

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TAMMY J. BLAND, <sup>1</sup>	§
	§ No. 690, 2010
Respondent Below-	§
Appellant,	§
v.	§ Court Below—Family Court
	§ of the State of Delaware
	§ in and for Kent County
RACHEL E. HALL,	§ File No. CK-09-02-1TK
	§ Petition No. 09-07813
Petitioner Below-	§
Appellee.	§

Submitted: February 14, 2011  
Decided: February 22, 2011

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

**ORDER**

This 22<sup>nd</sup> day of February 2011, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26.1, her attorney’s motion to withdraw, and the appellee’s response thereto, it appears to the Court that:

(1) The respondent-appellant, Tammy J. Bland (“Mother”), has filed an appeal from the Family Court’s October 20, 2010 order terminating her parental rights (“TPR”) in her minor child, Judy, born February 7, 2000.<sup>2</sup>

On appeal, Mother’s counsel has filed an opening brief and a motion to

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<sup>1</sup> The Court *sua sponte* assigned pseudonyms to the parties by Order dated October 27, 2010. Supr. Ct. R. 7(d). In this Order, we also assign a pseudonym to the minor child and her biological father.

<sup>2</sup> The Family Court also terminated the parental rights of Judy’s biological father, John A. Dugan (“Father”). Father did not participate in the proceedings below and has not participated in the instant appeal.

withdraw pursuant to Supreme Court Rule 26.1. Mother's counsel submits that he is unable to present a meritorious argument in support of the appeal. Mother has submitted several points for this Court's consideration. The petitioner-appellee, Rachel E. Hall ("Grandmother"), has 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) Grandmother filed her TPR petition in the Family Court in February 2009. Attached to the petition was an order dated May 24, 2002 (the "Maryland custody order") which granted her custody of Judy. Also attached to the petition was a consent to termination of parental rights, which had been signed by Father. Grandmother sought to terminate Mother's and Father's parental rights so that she could adopt Judy. Grandmother filed a petition for adoption in the Family Court at the same time she filed her TPR petition.

(3) In July 2009, Catholic Charities, Inc., filed its report (the "Home Study"), which had been ordered by the Family Court in connection with the TPR proceedings. The TPR hearing was scheduled for October 2009. However, after it was determined that Mother was indigent, the Family Court appointed counsel for her and the hearing was re-scheduled for June 16, 2010. Mother subsequently requested a continuance of the June 16,

2010 hearing, which the Family Court granted. The hearing was re-scheduled for September 17, 2010. An addendum to the Social Report was filed in the Family Court prior to the hearing.

(4) The following evidence was presented at the September 17, 2010 hearing. Crystal Connley, a licensed clinical social worker with Catholic Charities, testified regarding the Home Study. According to Ms. Connley, Catholic Charities mailed certified letters to both Mother and Father notifying them that it was conducting an investigation ordered by the Family Court in connection with Grandmother's TPR petition and requesting information pertinent to the investigation. Father returned the requested information. Mother's letter was returned "unclaimed." At the time of the October 2009 hearing, Mother agreed to meet with Ms. Connley for an interview, but later cancelled the interview. Ms. Connley subsequently reviewed documentation regarding the Maryland adoption proceedings at Mother's attorney's office. She was able to meet personally with Mother in December 2009.

(5) Ms. Connley testified that her investigation involved meeting with Grandmother and Mother, gathering background information, conducting a home visit at Grandmother's house and interviewing Judy. The investigation revealed the following. Father is Grandmother's

biological son and is the biological father of Judy. Father was incarcerated in Maryland at the time of Ms. Connley's investigation. He was released in April 2010, but was re-incarcerated in July 2010 due to a probation violation. Father agreed with Grandmother's goal of adopting Judy. In 2003, the Maryland court awarded custody of Judy to Grandmother and awarded visitation to Mother and Father. Judy has resided with Grandmother at her home in Hartly, Delaware, continuously since the Maryland court's order was issued.

(6) Ms. Connley recommended the termination of both Father's and Mother's parental rights and Grandmother's adoption of Judy. She stated that there is a loving, parent-child bond between Grandmother and Judy. Judy is a happy child who is well-adjusted to her school and Grandmother's home. Ms. Connley described Grandmother's home as warm and family-oriented and stated that Grandmother has sufficient income to provide for Judy's needs. Judy is an honor roll student, has many friends and is active in 4-H. She loves animals and has won competitions for showing her pet goat. According to Ms. Connley, Mother was \$2,412.94 in arrears on her child support.

(7) Grandmother also testified at the hearing. She is 50 years old and lives in Hartly, Delaware. She has an associate's degree in Criminal

Justice and has been employed with the United States Secret Service for 12 years. Prior to her employment with the Secret Service, she served in the United States Air Force and worked for the Delaware Department of Correction. Grandmother has been divorced twice. She currently is engaged to be married to a resident of Maryland she has known for 16 years. They have postponed their wedding until the proceedings involving Judy are concluded. At that time, Grandmother's fiancée and his three children will move into her home.

(8) Grandmother testified that she reported Mother on at least two occasions to the Department of Social Services of Caroline County, Maryland, during 2000 and 2001 for alleged physical, verbal and emotional abuse of Judy. She stated that she and other relatives cared for Judy when she was an infant and that Judy stayed with Mother only 1 or 2 days a week. Grandmother decided to petition for custody of Judy in 2002, when both Mother and Father were incarcerated. While Grandmother intended to retain custody of Judy only until Mother was released and had become adjusted to life outside of prison, intervening events changed that plan.

(9) According to Grandmother, Mother never contacted Judy during the time she was incarcerated, from early 2003 until late 2005. It was Grandmother who initiated contact between Mother and Judy after Mother

was released from prison. She contacted Mother's sister in November 2005 to ask if Mother would like to visit with Judy. Mother had approximately four visits with Judy in 2005 and 2006. At each visit, Mother engaged in some act of physical violence against Judy. During the first visit, she grabbed Judy when she refused to sit "properly." During the second visit, she bit Judy on the neck when Judy refused to go for ice cream with her. During the third visit, Mother shook Judy violently, leaving bruises on her arms, because she did not like Judy's hairstyle. She also told Judy she was ugly. During the fourth visit, Mother put her tongue in Judy's mouth when she kissed her. After each visit with Mother, Judy required counseling, which was arranged by Grandmother.

(10) According to Grandmother, Mother filed several visitation and support petitions in the Maryland court in 2006 and 2007, most of which were dismissed due to Mother's failure to show up for the hearings. In November 2007, the court issued an order granting Mother visitation at the Family Support Center in Denton, Maryland. The court also stated that the visitation could take place at the Family Visitation Center in Dover, Delaware, if the parties agreed. In April 2008, the Family Support Center informed the parties that there were currently no openings, but that they would be notified when space opened up. According to Grandmother, she

pursued visitation at the Family Visitation Center, but Mother refused to visit with Judy in Delaware.

(11) In June 2008, Grandmother was working on a Secret Service assignment in Maryland when she was attacked by Mother. Mother, who had just been served with a support petition by Grandmother, ran out of her car toward Grandmother, spit on her, and threatened to kill her and Judy. As a result of the incident, Grandmother obtained a restraining order from the Maryland court, which prohibited Mother from contacting Grandmother or Judy.

(12) Mother also testified at the hearing. She disputed most of Grandmother's testimony. According to Mother, she was Judy's primary caretaker prior to her incarceration in early 2003. She testified that she immediately contacted Grandmother after she was released from prison and visited frequently with Judy in late 2005. She denied that the four incidents of violent behavior toward Judy testified to by Grandmother had ever occurred. According to Mother, she has not visited with Judy since April 2006 because Grandmother did not permit it.

(13) Mother stated, contrary to the findings contained in the Home Report, that she is current on her child support. She agreed that she has filed to decrease her child support obligation on several occasions because she

does not believe she should pay child support if she does not have access to her child. Mother also stated that, if the Family Court decided not to terminate her parental rights, she would file for custody of Judy. She acknowledged that she does not currently have a relationship with Judy and could only gradually become part of her life. Mother does not want her parental rights to be terminated, but, rather, wants Grandmother to retain custody of Judy until she is ready to ease herself into Judy's life.

(14) In her appeal from the Family Court's order terminating her parental rights, Mother presents a number of claims that may fairly be summarized as follows: a) Grandmother allows Father to have contact with Judy even though she knows he is a gang member and smokes marijuana; b) she has a list of witnesses who will testify that most of what Grandmother testified to was false; c) Catholic Charities did not sufficiently investigate her home to see if it was a stable environment for Judy; d) she was prevented from testifying fully at the hearing; and e) the case should be moved from Delaware back to Maryland.

(15) 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.<sup>3</sup> To the extent that the Family Court's rulings of law are implicated, our review is *de novo*.<sup>4</sup> The Delaware statute governing the termination of parental rights requires a two-step analysis.<sup>5</sup> First, there must be proof of a statutory basis for termination.<sup>6</sup> Second, there must be a determination that termination of parental rights is in the best interests of the child.<sup>7</sup> Both requirements must be established by clear and convincing evidence.<sup>8</sup>

(16) In its October 20, 2010 decision, the Family Court concluded that Grandmother had proven by clear and convincing evidence that Mother had failed to adequately plan for Judy's physical needs or mental and emotional health and development.<sup>9</sup> Specifically, the Family Court found that, since 2003, when the Maryland court granted Grandmother custody of Judy, Mother has failed to adequately plan for her. She did not contact Judy during the time she was incarcerated. As of May 2009, she was significantly in arrears on her child support obligation. She has not participated in Judy's

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<sup>3</sup> *Wilson v. DFS*, 988 A.2d 435, 439-40 (Del. 2010) (citing *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983)).

<sup>4</sup> *Id.* At 440.

<sup>5</sup> Del. Code Ann. tit. 13, §1103 (listing grounds for termination of parental rights); *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

<sup>6</sup> *Id.*

<sup>7</sup> *Shepherd v. Clemens*, 752 A.2d at 537; Del. Code Ann. tit. 13, §722(a)(listing best interests factors).

<sup>8</sup> *Powell v. DSCYF*, 963 A.2d 724, 731 (Del. 2008).

<sup>9</sup> Del. Code Ann. tit. 13, §1103(a)(5). The Family Court rejected Grandmother's argument that Mother also had abandoned Judy pursuant to Del. Code Ann. tit. 13, §1103(a)(2).

education or extracurricular activities, has not scheduled or attended Judy's medical or dental appointments, and has not provided Judy with clothing, gifts, cards or letters. Moreover, as acknowledged by Mother herself in her testimony, she does not currently have a relationship with Judy. Mother presented no evidence that she has made any plans to act as a parent to Judy, such as preparing a home for her or considering where she will attend school.

(17) The Family Court also concluded that it was in Judy's best interests that Mother's parental rights be terminated. The Family Court noted that it had interviewed Judy following the September 17, 2010 hearing. At that time, Judy said that she was "confused." When asked by the judge if it felt good to see Mother at the courthouse, Judy stated, "Kind of, kind of not." She also stated that Mother is "mean" and had shaken her and called her ugly. Judy stated that she does not want to live with Mother, does not want regular contact with Mother and wants to remain with Grandmother. Judy was happy when she described her life with Grandmother. She is close with Grandmother's fiancée's children and with Grandmother's parents and extended family. The Family Court noted that Grandmother and Judy have a close, loving relationship, based upon the Home Study, Grandmother's testimony as well as the interview with Judy.

Neither Grandmother nor her fiancée has a criminal history. Mother's criminal history includes convictions of hindering prosecution, shoplifting, offensive touching, forgery, battery and first degree assault.

(18) We have carefully reviewed the parties' submissions as well as the record below, including the transcript of the TPR hearing and the Family Court's interview with Judy. We conclude that there is ample evidence 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 minor child. We also conclude that there is no factual or legal support for any of Mother's claims. Mother was represented by counsel at the TPR hearing, was notified of the issues to be decided at the hearing, and had ample opportunity to present any evidence at the hearing that she believed was relevant. Her pretrial motion to dismiss the case for lack of jurisdiction was properly denied by the Family Court.<sup>10</sup>

(19) While Mother testified that Grandmother did not tell the truth concerning Mother's neglect of and sporadic visitation with Judy and the violence that occurred when she did visit with Judy, the Family Court gave credence to Grandmother's testimony over that of Mother, which was well

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<sup>10</sup> Del. Code Ann. tit. 13, §1920.

within its discretion to do.<sup>11</sup> The transcript of the hearing reflects that Mother's attorney did not present one shred of evidence that Mother had taken steps to plan for Judy's future. Instead, his apparent strategy was to argue that Mother's "plan" was to become increasingly involved in Judy's life after she was released from prison, but that her "plan" was thwarted by Grandmother's determined efforts to prevent such a relationship from developing. Ultimately, that strategy failed because Mother's testimony simply was not credible. In the absence of any error or abuse of discretion, we conclude that the Family Court's judgment must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>11</sup> *Wife (J.F.V.) v. Husband (O.W. V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).