

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BOBBY KRAIG, <sup>1</sup>	§
	§
Respondent Below-	§ No. 688, 2011
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
DIVISION OF FAMILY SERVICES,	§ in and for New Castle County
	§ File No. 11-08-07TN
Petitioner Below-	§ Pet. No. 11-24919
Appellee.	§

Submitted: April 20, 2012  
Decided: May 30, 2012

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

**ORDER**

This 30<sup>th</sup> 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 16, 2011, the Family Court terminated the parental rights of appellant, Bobby Kraig (“Father”), with respect to his two young daughters based on his failure to plan. This is Father’s appeal from that final judgment.<sup>2</sup>

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

<sup>2</sup> In the same order, the Family Court also terminated the parental rights of the children’s mother. Any issues concerning the termination of the mother’s parental rights are not before us in this appeal, however.

(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. He raises three issues for this Court's consideration. The Division of Family Services (DFS) has responded to Father's points, as well as 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 December 26, 2007 and June 2, 2009, respectively. The children entered DFS' care in May 2010 when Father and Mother arrived in Delaware by train from New Jersey with six children<sup>3</sup> and no housing, income or employment. At the time, both parents had an active child protection case in New Jersey, and both had admitted to illegal drug use. At the adjudicatory hearing on June 17, 2010, Father and Mother stipulated that the children were dependent due to their lack of stable housing. A dispositional hearing was held on July 13, 2010 and each parent's case plan was entered into evidence. The key aspects of

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<sup>3</sup> Mother has four other children from two previous relationships in addition to the two children she has with Father.

Father's plan required him to obtain stable housing, have the financial means necessary to care for his children, complete a budget, complete a parenting course, have a mental health evaluation and follow any recommendations for treatment, have a substance abuse evaluation, and comply with all court orders. Given their continued lack of housing, the children were ordered to remain in DFS' care.

(4) Thereafter, the Family Court held three review hearings in October 2010, December 2010, and March 2011. Evidence was presented at the hearings regarding Father's lack of progress with his case plan. Father had moved back to New Jersey and thus had limited visitation with his daughters due to his lack of transportation. Father had been unable to secure stable housing, had insufficient income to care for his daughters, had completed the mental health evaluation but had failed to follow his treatment plan for schizophrenia and post-traumatic stress disorder, and had failed to fully complete substance abuse treatment. Accordingly, the Family Court concluded that the children remained dependent. The Family Court approved a change of goal from reunification to termination of parental rights following a permanency hearing in June 2011.

(5) The termination of parental rights hearing took place on September 22, 2011 and October 3, 2011. The Family Court heard

testimony from several witnesses including Father, Mother, the DFS treatment worker, the DFS permanency worker, and Father's sister who was requesting guardianship of the two girls. Father testified that he was unable to work due to health problems, but he presented no medical evidence to support that assertion. His only income at the time was \$200 per month he received in food stamps. Father had not completed his required drug treatment and he was not taking his required medications to treat his mental illnesses. Father acknowledged that he had never been the primary caretaker of his daughters and he had visited his daughters only seven times in the past seventeen months since they had entered DFS' care. Father's current home could not accommodate his children. Although Father's sister in New Jersey indicated a desire to keep the girls, New Jersey authorities had denied the request because she had failed to communicate with them and because of her boyfriend's criminal record. Father's sister had visited with the children only one time since they had entered DFS' care. Following the hearing, the Family Court issued its decision, finding clear and convincing evidence that there was a statutory basis for termination of Father's parental rights and that termination was in the children's best interests.

(6) In response to his counsel's opening brief, Father raised three points that he wishes this Court to consider on appeal. First, Father asserts

that he loves his children and that they should be living with him now that he has his own section 8 apartment in New Jersey. Father also asserts that he is willing to do whatever he needs to do to support his children financially. Finally, Father contends that he was unable to comply with his mental health treatment due to a hurricane but that he followed up with his new appointment that was rescheduled after the TPR hearing.

(7) 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.<sup>4</sup> To the extent the issues on appeal implicate the Family Court’s legal rulings, our review is *de novo*.<sup>5</sup> To the extent the issues on appeal challenge factual findings, we review the record to determine whether the Family Court’s factual findings are sufficiently supported by the record and are not clearly wrong.<sup>6</sup>

(7) In Delaware, the Family Court may grant a petition to terminate parental rights if two conditions are met.<sup>7</sup> First, there must be clear and convincing evidence of a statutory basis for termination under 13 Del. C. § 1103.<sup>8</sup> Second, termination must be in the child’s best interests.<sup>9</sup> Where, as in this case, the statutory basis justifying termination is a failure to plan,

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<sup>4</sup> *Wilson v. Division of Family Serv.*, 988 A.2d 435, 439-40 (Del. 2010).

<sup>5</sup> *Id.* at 440.

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

<sup>7</sup> *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

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 clear and convincing evidence that the children had been in DFS' care for more than a year,<sup>10</sup> that there was a history of neglect or lack of care of the children by Father,<sup>11</sup> that Father was not capable of assuming prompt custody of the children and to pay for their support in accordance with his financial means,<sup>12</sup> and that failure to terminate Father's parental rights would result in continued emotional instability or physical risk to the children.<sup>13</sup>

(8) Father's points essentially challenge the Family Court's finding that he was incapable of assuming legal and physical custody of his daughters. Upon this Court's review, however, we find clear and convincing evidence in the record to support the Family Court's findings that Father:

(i) had failed to successfully complete any of the elements of his case plan except for completing parenting classes; (ii) had not completed substance abuse treatment; (iii) had not been consistent with his mental health treatment; (iv) had finances limited to \$200 per month in food stamps and

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<sup>8</sup> *Id.* at 537.

<sup>9</sup> *Daber v. Division of Child Protective Serv.*, 470 A.2d 723, 726 (Del. 1983).

<sup>10</sup> *See* DEL. CODE ANN. tit. 13, § 1103(a)(5)a.1. (2009).

<sup>11</sup> *Id.* § 1103(a)(5)a.2.

<sup>12</sup> *Id.* § 1103(a)(5)a.4.

<sup>13</sup> *Id.* § 1103(a)(5)a.5.

section 8 housing; (v) was, by his own testimony, unable to work because of poor health; (vi) had not visited regularly and consistently with the children for the seventeen months they had been in DFS' care; and (vii) had not received approval from the State of New Jersey to have his daughters reside with him in his present apartment. The Family Court also considered all of the best interest factors and found that it was in the children's best interests to terminate Father's parental rights. In addition to Father's history of failing to care for the children, his criminal history, and his significant physical and mental health issues, the trial court found that the children had adjusted well to their foster family with whom they had lived for more than a year.

(9) Under the circumstances, we find clear and convincing evidence that Father failed to plan adequately for his children's needs, that several statutory conditions for termination had been met, and that it was in the children's best interests to terminate Father's parental rights. Having reviewed the record carefully, we conclude 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.

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/ Carolyn Berger  
Justice