

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN BOYER-COULSON, ¹	§
	§
Respondent Below,	§ No. 706, 2011
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware, in and
DIVISION OF FAMILY SERVICES,	§ for New Castle County
	§ File No. 11-04-07TN
Petitioner Below,	§ Pet. No. 11-12457
Appellee.	§

Submitted: April 20, 2012

Decided: May 30, 2012

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

ORDER

This 30th day of May 2012, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26.1(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) On November 23, 2011, the Family Court terminated the parental rights of appellant, John Boyer-Coulson (“Father”), with respect to his two young daughters based on a failure to plan. This is Father’s appeal from that order.

¹ The Court previously assigned a pseudonym to the appellant pursuant to Supreme Court Rule 7(d).

(2) Father's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26.1(c). Counsel asserts that, based upon a conscientious examination of the record, there are no arguably appealable issues. By letter, Father's attorney informed him of the provisions of Rule 26.1(c) and provided Father with a copy of the motion to withdraw and the accompanying brief. Father also was informed of his right to supplement his attorney's presentation. Father has not raised any issues for this Court's consideration. The Division of Family Services ("DFS") has responded to the position taken by Father's counsel and has moved to affirm the Family Court's judgment.

(3) The record reflects that the children were born September 2, 2008 and December 12, 2009, respectively. The children entered DFS' care after the younger child tested positive for cocaine at birth. Initially, the children were placed in the care of the maternal grandmother, but were later removed from that home when the grandmother indicated that she could not care for the children. In May 2010, the Family Court held a preliminary protective hearing. At the time, both Father and the children's mother² were incarcerated. There was no other family member able to care for the children. The Family Court thus found the children were dependent as

² The mother's rights were also terminated. The Family Court's ruling terminating mother's rights, however, is not at issue in Father's appeal.

defined by 10 Del. C. § 901(8). At the later adjudicatory hearing, the Family Court again found the children to be dependent. Father and the mother remained incarcerated, and the Family Court found that the maternal grandmother was not able to care for the children. A dispositional hearing was held in July 2010, and the Family Court concluded that the children remained dependent. Father was still incarcerated at the time of the January 2011 review hearing. The Family Court found that the mother had not made satisfactory progress toward reunification under her DFS case plan. In April 2011, the Family Court granted DFS' motion to change the goal from reunification to termination. The Family Court scheduled a full hearing on the petition for termination of parental rights in August 2011.

(4) Father appeared at the hearing with his counsel. The mother did not appear. Father testified that he remains incarcerated with no opportunity for release until at least 2013. His criminal history includes drug convictions and domestic violence. He also is a registered sex offender. Father also testified that his parental rights in two other children were terminated in Massachusetts. He has never been the primary caregiver for either of his daughters. Although Father had a case plan for reunification, he was unable to accomplish any of the objectives of the case plan due to his continued incarceration. Following the hearing, the Family Court issued its decision

finding clear and convincing evidence that there was a statutory basis to terminate Father's parental rights and that termination was in the children's best interests.

(5) Our review of a Family Court's decision terminating parental rights involves consideration of the facts and the law, as well as the inferences and deductions made by the Family Court.³ In this appeal, Father has raised no factual or legal issues for the Court's review. We therefore review the record to determine whether the Family Court correctly applied the law and whether its factual findings are sufficiently supported by the record and are not clearly wrong.⁴

(6) In Delaware, the Family Court may grant a petition to terminate parental rights if two conditions are met.⁵ First, there must be clear and convincing evidence of a statutory basis for termination under 13 *Del. C.* §1103.⁶ Second, termination must be in the child's best interests.⁷ Where, as here, the statutory basis justifying termination is a failure to plan, the Family Court must also find the existence of at least one additional condition enumerated in 13 *Del. C.* § 1103(a)(5). In this case, the Family Court found

³ *Wilson v. Division of Family Serv.*, 988 A.2d 435, 439-40 (Del. 2010).

⁴ *Id.* at 440.

⁵ *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

⁶ *Id.* at 537.

⁷ *Daber v. Division of Child Protective Serv.*, 470 A.2d 723, 726 (Del. 1983).

clear and convincing evidence that Father was incapable of discharging his parental responsibilities due to his extended incarceration.⁸

(7) After careful review, we find that the Family Court correctly applied the law. Moreover, the record clearly supports the Family Court's findings that DFS made reasonable efforts to reunify Father with the children but that Father, due to his incarceration, had failed to complete any of the elements of his case plan. That failure caused his daughters to remain in foster care for an extended period. The record also supports the Family Court's conclusion that termination was in the girls' best interests because Father's history of incarceration had prevented him from ever providing daily care for the children and had prevented the children from forming a reciprocal bond with him.

(8) The Court has carefully reviewed the record and concludes that Father's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Father's counsel has made a conscientious effort to examine the record and the law and has properly determined that Father could not raise a meritorious claim in this appeal.

⁸ See DEL. CODE ANN. tit. 13, § 1103(a)(5)a.3. (2009).

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice