IN THE SUPREME COURT OF THE STATE OF DELAWARE

DOROTHY O'CONNER,[1]	§	
	§	No. 276, 2013
Respondent Below-Appellant,	§	Court Below—Family Court
	§	of the State of Delaware,
v.	§	in and for New Castle County
	§	File No. 13-01-03TN
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES, DIVISION OF FAMILY SERVICES,	§	Petition No. 13-01347
Petitioner Below-Appellee.	§	

DARRYL OLAND,	§	
	§	No. 288, 2013
Respondent Below-Appellant,	§	Court Below—Family Court
	§	of the State of Delaware,
v.	§	in and for New Castle County
	§	File No. 13-01-03TN
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES, DIVISION OF FAMILY SERVICES,	§	Petition No. 13-01347
Petitioner Below-Appellee.	§	

Submitted: November 4, 2013
Decided: December 5, 2013

[1] The Court previously assigned pseudonyms to the appellants pursuant to Supreme Court Rule 7(d) and consolidated these appeals for consideration. The Court also uses pseudonyms for the children throughout this Order.

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

O R D E R

This 5th day of December 2013, upon consideration of the appellants' joint opening brief filed pursuant to Supreme Court Rule 26.1(c), their respective attorneys' motions to withdraw, and the responses filed by the Division of Family Services (DFS) and the Guardians ad Litem (GALs), it appears to the Court that:

(1) The respondents-appellants, Dorothy O'Conner ("Mother"), and Darryl Oland II ("Father"), filed these appeals from the Family Court's order, dated May 1, 2013, which terminated their parental rights with respect to their three minor children, Ginny (born November 1, 2001), Valerie (born October 28, 2003), and Darryl III (born September 21, 2010). Mother and Father's appointed attorneys on appeal have filed a joint brief and motions to withdraw pursuant to Rule 26.1(c). Counsel asserts that they have made a conscientious review of the record and the law and can find no arguable grounds for appeal. Father did not respond to his counsel's motion and brief and thus has not raised any issues for this Court's consideration on appeal. Mother has enumerated several points for the Court's consideration on appeal. DFS and the GALs have filed responses to the brief and have moved to affirm the judgment below.

(2) On December 28, 2011, DFS filed an emergency petition for custody of the children, alleging that the children were dependent and/or neglected in their parents' care. A preliminary protective hearing was held on January 4, 2012 and an adjudicatory hearing was held on January 27, 2012. Custody of the children was continued with DFS. Thereafter, the Family Court held two dispositional hearing and three review hearings. On January 8, 2013, the Family Court held a permanency hearing at which time the goal was changed to termination of parental rights (TPR) with a concurrent goal of reunification. The TPR hearing was held on March 22, 2013 and April 16, 2013. At the hearing, DFS presented the testimony of numerous witnesses familiar with the children and their case, including Mother and Father, two therapists from SODAT, DFS workers, a therapist, parent aides, the foster mother for Valerie and Darryl, and the foster mother for Ginny.

(3) The testimony established that Ginny and Valerie first came into DFS's care in 2006 as a result of criminal charges that were filed against Mother for punching Ginny in the face. Father was incarcerated at the time. Mother ultimately pled guilty to Assault in the Third Degree. In July 2007, the children were returned to their parents' care. Thereafter, the parties continued to move around frequently and were unable to maintain

steady employment. They drifted from homeless shelters to family members' homes to motel rooms for lack of a permanent residence. Father was arrested in March 2011 and again in June 2011. In December 2011, Mother voluntarily contacted DFS for help. The parents stipulated to a probable cause finding of dependency due to their financial situation and lack of housing. The children were placed in foster care, where it was discovered that Valerie, then eight-years-old, had tattoos on five different body parts including her buttocks. Both girls had sexual knowledge that was inappropriate for their tender ages and reported viewing pornographic videos, one involving children, on Mother's cell phone.

(4) DFS developed similar case plans for Mother and Father requiring each to maintain stable finances, attend the children's medical appointments, attend parenting classes, have substance abuse and mental health evaluations and follow any recommendations for treatment, obtain stable housing, and attend therapy with the children if recommended. Father also was required to comply with his court-ordered probation. The record reflects that Father had been released from the VOP Center on May 8, 2012 only to be rearrested on May 10 at the New Castle County Courthouse for disorderly conduct, a charge to which he later pled guilty. Mother pled

guilty in September 2012 to endangering the welfare of a child for having Valerie tattooed.

(5) As of the second day of the TPR hearing in April 2013, Father had a job in a restaurant but Mother was unemployed. Father testified that he had secured a new apartment starting in May but provided no proof of such. Moreover, Father had a new pending criminal charge for unauthorized use of a credit card, which was a violation of his probation and could result in his incarceration and loss of employment. Father's probation officer testified that he had not complied with the terms of his probation or treatment. Neither parent had completed the required parenting classes or been consistent in their mental health or substance abuse treatment.

(6) Following the hearing, the Family Court found clear and convincing evidence that there was a statutory basis for termination because both Mother and Father had failed to adequately plan for their children's emotional and physical needs and that termination of both Mother's and Father's parental rights was in the children's best interests.[2] Among other things, the Family Court found that the children had been in DFS' care for more than one year,[3] that there was a history of neglect, abuse or lack of

[2] DEL. CODE ANN. tit. 13, § 1103(a)(5) (2009).

[3] *Id.* § 1103(a)(5)a1.

care,[4] that the parties were incapable of discharging their parental responsibilities due to repeated incarceration,[5] that neither parent was able to assume custody of the children and support them financially,[6] and that failure to terminate the parental relationships would result in continued emotional instability and physical risk to the children.[7] These appeals followed.

(7) In response to her counsel's motion to withdraw, Mother filed a reply enumerating five points for consideration. First, she contends that DFS did nothing to help her find housing. Second, she asserts that she had shelter at the Sunday Breakfast Mission but DFS did not approve. Third, she contends that she did everything that DFS asked her to do but unfairly had her parental rights terminated because of a lack of housing. Fourth, she states that she has a close bond with her children, which is reflected in her decision to voluntarily contact DFS when she could not find appropriate housing for them during the winter. Finally, she asserts that she now has a stable job and housing and is able to care for her children.

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[4] *Id.* § 1103(a)(5)a2.

[5] *Id.* § 1103(a)(5)a3.

[6] *Id.* § 1103(a)(5)a4.

[7] *Id.* § 1103(a)(5)a5.

(8) This Court's review of a Family Court decision to terminate parental rights entails consideration of the facts and the law as well as the inferences and deductions made by the Family Court.[8] To the extent that the Family Court's rulings of law are implicated, our review is *de novo*.[9] To the extent that the issues on appeal implicate rulings of fact, we conduct a limited review of the factual findings of the trial court to assure that they are sufficiently supported by the record and are not clearly wrong.[10] If the trial judge has correctly applied the law, our review is limited to abuse of discretion.[11]

(9) In reviewing a petition for termination of parental rights, the Family Court must employ a two-step analysis.[12] First, the court must determine, by clear and convincing evidence, whether a statutory basis exists for termination.[13] Second, the court must determine, by clear and convincing evidence, whether termination of parental rights is in the child's best interests.[14]

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[8] *Wilson v. Div. of Family Serv.*, 988 A.2d 435, 439-40 (Del. 2010).

[9] *Id*. at 440.

[10] *Powell v. Dep't of Serv. for Children, Youth & Their Families*, 963 A.2d 724, 731 (Del. 2008).

[11] *Id.*

[12] DEL. CODE ANN. tit. 13, § 1103(a) (2009).

[13] *Shepherd v. Clemens*, 752 A.2d 533, 537 (Del. 2000).

[14] *Id.*

(10) In this case, we have reviewed the parties' positions and the record below very carefully. We conclude that there is ample evidence on the record to support the Family Court's termination of both Mother's and Father's parental rights on the statutory basis that they had failed to plan adequately for their children and because termination was clearly in the children's best interests. We find no abuse of discretion in the Family Court's factual findings and no error in its application of the law to the facts. Accordingly, the judgment below shall be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED. The motions to withdraw are moot.

BY THE COURT:

/s/ Randy J. Holland
Justice