware that the Child was in the custody of DSCYF/DFS, he actively participated in these proceedings by telephone, completed a home study performed by the Mexican consulate, and has maintained contact with the Child. Although Father could have contacted the Child more, the record reflects that the telephone contact between Father and Child has been sporadic partially due to cellular service issues and frequent disconnection, and while irregular, it has been ongoing. Father has maintained throughout these proceedings that he is willing to care for the Child and desires to have the Child reunified with him in Mexico.

The record also reflects that Father is employed and lives in appropriate housing for the Child. The home study performed by the Mexican consulate was very detailed, and included information about Father's home, family, community, and finances. Father lives in a rural community in Mexico that nonetheless contains a school, grocery stores, and medical facilities. Father lives in a modest but comfortable home with modern amenities, close to his extended family. Father also is financially capable of caring for the Child and has taken steps to determine how the Child would be cared for and maintain health insurance if he is reunified with Father in Mexico. The Court finds that Father is fully capable of caring for the Child in his home and that that he is willing and able to care for the Child.

Other state courts provide guidance regarding termination of parental rights for parents who have been deported. Case law reflects that courts have consistently found that deportation

alone is insufficient to terminate a parent's parental rights.<sup>14</sup> For example, in *In re Interest of Angelica L.*, the Supreme Court of Nebraska found that a deported Mother "did not forfeit her parental rights because she was deported."<sup>15</sup> In this case, a mother was deported after failing to timely take her child to the doctor. The Court noted that the mother had established a stable residence in her home country, Guatemala, and that nothing in the record indicated that she was an unfit parent. Likewise, in this case, Father has established a stable residence in his home country and nothing indicates that he is an unfit parent. There are no allegations of abuse or neglect of the Child by Father while the Child was in his care. Additionally, in *In re E.N.C.*, the Texas Supreme Court found that while a parent's deportation could be considered in a termination of parental rights proceeding, deportation, like incarceration, by itself may not be the dominant factor in terminating parental rights.<sup>16</sup> In *E.N.C.*, the Court also found that no evidence was presented that the deported father in Mexico was unable to care for the children and therefore found that it was not in the best interest of the child that the father's parental rights be terminated.<sup>17</sup> Although each case presents different facts and circumstances for the Court to consider, the clear direction courts take is that a social welfare agency must provide evidence that a parent is unfit, in addition to being deported, before terminating a deported parent's parental rights.

This Court has previously terminated the parental rights of a parent who has been deported.<sup>18</sup> However, in that case, the Court found that the father had a history of abuse and neglect of the children and was frequently incarcerated. The Court also found that the father was

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<sup>14</sup> See *In re E.N.C.*, 384 S.W.3d 796 (2012) (Tex. Sup. Ct.) (finding that Father's deportation was insufficient to terminate his parental rights); *In Interest of J.K.V.*, 490 S.W.3d 250 (2016) (Tex. Ct. App.) (finding that Father's deportation was insufficient to terminate his parental rights); *In re Interest of Angelica L.*, 277 Neb. 984 (2009) (finding that deportation was insufficient to terminate Mother's parental rights).

<sup>15</sup> *In re Interest of Angelica L.*, 277 Neb. 984, 1009 (2009).

<sup>16</sup> *In re E.N.C.*, 384 S.W.3d 796 (2012) (Tex. Sup. Ct.)

<sup>17</sup> *Id.*

<sup>18</sup> *DSCYF v. Garcias*, 92 A.3d 1072 (Del. Fam. Ct.) (2013).

unwilling to assume responsibility for the children. In the case at bar, however, Father has no history of abuse of the child, the record reflects only one (1) incarceration totaling one (1) week for a traffic ticket, and Father has consistently maintained that he is willing and able to care for the Child. Father is employed and has a stable home and family residence.

The record reflects that Father was active in the Child's life, despite his deportation, until he was blocked from being so due to Mother. Once Father discovered the Child was in the custody of DSCYF/DFS, he resumed contact with the Child on a consistent basis. He has also demonstrated that he capable of caring for the Child in his home and is eager to have the Child reunified with him in Mexico. Therefore, the Court finds that DSCYF/DFS has failed to establish by clear and convincing evidence that Father has failed to plan for the Child's needs.

#### **B. Best Interest of the Child**

Even when one or more of the statutory grounds for termination of parental rights has been established, the petition should not be granted unless the Court determines by clear and convincing evidence that the termination is in the child's best interest.<sup>19</sup> While required to consider all factors relevant to this case in determining the Child's best interests, the Court must

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<sup>19</sup> See *Division of Family Services v. Hutton*, 765 A.2d 1267 (Del. 2000)

specifically consider the factors enumerated in 13 *Del. C.* §722.<sup>20</sup> The Court has also held that some factors may be given more weight than others in the Court’s analysis.<sup>21</sup>

### ***1. TPR as to Father***

The Court found, *supra*, that DSCYF/DFS did not establish by clear and convincing evidence that Father failed to adequately plan for the Child’s physical and emotional needs. Therefore, it is not necessary for the Court to determine whether TPR is in the Child’s best interests. However, even if DSCYF/DFS had established the statutory ground of failure to plan as to Father, the Court nonetheless finds that it *not* in the Child’s best interests for Father’s parental rights to be terminated based on an analysis of the factors in 13 *Del. C.* §722:

#### ***i. The wishes of the child’s parents as to his custody and residential arrangements;***

During the hearing, Father testified that he opposed the herein Petition. He desires for the Child to be reunited with him in Mexico and feels that he is capable and willing to care for the Child in his home. Father stated that “it was difficult to lose” the Child when he was deported and stated that if the herein Petition were granted, it would be like “losing him again.”

Additionally, although Father acknowledges that the Child has always lived in the U.S., Father

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<sup>20</sup> 13 *Del. C.* § 722(a) mandates that the Court consider all relevant factors including:

- (1) The wishes of the child's parents or 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 and his or her parents, grandparents, siblings, persons cohabiting in a relationship between a husband and wife with a parent of the child any other residents of the household or persons who significant effect the child's best interest;
- (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, and
- (8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.”

<sup>21</sup> *Ross* citing *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997) (noting that “[t]he amount of weight given to one factor or combination of factors will be different in any given proceeding. It is quite possible that the weight of one factor will counterbalance the combined weight of all other factors and be outcome determinative in some situations.”)

nonetheless believes that the Child could be happy in Mexico. However, Father also stated that if the Child desired to remain in the U.S., he was “willing to be okay with that.” Finally, Father testified that he believed the current caretakers would continue to allow him to contact the Child if the herein Petition were granted, indicating that Father and the Child’s caretakers have a positive relationship. Under these circumstances, it is possible that a permanency plan for this Child far less onerous may be available. Therefore, the Court finds that this factor favors denying the herein Petition.

***ii. The wishes of the child as to his custodial and residential arrangements;***

During the child interview, the Child stated that he desires to visit his Father and meet his sister. Although the Child made it clear that he desired to remain in the U.S. with his current caretakers and his brothers, he also indicated that he wished to have a relationship with his Father. The Child stated that he enjoyed speaking with his Father and would like to continue to do so. The Court finds that the Child not surprisingly is unable to understand the legal consequences of termination of his parents’ parental rights; rather, he merely understands that he wishes to remain with his current caretakers and would like to continue having a relationship with his Father. Accordingly, the Court finds that this factor favors denying the herein Petition.

***iii. The interaction and interrelationship of the child with his parents, grandparents, siblings, person cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or person who may significantly affect the child’s best interests;***



The record reflects that the Child is extremely close to his younger brothers, as well as his current caretakers. Since being in the home of his current caretakers, he has thrived both emotionally and academically. The record also reflects that the Child was separated from his brothers for over a year while they resided in separate foster homes, and the Court notes that this was especially traumatic for the Child, as he is the oldest and especially bonded to his younger siblings. Therefore, it is important to the Child's wellbeing that he be able to remain in his current home with his siblings and caretakers.

However, the record also reflects that the Child desires a relationship with his Father and that Father has sought to maintain contact with the Child to the extent he has been able to do so. Although the Child and Father do not currently have a bonded relationship, they nonetheless speak with each other on the telephone and both indicate that their relationship is a positive one. Additionally, the Child has extended paternal relatives in the U.S. with whom he enjoyed visiting when they came to Delaware and would like to see more. According to DSCYF/DFS, Father's aunts came to visit the Child and showed him pictures of Father and his family, which the Child enjoyed. The record reflects that although Father's relatives are unable to care for the Child due to the denial of the ICPC, Father's relatives were nonetheless invested in the Child's life and wellbeing and seek to continue that relationship.

Finally, the Court finds that although the Child has never met his younger sister who lives in Father's home, nor has he spoken with her, he nonetheless would benefit from building that relationship. The Child is extremely close to his brothers; the addition of another sibling, albeit one who lives far away, would only serve to strengthen his support system and bond with his family.

Therefore, the Court finds that this factor favors denying the herein Petition. Although the Child is clearly extremely bonded to his caretakers and brothers in his current household, and should remain in that household, the Court nonetheless believes that the Child deserves an opportunity to build a relationship with his Father and his paternal relatives. Additionally, while the approved permanency goal was termination of parental rights for the purposes of adoption, once denied, DSCYF/DFS will need to seek an appropriate replacement. Father's testimony as to his willingness to allow the Child to remain in Delaware raises the possibility of a guardianship for the Child.

***iv. The child's adjustment to his home, school, and community;***

The record reflects that the Child is doing exceptionally well in the home of his current caretakers. He has resided with them for over one (1) year, and since that time he has grown both academically and emotionally. According to the social report submitted by DSCYF/DFS, the Child looks to his current caretakers for love and affection and is an integral part of their home. Additionally, his caretakers have sought to ensure that the Child's special needs in school are being addressed. Therefore, the Court finds that the Child is well-adjusted to his current home, school, and community in Delaware.

On the other hand, the record reflects that the Child is not at all adjusted to Father's home, as he has never been to Mexico and has not seen his Father since he was four (4) years old. Therefore, this factor favors granting the herein Petition.

***v. The mental and physical health of all individuals involved;***

The record reflects no mental health or physical health issues of either Father or the Child's current caretakers. The Child has an Individualized Education Plan (IEP) for a learning disability. Mr. M----- testified that he and his husband work diligently with the Child every

night to assist him with his reading despite his learning disability; due to the efforts of the Child and his caretakers, the Child's reading has progressed to the point where he is now reading on his grade level. The record reflects that the Child's caretakers are willing and able to continue to diligently address the Child's special education needs.

Father testified that the school near his home has services available for children with special needs. The report produced by the Mexican consulate indicates that there is a school near Father's home, though the report does not address the school's services with regard to special education for students with special needs. Nonetheless, there is nothing in the record to indicate that Father is unable to assist the Child with his educational needs. Therefore, the Court finds that this factor favors denying the herein Petition.

***vi. The past and present compliance by Father with his rights and responsibilities to the child under §701 of this title;***

The record reflects that the Child was cared for by Mother and Father until Father's deportation in 2010. Following his deportation, Father maintained contact with the Child until he was unable to do so due to Mother's failure to facilitate contact. Since becoming aware of the herein proceedings, Father has been an active participant and has maintained contact with the Child. Unlike Mother, Father has never been found to pose a risk to the Child.

Additionally, the record reflects that Father is eager to have the Child reunited with him in Mexico and is capable of caring for the Child in his home. Accordingly, the Court finds that Father has been compliant with his responsibilities as a parent to the Child to the extent that he has been able to do so given his immigration status and deportation. Therefore, this factor favors denying the herein Petition.

***vii. Evidence of domestic violence as provided for in Chapter 7A of this title; and,***

Mother testified that Father abused her in front of the Child during the time between the Child's birth in 2006 and when Father was deported in 2010. Father denied that any incidents of abuse occurred. Additionally, the report from the Mexican consulate indicates that there are no issues of violence with Father and his family, as confirmed with interviews with Father, his family, and Father's neighbors. Mother's testimony regarding abuse by Father is too vague to find that Father abused Mother. There were no Protection From Abuse Orders between Mother and Father, and Mother indicated that she and Father were together until Father was deported. Therefore, the Court finds that this factor is inapplicable to the Court's analysis.

***viii. The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.***

The record reflects that Father was deported following his failure to appear in court for a traffic ticket. The record is absent as to any other criminal history of Father. Therefore, the Court finds that this factor is inapplicable to the Court's analysis.

The Court finds factors one (1), two (2), three (3), five (5), and six (6) favor denying the herein Petition, whereas factor four (4) favors granting the herein Petition and factors seven (7) and eight (8) are inapplicable to the Court's analysis. Therefore, the Court finds that it is in the Child's best interests that the herein Petition be denied.

The Court finds that Child's desire to maintain a relationship with his Father has merit, as is his desire to remain in the U.S. with his current caretakers. The record reflects that the Child is doing exceptionally well in the home of his current caretakers, and that they are committed to

ensuring that he is cared for and that all his needs are met. Mr. L----- and Mr. M----- have provided exceptional care and love for the Child, such that the Child has grown both emotionally and academically in their care. In finding that it is not in the Child's best interests that Father's parental rights be terminated, the Court is *not* finding that it is in the Child's best interests that he be reunited with Father in Mexico. Rather, the Court is merely finding that there may be other options available to this family to allow the Child to remain in the U.S. with his current caretakers without legally severing the family ties of Child and Father. By not terminating Father's parental rights, the Court is ensuring that the Child maintains a relationship with his Father, his younger sister, and his paternal relatives, although he may never live with them.

The Court notes that the Child's support system is only strengthened by ensuring that the Child maintains a relationship with his Father and his paternal relatives. The Child's current caretaker, Mr. M-----, testified that he sought to allow the Child to maintain a relationship with Father by continuing telephone contact with Father and by arranging a visit to Mexico. The Court commends Mr. M----- and Mr. L----- for seeking to support this relationship in order to expand the Child's support network. However, the Court notes that Father, due to his immigration status, has consistently lacked the power to facilitate a relationship with his son, despite his efforts to maintain that relationship. Should the Court grant the herein Petition of DSCYF/DFS, there would be no means for Father to enforce *any* of his rights to have a relationship with the Child, even though the maintenance of that relationship is in the Child's best interests. Therefore, the Court finds that it is not in the Child's best interest that Father's parental rights be terminated.

## **2. TPR as to Mother**

The Court found, *supra*, that DSCYF/DFS established by clear and convincing evidence that Mother consented to the herein Petition. However, before granting the herein petition, the Court must also find that it is in the best interest of the Child that Mother's parental rights be terminated based on an analysis of the factors in 13 *Del. C.* §722:

### ***i. The wishes of the child's parents as to his custody and residential***

The record reflects that Mother has consented to the TPR and believes that TPR is in the Child's best interests. Therefore, the Court finds that this factor favors granting the herein Petition.

### ***ii. The wishes of the child as to his custodial and residential arrangements;***

During the child interview, the Child stated that he did not know how he felt about terminating his Mother's parental rights. The Court finds the Child is too young to understand the consequences of legally terminating his parents' rights. The Court did not inquire whether the Child desired to maintain a relationship with Mother. The record reflects that the Child has had no contact with Mother for over a year. Therefore, the Court finds that this factor is applicable to the Court's analysis.

### ***iii. The interaction and interrelationship of the child with his parents, grandparents, siblings, person cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or person who may significantly affect the child's best interests;***

As the Court noted, *supra*, the Child is extremely close to his brothers, as well as his current caretakers, and it would be detrimental to his wellbeing to remove him from that placement. The record is void of any information regarding the Child's current relationship with Mother or Mother's relatives. Although Mother and Child appeared to have a positive relationship prior to when the Child was taken into the custody of DSCYF/DFS, she has not seen the Child for some time. Therefore, the Court finds that this factor favors granting the herein Petition.

***iv. The child's adjustment to his home, school, and community;***

The Court found, *supra*, that the Child is well-adjusted to his current home, school, and community in Delaware.

On the other hand, the record reflects that the Child is not at all adjusted to Mother's home, as he has not been in the care of Mother for over almost two (2) years. Therefore, this factor favors granting the herein Petition.

***v. The mental and physical health of all individuals involved;***

As noted *supra*, the Child has special education needs that are being diligently addressed by his current caretakers. The record reflects no mental health or physical health issues of Mother. The record is also absent any information regarding Mother's ability to address the Child's special education needs. Therefore, the Court finds that this factor is inapplicable to the Court's analysis.

***vi. The past and present compliance by Mother with her rights and responsibilities to the child under §701 of this title;***

The record reflects that the Child's needs were being met by Mother and Father until the Child was four (4) years old and Father was deported. Following Father's deportation, Mother

began residing with her paramour Mr. R---- and gave birth to the Child's brothers. The Court found by clear and convincing evidence that the Child's brother, S-----, had sustained serious physical injuries due to the actions or neglect of Mother and that the Child was thus at serious risk in Mother's home. Due to the severity of the allegations of abuse, the Court finds that Mother has not been compliant with her responsibilities as a parent to the child, even though the allegations of abuse concerned a child other than the Child subject to the herein Petition. Therefore, this factor favors granting the herein Petition.

***vii. Evidence of domestic violence as provided for in Chapter 7A of this title; and,***

The Court found, *supra*, that there was no evidence of domestic violence with Mother and Father. The record is absent as to any other allegations of domestic violence regarding Mother. Therefore, the Court finds that this factor is inapplicable to the Court's analysis.

***viii. The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.***

The record is absent as to any criminal history of Mother. However, due to the abuse suffered by the Child's brother, a criminal investigation was undertaken for child abuse. Therefore, the Court finds that this factor favors granting the herein Petition.

The Court finds factors one (1), three (3), four (4), six (6), and eight (8) favor granting the herein Petition, whereas factors two (2), five (5), and seven (7) are inapplicable to the Court's analysis. The record reflects that the Child is well-adjusted to the home of Mr. L----- and Mr. M----- and desires to remain in their home. Since being in their home, he has grown both emotionally and academically; his needs are being met in full and he is doing well. It would not



be in the Child's best interest to return to Mother's home. Therefore, the Court finds, following an analysis of the factors under 13 *Del. C.* §722, that it is in the best interest of the Child that Mother's parental rights be terminated.

### **C. Finding of Harm to the Child**

Pursuant to 13 *Del. C.* §1103(b), the Court shall not terminate the parental rights of one (1) parent and leave only one (1) parent holding parental rights, unless the Court finds that the continuation of the rights to be terminated would be harmful to the Child. In this case, the Court has found, *supra*, that DSCYF/DFS has established grounds for the termination of Mother's parental rights on the ground of consent and that it is in the Child's best interest that Mother's parental rights be terminated. However, the Court has also found that DSCYF/DFS failed to establish grounds for termination of Father's parental rights and that it is not in the Child's best interest for Father's parental rights to be terminated. These findings would leave parental rights in only one (1) parent.

The Court finds that not terminating Mother's parental rights would be harmful to the Child. Mother consents to the herein Petition and has agreed that termination of the Child's parental rights is in the Child's best interests. Moreover, the record reflects that the injuries sustained by the Child's brother, S-----, were so severe that the Child may have suffered significant brain damage or died had he not received prompt medical attention. The Court further found that these injuries were due to the abuse or neglect of Mother as well as that child's father. The record also reflects that the injuries sustained by S----- were caused by multiple incidents of abuse over an extended period of time. The Court found that S-----'s injuries were so severe that the Child was at serious risk of injury in Mother's home. Therefore, the Court's findings

related to the physical abuse endured by the Child's brother poses such a significant risk to the Child that the Court finds that it would be harmful for Mother to continue to hold parental rights in the Child.

### **CONCLUSION**

The Court finds that DSCYF/DFS has established by clear and convincing evidence that the statutory ground for the termination of Mother's parental rights exists under 13 *Del. C.* 1103(a)(1), on the grounds of consent. The Court also found that clear and convincing evidence establishes a second ground for termination of parental rights, that of unexplained serious physical injury to a child in Mother's care pursuant to 13 *Del. C.* §1103(a)(7). However, because Mother has consented and DSCYF/DFS has agreed to accept that right, the Court solely grants the termination of Mother's parental rights on the basis of Mother's voluntary consent.<sup>22</sup> Mother's consent to the herein Petition has the limited purpose of transferring her parental rights to DSCYF/DFS or the individuals selected by DSCYF/DFS for adoption; accordingly, her rights must be transferred to DSCYF/DFS. The Court has also found that it is in the best interest of the Child for Mother's parental rights to be terminated based on an analysis of the factors pursuant to 13 *Del. C.* §722.

However, the Court finds that DSCYF/DFS has failed to establish by clear and convincing evidence that the statutory ground for termination of Father's parental rights exists

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<sup>22</sup> The Court notes for the record that Mother and the father of her other children have another child currently in the custody of DSCYF/DFS, Genesis S-----, who came into care after her brothers, when she was four (4) months old, solely on the grounds of the injuries suffered by the Child's brother. Because a Motion to change the goal to termination of parental rights/adoption has been filed in that case, the Court is cognizant of the consequences with regard to that case if the Court grants this termination of parental rights on involuntary grounds pursuant to 13 *Del. C.* §1103(a)(6). The Court does not wish to undermine Mother's consent and her purposes for submitting that consent. Accordingly, the Court solely grants Mother's termination of parental rights on the grounds of consent, but also makes a finding that other grounds are met sufficient to grant termination of parental rights.

pursuant to 13 *Del. C.* §1103(a)(5). The Court also finds that it is not in the Child's best interests for Father's parental rights to be terminated.

However, although the Court is not terminating Father's parental rights, the Court nonetheless continues to find that the Child is dependent as to Father pursuant to 10 *Del. C.* § 901(8). The Court finds that it would be detrimental to the Child's emotional well-being for him to be taken away from his current caregivers, with whom the Child is closely bonded, and transported to Mexico. In his testimony, Father acknowledged that if the Child desired to remain in the U.S., he would accept that. Accordingly, the Court finds that the Child remains dependent as to Father and that it is contrary to his welfare to be transported to Father's home in Mexico. It is in the best interest of the Child to remain in the care of the DSCYF/DFS designated foster family at this time.

The Court acknowledges that terminating only one (1) parent's parental rights limits the available permanency options for the Child. The Court also acknowledges the difficulty in this case of a Child whose best interests are served by remaining in his current foster home, but where there is insufficient evidence to terminate his Father's parental rights under the law. Nonetheless, after weighing all considerations in this case and the law the Court is bound by, the Court finds that the Child's interests are best served by the findings expressed herein. By not terminating Father's parental rights, the Child may still pursue a relationship with his Father, which is in his best interests. Terminating Mother's parental rights is in the Child's best interests, as Mother has consented to the Petition and because of the severe injuries suffered by the Child's brother in her care. Moreover, even though Father retains his rights, the Court continues to find that the Child is dependent as to Father and that the Child should remain in the U.S. with his current caretakers.

Accordingly, the Petition for Termination of Parental Rights is hereby **GRANTED** as to G----- S----- and **DENIED** as to G----- J-----H----- . The parental rights of G----- S----- are hereby **TERMINATED and TRANSFERRED to DSCYF/DFS**. The Court shall schedule a Permanency Review hearing to consider other permanency options for the Child.

**IT IS SO ORDERED.**

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**Date Written Order Issued**

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**ROBERT BURTON COONIN, JUDGE**

RBC/cap

cc: Counsel  
File