IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHANIE CLARKE,[1]	§	
	§	No. 365, 2012
Respondent Below-	§	
Appellant,	§	
	§	Court Below—Family Court
v.	§	of the State of Delaware
	§	in and for New Castle County
DEPARTMENT OF SERVICES	§	File No. 12-02-01TN
FOR CHILDREN, YOUTH AND	§	Petition No. 12-03797
THEIR FAMILIES,	§	
	§	
Petitioner Below-	§	
Appellee.	§	

Submitted: December 20, 2012
Decided: February 4, 2013

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

O R D E R

This 4th day of February 2013, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26.1, her attorney's motion to withdraw, the response of the appellee, the Department of Services for Children, Youth and Their Families, Division of Family Services ("DFS"), and the response of the attorney *ad litem*, it appears to the Court that:

(1) The respondent, Stephanie Clarke ("Mother"), has filed an appeal from the Family Court's June 4, 2012 order terminating her parental

[1] The Court *sua sponte* assigned pseudonyms to the parties by Order dated July 3, 2012. Supr. Ct. R. 7(d). We also hereby assign a pseudonym to the minor child.

rights ("TPR") in her child, Linda. On appeal, Mother's counsel has filed an opening brief and a motion to withdraw pursuant to Supreme Court Rule 26.1. Mother's counsel submits that she is unable to present a meritorious argument in support of the appeal. Despite being given afforded an opportunity to do so, Mother has submitted no points for this Court's consideration. DFS and the attorney *ad litem* have moved to affirm the judgment of the Family Court. For the reasons that follow, we conclude that the judgment of the Family Court must be affirmed.

(2) Mother has an extensive history with DFS, dating back to at least 1998. Of particular importance to this case, the Family Court in 2004 issued an order terminating Mother's parental rights with respect to Linda's two older half-brothers. On August 11, 2010, Linda's maternal aunt filed an emergency petition for guardianship of Linda in the Family Court, naming Mother and Linda's biological father ("Father") as respondents. An emergency hearing took place on August 23, 2010. Mother failed to appear. Father appeared, waived his right to counsel and consented to the guardianship on the ground that he was unable to care for Linda due to an addiction to prescription drugs. The Family Court granted guardianship to Linda's maternal aunt and granted visitation to Mother and Father. On November 22, 2010, Linda entered the care and custody of DFS when her

maternal aunt was no longer able to care for her. She was placed with a foster family with whom she remains to this day.

(3) On December 7, 2010, following a preliminary protective hearing, the Family Court issued an order finding that Linda continued to be dependent. In its order, the Family Court noted that Mother had extensive mental health problems, including an inpatient hospitalization at the Rockford Center and substance abuse issues, and that her parental rights had been involuntarily terminated with respect to two of her other children. The Family Court also noted that Mother has had nine children, none of whom she has raised. Counsel was appointed for both Mother and Father. In January 2011, the Family Court held an adjudicatory hearing at which it found that Linda continued to be dependent. At the hearing, DFS made a motion for "no reasonable efforts" with respect to Mother.[2] Mother's counsel responded to the motion, arguing that Mother had taken substantial steps to address her problems. At a dispositional hearing in March 2011, the Family Court approved a reunification plan for Father, but granted DFS's motion for "no reasonable efforts" with respect to Mother.

[2] Del. Code Ann. tit. 13, §1103(a) (6) and (d). Under the statute, DFS is not required to perform reunification and related services when the respondent's parental rights over a sibling of the child who is the subject of the petition have been involuntarily terminated in a prior proceeding.

(4) A review hearing was held in the Family Court in July 2011. Following the hearing, the Family Court issued an order in which it found that Linda continued to be dependent and that it was in her best interests to remain in the care and custody of DFS. Father had undergone a psychological examination in which he was diagnosed with bipolar disorder, substance abuse, borderline intellectual functioning, personality disorder and social functioning problems. The evaluator concluded that he was "going through the motions" of complying with his case plan, but was making no real progress. At this time, Mother began to seek and participate in counseling services, including a drug/alcohol counseling program at Kent-Sussex Counseling and a domestic violence evaluation at Turning Point. She and Father also were visiting regularly with Linda. In December 2010, Mother, through counsel, filed a motion for increased visitation based upon her increased participation in mental health programs. DFS filed a response objecting to increased visitation. In September 2011, DFS filed a motion to change the goal of reunification with Father to termination based upon Father's re-arrest for a DUI.

(5) In October 2011, a permanency hearing was held in the Family Court. The Family Court approved the goal of termination of Father's parental rights while requiring concurrent planning for reunification.

Mother's motion for increased visitation also was granted. DFS continued to oppose reunification with Mother on the grounds that a) Mother had a history of previous involuntary terminations; b) Mother had failed to raise any of her eight children; and c) Mother continued to maintain a relationship with Father in spite of repeated incidents of domestic violence. Another permanency hearing was held in February 2012 at which the Family Court again found Linda to be dependent and that it was in her best interests to continue in the care and custody of DFS. The Family Court noted that Mother had undergone a psychological evaluation in January 2012 and had been diagnosed with bipolar disorder, adjustment disorder and borderline personality disorder. Father remained incarcerated at the time. Linda remained in her foster home and was reported to be doing well. A trial on DFS's TPR petition was scheduled for May 7 and 8, 2012.

(6) The TPR hearing took place as scheduled. The evidence presented at the hearing was as follows. The DFS family crisis therapist assigned to this case in November 2010 testified. She stated that, when Linda was taken from her maternal aunt's home, she had a fever, was congested and needed a nebulizer. She also had a hernia. Mother was asked about other relatives with whom Linda could stay, but did not follow up with that information. Mother denied having a history of substance abuse. At the

end of January 2011, Linda's case was transferred to another case worker. From that time until January 2012, Mother and Father had weekly visitation with Linda. Mother was observed singing and reading books with Linda, but concerns arose when she threatened members of the foster mother's family. After Father was incarcerated, Mother brought another man to several of her visitations, but there were concerns about him as he and Mother had been involved in a serious automobile accident in which she had driven their car off the road. The case worker visited with Mother at her home, which she shared with her mother and grandmother, both of whom also have DFS histories. At one of the visits, Mother admitted that she had been arrested for causing injury to Father during an argument. The case worker also visited with Linda in her foster home, observing that Linda was very comfortable there and interacted well with her foster parents.

(7) Another DFS case worker began working with Linda's case in January 2012. She testified at the TPR hearing that Mother had incurred criminal charges in connection with the traffic accident in which she had driven a car off the road. The police were called to the scene and Mother struggled with them, resulting in charges of Driving Under the Influence, Offensive Touching, Disorderly Conduct and Driving With an Expired License. The case worker testified that the individual with whom Mother

was riding has an extensive criminal history. He is also subject to a DFS case plan under which Mother is not permitted to have unsupervised contact with his children. The case worker, finally, testified that she has observed Mother with Linda during visitations and that Mother has a difficult time engaging with Linda.

(8) The Delaware State Police officer who came to the scene of the automobile accident involving Mother and her companion also testified. He stated that, when he arrived on the scene, Mother was making suicidal statements and acting out of control, so he ordered that she be taken to Meadow Wood Hospital. A video recording of Mother's ride to the hospital in the police vehicle was recorded and shown at the TPR hearing. The video, which is over thirty minutes long, shows Mother kicking the car windows, banging her head on the windows and attempting to strangle herself with her seatbelt, while making offensive and derogatory remarks to the police officer. These actions did not cease until Mother arrived at the hospital and was sedated, which took eight to ten people to accomplish. The psychologist who evaluated Mother also testified at the TPR hearing. He stated that Mother has a number of serious psychological issues, including bipolar disorder, adjustment disorder and borderline personality disorder.

He stated that Mother tends to focus on her own needs rather than those of her children and is unable to provide them with stability or structure.

(9) The DFS permanency worker assigned to Linda's case also testified. She has observed Linda's interactions with the members of her foster family, with whom Linda has been living since she was four months old. She described the family's interactions are loving, comforting and appropriate. The foster parents have expressed their desire to adopt Linda and the permanency worker testified that she supported that outcome. She testified that, while Mother interacts well with Linda, she is overly concerned about the length of the visitations and packs up the toys and food long before the visitation is over. The permanency worker also testified that Linda needs some help with developmental skills and will be evaluated in six months to determine if her speech is delayed. Finally, the permanency worker testified that Mother's parental rights should be terminated so that Linda's foster parents can begin the process of adopting her.

(10) Mother testified on her own behalf at the hearing. She resides in a three-bedroom house with her mother and grandmother. If Linda is returned to her, she would sleep with Mother in her room and her mother and grandmother would help with childcare. Mother is unemployed, but receives $700 a month in social security disability benefits and food stamps.

Although Mother was without a formal treatment plan, she testified that she attended twelve weeks of counseling for substance abuse and received a certificate of completion of the program. All of her urine tests were negative. Mother also attended a marriage counseling and parenting class. She enrolled in a support group for victims of domestic violence. Mother also testified that she is attending counseling at the Center for Mental Wellness, which has helped her cope with her depression. Mother visits with Linda twice a week for a total of two and a half hours. She denied that Linda has trouble transitioning between her foster family and Mother and denied that she ever threatened any member of the foster family. Mother stated that she has no recollection of the incident with the police after the automobile accident and stated that she refused to sign the consent for the records from Meadow Wood because she did not want to be "under a microscope." Mother, finally, stated that she wants to regain custody of Linda because she loves her very much.

(11) Linda's foster mother testified at the hearing. She stated that when Linda first came to her home she was in poor health. She had respiratory problems, a double ear infection and was underweight. Because Linda has been diagnosed with a possible speech delay, the foster mother is using techniques recommended by Child Development Watch and has

arranged for Linda to begin weekly meetings with an early child educator. The foster mother stays home with Linda during the day. Linda enjoys going for walks and has a good relationship with the foster grandparents, who live close by. The foster mother takes Linda to all visitations with Mother and states that Mother and Linda interact well. She also states that she will continue to allow Linda to interact with Mother, even if she is permitted to adopt Linda. Linda's adoption case manager also testified. She stated that she has supervised Linda's care by her foster family since November 2010. She stated that, since Linda was placed with her foster family, her health has improved significantly. The adoption case manager stated that she accompanies Mother and the foster mother to all of Linda's medical appointments. At one visit, Mother became nervous and started to speak very loudly. The adoption case manager stated that she believes Mother is concerned that Linda is not "normal" and becomes stressed when she believes she is asked questions that are too advanced for her. The adoption manager believes that it is in Linda's best interests to be adopted by her foster parents.

(12) In its June 4, 2012 order terminating Mother's parental rights, the Family Court noted that DFS sought termination of Mother's parental rights on the grounds of prior involuntary termination of parental rights over

a sibling[3] and failure to plan.[4] Based upon the evidence presented at the TPR hearing, the Family Court concluded that DFS had proven by clear and convincing evidence that Mother's parental rights in two of her other children were terminated involuntarily in prior proceedings.[5] The Family Court also concluded that DFS had proven by clear and convincing evidence that termination of Mother's parental rights was in the best interests of Linda.[6]

(13) This Court's review of the Family Court's decision to terminate parental rights entails consideration of the facts and the law as the inferences and deductions made by the Family Court.[7] To the extent that the Family Court's rulings of law are implicated, our review is *de novo*.[8] The Delaware statute governing the termination of parental rights requires a two-step analysis.[9] First, there must be proof of a statutory basis for termination.[10] Second, there must be a determination that termination of parental rights is

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[3] Del. Code Ann. tit. 13, §1103(a) (6).
[4] Del. Code Ann. tit. 13, §1103(a) (5).
[5] Because DFS had established one statutory ground for termination, it was not necessary for the Family Court to address the alternative ground of failure to plan. *In re Stevens*, 652 A.2d 18, 24 (Del. 1995).
[6] Del. Code Ann. tit. 13, §722(a). The Family Court also terminated Father's parental rights on the ground of voluntary consent. Del. Code Ann. tit. 13, §1103(a) (1). Father is not a party to this appeal.
[7] *Wilson v. DFS*, 988 A.2d 435, 439-40 (Del. 2010) (citing *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983)).
[8] Id. at 440.
[9] Del. Code Ann. tit. 13, §11103 (listing grounds for termination of parental rights); *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).
[10] Id.

in the best interests of the child.[11] Both requirements must be established by clear and convincing evidence.[12]

(14) We have carefully reviewed the parties' submissions as well as the record below, including the transcript of the TPR hearing. We conclude that there is ample record evidence supporting the Family Court's termination of Mother's parental rights, both on the statutory ground of a termination of her parental rights in prior proceedings and on the ground that such termination is clearly in the best interests of Linda. There was no error or abuse of discretion on the part of the Family Court.

NOW, THEREFORE, IT IS ORDERED that the motions to affirm of DFS and the attorney *ad litem* are GRANTED. The judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

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[11] *Shepherd v. Clemens*, 752 A.2d at 537; Del. Code Ann. tit. 13, §722(a) (the best interests factors include 1) the wishes of the child's parents; 2) the wishes of the child; 3) the interaction of the child with its parents and other members of the household; 4) the child's adjustment to its home, school and community; 5) the mental and physical health of the individuals involved; 6) past and present compliance of the parents with their rights and responsibilities; 7) evidence of domestic violence; and 8) the criminal history of any party).

[12] *Powell v. DSCYF*, 963 A.2d 724, 731 (Del. 2008).