

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEREMY D. MEYERS,¹

Respondent Below-
Appellant,

v.

ELIZABETH V. and DAVID
REDNER,

Petitioners Below-
Appellees.

§

§ No. 387, 2011

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§ Court Below—Family Court

§ of the State of Delaware,

§ in and for Sussex County

§ File No. 10-08-01TS

§ Case No. 10-28445

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Submitted: November 18, 2011

Decided: January 24, 2012

Amended: February 1, 2012

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

ORDER

This 1st day of February 2012, upon consideration of the appellant's opening brief and the record below,² it appears to the Court that:

(1) The respondent-appellant, Jeremy Meyers (“Father”), filed this appeal from a Family Court order, dated July 11, 2011, which terminated his parental rights with respect to his young daughter (“the Child”). Father contends that the Family Court erred in several respects when it found clear and convincing evidence of Father’s abandonment of the Child.

¹ The Court previously assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

² The appellees chose not to file an answering brief.

(2) The record reflects that the Child was born on April 2, 2004 in Baltimore, Maryland. At birth, the Child tested positive for drugs due to her mother's drug use and was taken into immediate custody by a Maryland social service agency. The appellees, who are the maternal grandparents, were unable to obtain temporary guardianship of the Child because the mother lived in their home. The Child therefore was placed in Father's custody for approximately three months. Later that year, Father was arrested on drug charges. He was convicted and sentenced to a ten-year term of incarceration. Following Father's incarceration, the Child was cared for by her mother and the appellees.³

(3) In September 2007, the mother was the victim of murder. The Child has lived solely with the appellees since that time. In August 2010, the appellees filed a petition for termination of Father's parental rights and a petition to adopt the Child. Father opposed the petitions, and the Family Court appointed counsel to represent him. The matter was referred to Catholic Charities to investigate and provide a recommendation with respect to the petitions. Thereafter, the Family Court held a hearing at which both the appellees and Father testified. Based on the testimony, the Family Court

³ Mother apparently had completed the requirements specified by the Maryland social service agency in order to regain custody of the Child.

found clear and convincing evidence to support the termination of Father's parental rights and thus granted both petitions. This is Father's appeal.

(4) In his opening brief on appeal, Father contends that the Family Court abused its discretion in finding clear and convincing evidence of Father's abandonment of and failure to plan for the Child. Father contends that the Family Court did not properly consider evidence that: (i) the appellees interfered with Father's ability to communicate with the Child; (ii) Father already had legal recognition of his paternity of the Child and did not pursue a lawsuit to establish his right to contact or visitation because Father determined it was not in the Child's best interest to do so; (iii) Father's incarceration prevented his ability to assume legal and physical custody of the Child; (iv) Father's financial support of the child was in accordance with his means at the time and not reflective of his willingness to support the Child; (v) the long-term benefits of living with her biological parent outweighed any short-term psychological harm the Child might experience in leaving the appellees' home; and (vi) since his release from incarceration in March 2011, Father has manifested a rapid ability to obtain and hold a job and procure appropriate housing.

(5) This Court's review of a Family Court 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.⁴ To the extent that the Family Court's rulings of law are implicated, our review is *de novo*.⁵ To the extent that the issues on appeal implicate rulings of fact, we conduct a limited review of the factual findings of the trial court to assure that they are sufficiently supported by the record and are not clearly wrong.⁶

(6) In reviewing a petition for termination of parental rights, the Family Court must employ a two-step analysis.⁷ First, the court must determine, by clear and convincing evidence, whether a statutory basis exists for termination.⁸ Second, the court must determine, by clear and convincing evidence, whether termination of parental rights is in the child's best interests.⁹

(7) In this case, we have reviewed the parties' positions and the record below very carefully. We conclude that there is ample evidence on the record to support the Family Court's termination of Father's parental rights on the statutory bases of abandonment and failure to plan and because termination was clearly in the Child's best interests. The record supports the finding of abandonment because, for at least twelve consecutive months

⁴ *Wilson v. Div. of Family Serv.*, 988 A.2d 435, 439-40 (Del. 2010).

⁵ *Id.* at 440.

⁶ *Powell v. Dep't of Serv. for Children, Youth & Their Families*, 963 A.2d 724, 731 (Del. 2008).

⁷ DEL. CODE ANN. tit. 13, § 1103(a) (2009)

⁸ *Shepherd v. Clemens*, 752 A.2d 533, 537 (Del. 2000).

⁹ *Id.*

before the appellees filed their petition, the evidence reflected that Father: (i) had failed to regularly visit the Child; (ii) had failed to establish a legal right to have contact with the Child; and (iii) had failed to manifest an ability to assume legal and physical custody of the child during the relevant time period.¹⁰ Contrary to Father's suggestion, his act of abandonment cannot be cured by his subsequent conduct.¹¹ The appellees were not required to prove Father's present intent to abandon the Child. Given the lack of any meaningful relationship between Father and the Child since her infancy, the Family Court's conclusion that failure to terminate Father's parental rights would be detrimental to the Child is supported by the record.¹²

(8) Furthermore, the record supports the Family Court's conclusion that Father had failed to adequately plan for the Child's physical and emotional needs. Due to Father's lengthy incarceration, the Child had lived with the appellees for many years, and there appears little likelihood that Father is able or would be able to discharge his parental responsibilities in the near future.¹³ The Family Court properly considered all of the best

¹⁰ DEL. CODE ANN. tit. 13, § 1103(a)(2)(b) (2009).

¹¹ *Id.* §§ 1101(1)(c), 1103(a)(2)(c).

¹² *Id.* § 1103(a)(2)(b)(4).

¹³ *Id.* § 1103(a)(5)(b).

interest factors,¹⁴ and its decision that termination was in the Child's best interests is sufficiently supported by the record.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹⁴ *Id.* § 722(a).