

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JANET MARTIN, ¹	§
	§ No. 726, 2010
Respondent Below-	§
Appellant,	§
v.	§ Court Below—Family Court
	§ of the State of Delaware
	§ in and for New Castle County
DIVISION OF FAMILY	§ File No. 10-08-01TN
SERVICES,	§ Petition No. 10-25776
	§
Petitioner Below-	§
Appellee.	§

Submitted: April 4, 2011

Decided: May 16, 2011

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

ORDER

This 16th day of May 2011, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26.1, her attorney’s motion to withdraw, the responses of the appellee, the Division of Family Services (“DFS”), and the Court Appointed Special Advocate (“CASA”), it appears to the Court that:

(1) The respondent-appellant, Janet Martin (“Mother”), has filed an appeal from the Family Court’s October 22, 2010 order terminating her

¹ The Court *sua sponte* assigned a pseudonym to the appellant by Order dated November 23, 2010. Supr. Ct. R. 7(d). In this Order, we also assign pseudonyms to the minor children.

parental rights (“TPR”) in her two minor children. 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. Mother has submitted one issue for this Court’s consideration. DFS and the CASA have moved to affirm the Family Court’s judgment. For the reasons that follow, we conclude that the judgment of the Family Court must be affirmed.

(2) The record in this case reflects the following. DFS, a division of the Delaware Department of Services for Children, Youth and Their Families, filed a petition on August 2, 2010, seeking to terminate the parental rights of Mother in her twin girls, Anna and Amy (collectively, the “twins”), born August 11, 2009.² Termination of Mother’s parental rights was sought on the ground of failure to plan.³ The hearing on the petition took place on September 23, 2010. Mother appeared at the hearing with her counsel. Despite proper notification, the biological father of the twins did not appear at the hearing.

(3) The twins entered DFS custody on August 14, 2009. Mother, who was 17 years old at the time, was herself in the custody of DFS. The

² The petition also sought the termination of the parental rights of the unknown father of the twins. An amended petition was filed on August 12, 2010.

³ Del. Code Ann. tit. 13, §1103(a)(5).

twins were born premature and were placed in the Neonatal Intensive Care Unit at Christiana Hospital when they were three days old. A preliminary protective hearing was held in the Family Court on August 19, 2009. Mother stipulated to a finding that the twins were dependent as she was in the New Castle County Detention Center awaiting a hearing on a violation of probation (“VOP”) and was unable to care for them. The Family Court ordered DFS to develop a case plan for Mother. After Mother was found to have committed a VOP, she provided the names of four relatives who might be able to care for the twins. Only one relative, who was residing in Georgia, expressed any interest in caring for them.

(4) An adjudicatory hearing was held on September 24, 2009 and a dispositional hearing was held on December 15, 2009. On each occasion, custody of the twins was continued with DFS. In both September and December 2009, Mother was presented with a case plan whose goal was reunification with the twins, but she refused to sign it on both occasions. The case plan was thereafter made an order of the Family Court. The Family Court explained to Mother that completion of her case plan was absolutely necessary for her to be reunified with the twins. A relative of Mother’s filed for guardianship of the twins, but withdrew the petition on December 15, 2009. Another relative filed a guardianship petition on the

same day, but later withdrew it. The same relative filed another petition in May 2010, but the petition was later dismissed when the filing fee was not paid.

(5) Custody of the twins continued with DFS through review hearings held in March and June 2010. At the March hearing, the Family Court found that Mother had made no meaningful steps to complete her case plan. She had not enrolled in anger management class or counseling and had missed visitations with and medical appointments for the twins. By June, Mother had begun working with a social worker on living independently. However, she still had not completed basic aspects of her case plan. By now, the twins had been placed with a potential adoptive resource and were thriving in that environment. On August 2, 2010, DFS filed its TPR petition. On August 10, 2010, the Family Court held a permanency hearing and changed the goal from reunification to termination of parental rights/adoption.

(6) The hearing on the petition for termination of Mother's parental rights was held in the Family Court on September 23, 2010.⁴ Both DFS and Mother presented evidence in the form of witnesses and documentation.

⁴ A hearing on the twins' maternal grandmother's petition for guardianship also was held in the Family Court on October 1, 2010.

The Family Court took judicial notice of its files with respect to the twins as well as Mother's own dependency/neglect file and delinquency file.

(7) The following evidence was presented at the hearing. At the time of the hearing, Mother was eighteen years old. She herself had been in the Delaware foster care system since August 2000, when she was eight and a half years old. After several months in foster care, she was returned to her parents. However, between the ages of eleven and fourteen, Mother picked up numerous criminal charges, many of which were violent in nature. In January 2004, Mother pleaded delinquent to Offensive Touching and Disorderly Conduct. In February 2004, she pleaded delinquent to Terroristic Threatening based upon allegations that she threatened to kill her mother.

(8) Between September 2004 and August 2009, when she delivered the twins, Mother had extensive contact with the criminal justice system. She was sentenced to a boot camp program in Pennsylvania and, while serving probation, became a runaway. In March 2005, she was committed to the Red Lion Treatment Center in Delaware. After pleading delinquent to charges of assault and a VOP, she was placed in a mental treatment facility in Washington, D.C. Mother did poorly in the program and repeatedly provoked confrontations with her peers and three times tried to hang herself.

(9) In October 2006, Mother was taken to the Rockford Center in Delaware for an evaluation following two criminal charges involving violence. In April 2007, she was charged with Assault in the Third Degree. In the interim, she had been taken to Kids Peace, a mental treatment facility in Pennsylvania. In October 2007, after learning that she would not be released, Mother's behavior deteriorated. She became aggressive, attempting to bite members of the staff and threatening suicide. Ultimately, Kids Peace notified DFS that it would no longer provide services to Mother. She was placed in the Rockford Center while it was determined where she could be housed.

(10) In January 2008, at a dependency review hearing, the Family Court ordered Mother to be placed at a facility called Coastal Harbor in Georgia. She was placed there in February 2008. Mother had difficulty at Coastal Harbor and engaged in some self-harming behavior. However, she did well in school. Later that year, she was permitted to attend events outside the facility and her discharge from the facility was being explored. By December 2008, Mother had been released to the Red Lion Residential Treatment Center in Delaware. However, she was placed at the Bayard House after threatening the staff. Thereafter, she became a runaway. She was reported to the police and a VOP was filed against her.

(11) Mother ultimately turned herself in, but, by June 2009, she had run away again and a capias was issued. She was communicating with DFS by phone and reported that she was pregnant with twins. By September 2009, Mother had delivered the twins and they were placed in DFS custody. Mother herself was placed in a foster home where she appeared to be doing well. She was completing her GED, visiting the twins and participating in parenting classes. She was compliant with her probation and her urine screens were clean. Unfortunately, in October 2009, Mother again was arrested and charged with six offenses. She was treated at Dover Behavioral Health System as a mental patient. Mother exited the Delaware foster care system on December 16, 2009. At that time, the twins were approximately five months old.

(12) Jill Rosen, a social worker with Children and Families First, testified on behalf of DFS. Rosen developed Mother's case plan. The case plan reflected the following issues: living conditions, financial issues, choosing inappropriate caregivers, medical/physical care, unrealistic expectations, poor communication, difficulty handling conflict, substance abuse, emotional instability/mental health issues, and legal issues. According to Rosen, Mother consistently disputed the need to complete the plan or seek treatment for her mental health issues. Rosen testified that

Mother was unable to care for the twins at the time of the TPR hearing. She had no stable living arrangements and had provided no documentation regarding employment, completion of a substance abuse evaluation, completion of an anger management course or completion of the Strengthening Families parenting class. Ultimately, according to Rosen, Mother failed to complete any aspects of the case plan.

(13) Pam Richards, the Independent Living Worker, worked with Mother on transitioning from DFS foster care to independent living. She made arrangements for Mother to be enrolled in Medicaid and signed up for food stamps. Richards testified that Mother was placed on a list for housing with Life Lines, a housing program for young people exiting foster care, but was ineligible for the program until she completed a substance abuse evaluation. In February 2010, Mother was taken to Crossroads for a substance abuse evaluation, but left prior to completing it. She then was referred to Brandywine Counseling, but failed to go there for the evaluation on at least two occasions.

(14) Through Delaware State Housing, there were housing options available for young people exiting foster care, but Mother was unable to take advantage of them because she never obtained a job. After Ms. Richards arranged for a job with Goodwill, Mother was arrested and incarcerated in

February 2010.⁵ Mother also was referred to a Youth Summer Employment program, but never called to enroll in the program. Mother also was eligible for a transitional housing program and the STEP UP program, but could not take advantage of them because she never found a job and never completed a substance abuse evaluation.

(15) While Richards attempted to assist Mother in obtaining mental health treatment, Mother continually denied the need for treatment. She was referred to several mental health providers, but did not go. Between August 20, 2010 and August 26, 2010, Mother was admitted to Meadow Wood Hospital following treatment at Christiana Hospital's crisis center for an alleged suicide attempt and suicidal ideation. Mother denied that she attempted suicide. She was diagnosed with bipolar disorder and polysubstance dependence.

(16) Rosen testified regarding her observation of the twins in their foster home. She stated that they were bonded with their foster parents, who remain a potential adoptive resource. The twins have had a number of medical issues, including asthma, eye issues, hernias, and chronic ear infections, which were being addressed consistently. The twins' foster

⁵ The charges, including Offensive Touching, Endangering the Welfare of a Child, Aggravated Menacing, Possession of a Deadly Weapon during the Commission of a Felony and Resisting Arrest, were later dismissed by the State.

mother is a registered nurse who oversees the twins' various medical issues, including regular use of a nebulizer for their respiratory problems. Rosemary Parisi, the CASA assigned to this case, also testified that the twins are thriving in foster care and are having their various medical needs properly attended to.

(17) Mother testified on her own behalf at the hearing. She was four months pregnant at the time. Mother stated that she did not agree with the case plan requirements. She also did not believe she received adequate assistance in achieving the goals of her case plan. She stated that she knew of possible guardians for the twins that had not been investigated by DFS.

(18) In its October 22, 2010 order terminating Mother's parental rights, the Family Court concluded that DFS had proven by clear and convincing evidence that Mother has failed to plan for reunification with the twins and that Mother has failed to plan adequately for the twins' physical needs or mental and emotional health and development. The Family Court also found that DFS had made reasonable efforts to reunify Mother with the twins. Finally, the Family Court concluded that DFS had proven by clear

and convincing evidence that termination of Mother's parental rights was in the best interests of the twins.⁶

(19) In her appeal from the Family Court's order, Martin claims that her parental rights in the twins should not have been terminated because she completed a parenting course, was working on various issues with her religious counselor and was not getting the help she needed from DFS.

(20) This Court's review of the Family Court's 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.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

⁶ On October 14, 2010, the Family Court also denied the petition for guardianship filed by the twins' maternal grandmother.

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, §1103 (listing grounds for termination of parental rights); *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

¹⁰ *Id.*

parental rights is in the best interests of the child.¹¹ Both requirements must be established by clear and convincing evidence.¹²

(21) 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 evidence in the record supporting the Family Court's termination of Mother's parental rights, both on the statutory ground of failure to plan and on the ground that such termination is clearly in the best interests of the twins. 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 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

¹¹ *Shepherd v. Clemens*, 752 A.2d at 537; Del. Code Ann. tit. 13, §722(a) (listing best interests factors).

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