IN THE SUPREME COURT OF THE STATE OF DELAWARE

JANET POWELL,	§	
	§	No. 266, 2012
Respondent Below-	§	
Appellant	§	Court Below: Family Court of the
	§	State of Delaware in and for
v.	§	New Castle County
	§	
DIVISION OF FAMILY SERVICES,	§	File No. 11-05-08TN
	§	
Petitioner Below-	§	
Appellee	§	

Submitted: September 28, 2012
Decided: November 27, 2012

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

O R D E R

On this 27th day of November, 2012, it appears to the Court that:

(1) Defendant-Below/Appellant, Janet Powell[1] ("Mother"), appeals from the Family Court's decision to terminate her parental rights. Mother raises two claims on appeal. First, Mother claims because the Family Court's written opinion does not explicitly weigh or evaluate the § 722 factors, its decision to terminate Mother's parental rights is not the product of a logical and orderly reasoning process; Second, Mother claims the Family Court's decision to terminate Mother's

[1] Pseudonyms for Mother and Child have been assigned by the Supreme Court pursuant to Supreme Court Rule 7(d).

parental rights is not supported by clear and convincing evidence. We find no merit to Mother's appeal and affirm.

(2) N.P. ("Child") was born in March, 2008 and resided with Mother until his first entry into foster care system on May, 2009 when his Mother and Maternal Grandmother ("MGM") were arrested for stealing a woman's purse and having controlled substances in their possession. Following Mother's arrest, Child was placed in foster care for ten days. In July, 2009 physical custody was rescinded to the Father. Father relied upon assistance from Child's foster parents. In 2010, DFS received a new referral alleging that the Child was not up to date on medical needs and he was presented in unclean state. DFS learned that Father had placed the Child back with Mother and that Mother was not providing adequate care for the Child. As a result of this investigation, DFS placed the Child back in the care of Foster Parents in January, 2010 where he has since remained.

(3) The Family Court held an Adjudicatory Hearing and found that the Child was dependent as to Mother, based upon concerns regarding Mother's housing, mental health, and need for substance abuse treatment. The Family Court continued custody with DFS.

(4) The Family Court then held a Dispositional Hearing and reviewed Mother's case plan for reunification with the Child. The case plan required Mother to (a) secure employment to ensure a financial ability to care for the Child, (b)

secure mental health and substance abuse treatment, (c) secure appropriate housing for the Child, (d) comply with legal matters, (e) attend the Child's medical appointments and (f) continue to visit with the Child.

(5) Mother was non-compliant with the case plan. Mother did not obtain employment that would allow her to care for the Child. Mother did not complete any skill-building course that would further her employment opportunities. However, Mother did pass a General Education Development test, and Mother initiated substance abuse treatment programs three times, none of which she completed.

(6) At the October 2010 Review Hearing, the Family Court found that the major barriers to reunification for Mother continued to be mental health and substance abuse issues.

(7) In 2011, despite the opportunity for weekly visits, Mother visited the Child only nine times out of a possible fifty-two visits. In December, 2011, in between the first and second days of the termination of parental rights ("TPR") Hearing, Mother, who had just been released from incarceration, began treatment for mental health and substance abuse issues at Gateway. The Gateway Program is a four to nine-month program and, as of the final day of the TPR Hearing, Mother had only completed one month and was still in Phase 1 out of 3 of the program.

(8) Throughout this time, the Foster Parents continued to meet the Child's physical, emotional, and medical needs during the two years he was in their care. The Family Court heard evidence that the Child sees the Foster Parents as "his caregivers and his parents" and it would be "detrimental to him to leave [the Foster family] environment." The Child refers to the Foster Parents' home as his home and sees the Foster Parents' dog as his dog. Mother agreed that, as of the time of the TPR Hearing, it was in the Child's best interests to remain placed with Foster Parents. Mother claimed, however, that it would not be in Child's best interest to remain in that home permanently.

(9) On June 29, 2012, the Family Court issued a determination that Mother and Father's parental rights should be terminated based upon failure to plan because neither parent completed his or her case plan. The Family Court also determined that termination of parental rights was in the best interests of the Child.

(10) When reviewing a Family Court's order, our standard and scope of review involves a review of the facts and law, as well as the inferences and deductions that the Family Court has made.[2] To the extent that the issues on appeal implicate rulings of law, we conduct a *de novo* review.[3] To the extent that the issues on appeal implicate rulings of fact, we conduct a limited review of the

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[2] *Powell v. Dep't of Servs. for Children, Youth, & Their Families*, 963 A.2d 724, 730 (Del. 2008); *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).
[3] *Powell*, 963 A.2d at 730–31; *In re Heller*, 669 A.2d 25, 29 (Del. 1995).

factual findings of the Family Court to assure that they are sufficiently supported by the record and are not clearly wrong.[4] We will not disturb inferences and deductions that are supported by the record and that are the product of an orderly and logical deductive process.[5] If the Family Court has correctly applied the law, our review is limited to abuse of discretion.[6]

(11) In Delaware, the Family Court must conduct a two-step analysis when deciding whether or not to terminate parental rights.[7] First, the Family Court examines whether there is clear and convincing proof of at least one of the grounds for termination set forth in 13 *Del. C.* § 1103(a).[8] Second, the Family Court must determine whether the decision is in the best interests of the child pursuant to 13 *Del. C.* § 722.[9]

(12) In determining the best interests of the child, the Family Court must consider all of the eight factors enumerated in § 722. The Family Court shall consider:

> (1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;
> (2) The wishes of the child as to his or her custodian or custodians and residential arrangements;
> (3) The interactions and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the

[4] *Powell*, 963 A.2d at 731; *In re Stevens*, 652 A.2d 18, 23 (Del. 1995).
[5] *Powell*, 963 A.2d at 731; *In re Stevens*, 652 A.2d 18, 23 (Del. 1995).
[6] *Powell*, 963 A.2d at 731; *Solis*, 468 A.2d at 1279.
[7] 13 *Del. C.* 1103; *Powell*, 963 A.2d at 731.
[8] *Powell*, 963 A.2d at 731.
[9] *Harper v. Div. of Family Servs.*, 953 A.2d 719, 725 (Del. 2008).

> relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;
> (4) The child's adjustment to his or her home, school, and community;
> (5) The mental and physical health of all the 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.[10]

While the Family Court must balance all of the relevant factors, the court may give different weight to different factors.[11] "The 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."[12]

(13) Mother contends that the Family Court's decision under § 722 was not the product of an orderly and logical review of the evidence. According to Mother, there can be no logical and orderly review process unless the court expressly enumerates those § 722 factors that the Family Court found relevant to its analysis. Further, the Family Court must explicitly indicate what evidence supports each enumerated factor and whether or not that factor weighs for or against termination.

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[10] 13 *Del. C.* § 722 (a).
[11] *Powell*, 963 A.2d at 735 (citing *Snow v. Richards*, 937 A.2d 140, 2007 WL 3262149, at *3 (Del. Nov. 6, 2007) (ORDER)).
[12] *Powell*, 963 A.2d at 735 (citing *Fisher v. Fisher*, 691 A.2d 619 (Del. 1997)).

Mother argues "there was no discussion of how the evidence had any bearing on any individual factor." Mother concludes that, "Without this detailed analysis...this Court cannot conclude that the Family Court engaged in an orderly and logical review of the evidence."

(14) This Court has consistently held that § 722 does not require the Family Court to conduct a step-by-step analysis[13] let alone engage in such a specific process as Mother proposes. After reviewing the Family Court's decision, it cannot be said that the court's decision was anything other than the product of an orderly and logical reasoning process. Although the Family Court's decision fails to explicitly enumerate the § 722 factors, a review of its findings supports the conclusion that they were considered.

(15) The first factor requires the Family Court to consider the wishes of the parents. The Family Court found that Mother opposed the termination and transfer of her parental rights. Mother argues that she deserves another chance to parent the Child after she successfully completes the Gateway Program. This finding supports the conclusion that the Family Court considered the first factor of § 722, finding it favors the Mother.

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[13] *Harper v. Div. of Family Servs.*, 953 A.2d 719, 725 (Del. 2008) ("Section 772 does not require the Family Court to articulate a step-by-step analysis."); *Powell*, 963 A.2d at 735; *Clark v. Div. of Family Servs.*, 23 A.3d 864, 2011 WL 2435370, at *3 (Del. June 16, 2011) (ORDER).

(16) The second factor requires the Family Court to consider the wishes of the child. Although the court did not hear testimony from the Child, the court did hear testimony of a social worker who interviewed the boy. The Family Court found that the Child is "very bonded to his current foster parents and is very comfortable in the home." The Child refers to his foster parents as "mommy" and "poppy." These findings support the conclusion that the Family Court considered the Child's wishes as required by § 722, and found that it favors termination.

(17) The third factor requires the Family Court to consider the Child's interaction with significant adults in his life. The record supports the conclusion that the court considered this factor. The court heard testimony that the Child sees the foster family as his caregivers and his parents and that it would be detrimental to him to leave that environment. The court found that the Child refers to his foster parents as "mommy" and "poppy." Therefore, the record and the Order support the conclusion that the Family Court considered the third factor set forth in § 722, again finding that it favors termination.

(18) The fourth factor the Family Court must consider is the child's adjustment to his home, school, and community. The Family Court found that, at the time of the TPR Hearings, Mother conceded that it was in the best interests of the child to remain with the foster parents for the present time. The Family Court also heard evidence that the Child is very bonded to his current foster parents and

is very comfortable in the home. The record and the Family Court's findings support the conclusion that it considered the fourth factor of § 722, again concluding that it favors termination.

(19) The fifth factor the Family Court must consider is the mental and physical health of the parties. The court found that the Mother failed to engage in substance abuse or mental health treatment prior to her most recent period of incarceration as of the TPR Hearing. The court also noted that the Mother had been diagnosed with bipolar disorder, anxiety disorder, and ADHD. The Family Court found that "Mother's failure to successfully complete a mental health and substance abuse treatment [program] played a large role in Mother's legal troubles." The court's findings support the conclusion that it considered the fifth factor of § 722, in concluding that it favors termination.

(20) The sixth factor the Family Court must consider is the Mother's compliance with her rights and responsibilities to the Child. The court heard extensive evidence that Mother has consistently relied upon the assistance of others to provide for the Child's care. The Family Court found that the Child has been in foster care since January of 2010. The record and these findings support the conclusion that the Family Court considered the sixth factor of § 722, in concluding that it favors termination.

(21) The seventh factor the Family Court must consider is evidence of domestic violence. As to this factor, the court made no findings. However, the record reflects that the court did hear evidence of a Protection from Abuse Order signed against Mother. The record supports the inference that because the court heard evidence of domestic violence, that evidence was considered by the Family Court in reaching its decision.

(22) The eighth factor that the Family Court must consider is the criminal history of the parent. The record shows that the Family Court heard extensive evidence regarding Mother's criminal record and history of incarceration. From the contents of the record, there can be no doubt that the Family Court considered the eighth factor of § 722, again concluding that it favors termination.

(23) The Family Court's decision contains a detailed discussion of its factual findings. These findings are set forth in a logical and orderly manner. After making its findings, the Family Court determination that termination of Mother's parental rights was in the best interests of the Child and that that determination was supported by clear and convincing evidence.

(24) This Court will not disturb findings that are supported by the record and are the result of an orderly and logical deductive process.[14] The Family Court's finding of facts, listed above in the § 722 factors discussion, show the

[14] *In re Stevens*, 652 A.2d 18, 23 (Del. 1995).

Family Court's decision was supported by clear and convincing evidence. So long as the Family Court's findings may reasonably be considered the product of an orderly and logical reasoning process how a court presents its decision is within that court's discretion.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice