IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY SANDERS,	§	
	§	No. 667, 2011
Respondent Below,	§	
Appellant,	§	Court Below – Family Court
	§	of the State of Delaware,
v.	§	in and for New Castle County
	§	
DIVISION OF FAMILY SERVICES,	§	File No. CN10-02989
	§	Pet. No. 10-16079
Petitioner Below,	§	
Appellee.	§	

Submitted: May 2, 2012
Decided: May 15, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

O R D E R

This 15th day of May, 2012, it appears to the Court that:

1) The respondent-appellant, Larry Sanders ("Sanders"), appeals from a Family Court judgment that terminated his parental rights in his two children ("the children").[1] On appeal, Sanders claims that the Family Court erred by finding clear and convincing evidence that Sanders failed to plan for the children. Sanders argues that he provided the Division of Family Services ("DFS"), the petitioner-appellee, with the name of his father, a relative who was willing to care for the children, and that the Family Court erroneously rejected Sanders' father as a proper

[1] The Court, *sua sponte*, has assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

placement option. We have concluded that the Family Court committed no error. Therefore, its judgment must be affirmed.

2) Some time before May 13, 2010, Sanders' children and their mother ("Mother") arrived in Delaware from New Jersey by train, with no arrangement for housing, income, or employment. DFS filed a Dependency/Neglect Petition for Custody of the children in the Family Court. DFS also requested an emergency *ex parte* order of temporary custody, which was granted on May 13, 2010. On May 19, a preliminary hearing was held. At that time, Sander's precise whereabouts were unknown to DFS and Mother, but Mother provided the Family Court with Sanders' name and date of birth, and stated that he lived in Ohio.

3) On May 20, the Family Court ordered the children to remain in DFS's custody, and required DFS to notify Sanders of the next court hearing, by publication in Ohio. Eventually DFS located Sanders, who was incarcerated in a sex offender facility in Minnesota. Sanders informed DFS that he would be incarcerated until 2014, and that he wanted his children to live with his father (the "Grandfather").

4) DFS then requested that an Interstate Compact for the Placement of Children ("ICPC")[2] home study be completed to determine if the Grandfather

[2] The ICPC is codified in Del. Code Ann. tit. 31, §§ 381-389 (2009). An ICPC request is required when a child is to be placed for adoption or in foster care in another state, and the placement must be approved by both states.

would be a suitable placement option for the children. After completing the study, the Minnesota ICPC office approved the children's placement with the Grandfather. At a review hearing held on March 9, 2011, DFS advised the Family Court that the Minnesota ICPC office approved of the Grandfather, but the DFS nonetheless expressed concerns. In particular, DFS questioned whether the Grandfather, who lived in a three bedroom, Section 8 - qualifying home, could accommodate and financially support two more children because the Grandfather and his wife were already supporting three children.

5) On March 14, the Family Court found that "placement of the child(ren) in the home of [the] relative is not appropriate," because the Grandfather already was caring for three children in his three bedroom home; the Grandfather was nearly sixty years old with physical health issues; and the Grandfather's commitment to the children was questionable, since he had not seen or had contact with them for over a year.

6) On May 13, 2011, DFS requested permission from the Family Court to petition for termination of parental rights. A hearing was held on June 14, 2011, in which Sanders did not participate. On June 15, 2011, the Family Court granted DFS's request. On August 11, 2011, DFS formally petitioned the Family Court to terminate the parental rights of Mother and Sanders, on the ground that they failed

to plan adequately for their children.[3] Hearings on the petition were held on September 22 and October 3, 2011. Sanders participated by telephone on both dates. The Grandfather also testified by telephone during the October 3 hearing.

7) On November 16, 2011, the Family Court granted DFS's motion to terminate the parental rights of the Mother and Sanders under title 13, section 1103(a)(5) of the Delaware Code. The court held that Sanders had failed to plan adequately for the children because he had been incarcerated since 2003 and would not be released until 2014, he had minimal contact with the children only through letters, and he had no direct contact with them. The Family Court further held that the Grandfather was not a "viable placement option" and that it was not within the "children's best interests to place the children in [his] home."

8) This appeal followed. On appeal, Sanders challenges only the Family Court's finding that he failed to plan adequately for the children.[4] His sole claim is that he identified a willing relative, the Grandfather, who was approved by the Minnesota ICPC office to take guardianship of his children.

9) The Family Court's decision to terminate a person's parental rights is a mixed question of fact and law.[5] To the extent the issues on appeal implicate

---

[3] *See* Del. Code Ann. tit. 13, § 1103(a)(5).

[4] The Father does not challenge the Family Court's conclusion that at least one of the conditions listed under section 1103(a)(5)(a) had been met, or that termination would be in the best interests of the children.

[5] *Wilson v. Div. of Family Servs.,* 988 A.2d 435, 439-40 (Del. 2010).

rulings of law, our review is *de novo*.[6] This Court will not disturb factual findings unless they are not supported by the record and are clearly wrong,[7] nor will it disturb inferences and deductions that are supported by the record and are the product of an orderly and logical reasoning process.[8] If the trial judge correctly applied the law, our review is limited to abuse of discretion.[9]

10) To terminate a person's parental rights for failure to plan when the parent's children are already in DFS custody, the Family Court conducts a two-step legal analysis.[10] First, the court must find, by clear and convincing evidence, that the parent has failed to plan adequately for the child's physical needs or mental and emotional development, and that at least one of the statutory grounds for termination under title 13, section 1103(a)(5)(a) is satisfied.[11] Second, the Family

[6] *In re Stevens*, 652 A.2d 18, 23 (Del. 1995).
[7] *Powell v. Dep't of Servs. for Children, Youth & Their Families*, 963 A.2d 724, 731 (Del. 2008).
[8] *In re Stevens*, 652 A.2d at 23.
[9] *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).
[10] *Powell v. Dep't of Servs. for Children, Youth & Their Families,* 963 A.2d at 731.
[11] *Div. of Family. Servs. v. Hutton,* 765 A.2d 1267, 1271 (Del. 2001). As to the those statutory factors, title 13, section 1103(a)(5)(a) states as follows:

> In the case of a child in the care of the Department or a licensed agency [one of the following conditions must be met]:
> 1. The child has been in the care of the Department or licensed agency for a period of 1 year, or for a period of 6 months in the case of a child who comes into care as an infant, or there is a history of previous placement or placements of this child; or
> 2. There is a history of neglect, abuse or lack of care of the child or other children by the respondent; or
> 3. The respondent is incapable of discharging parental responsibilities due to extended or repeated incarceration, except that the Court may consider postconviction conduct of the respondent; or

Court must determine whether a termination of parental rights is in the best interests of the child, as defined in title 13, section 722.[12]

11) In a failure to plan analysis, a parent's claimed "plan" to have his children be cared for by a relative requires, at a minimum, that that family member be "suitable" for the task.[13] Sanders claims that the Grandfather was suitable—a "fit and willing relative who can provide long-term adequate care for the children," and was expressly approved by the Minnesota ICPC office. The Family Court found otherwise, however, and Sanders does not contend that the Minnesota ICPC's "approval" of placement with the Grandfather was *legally* binding on the Family Court in determining that the Father had failed to plan.[14]

12) According to Sanders, the ICPC's report is significant record evidence which shows DFS failed to meet its evidentiary burden of "clear and convincing" proof of Sanders' failure to plan. However, the record discloses that the Family

---

> 4. The respondent is not able or willing to assume promptly legal and physical custody of the child, and to pay for the child's support, in accordance with the respondent's financial means; or
>
> 5. Failure to terminate the relationship of parent and child will result in continued emotional instability or physical risk to the child . . . .

[12] *Id.*

[13] *See, e.g., Hughes v. Div. of Family Servs.*, 836 A.2d 498, 505 (Del. 2003) ("[Father's] only plan for his Minor Child was that she be placed with another relative. No suitable relative could be located, however . . . .").

[14] *Cf. Brown v. Div. of Family Servs.*, 14 A.3d 524, 533 (Del. 2011) (affirming the termination of parental rights of the mother after her approval by the Connecticut ICPC office because the mother was later involuntarily committed to a psychiatric facility). In its order in this case, the Family Court stated that "[it] is somewhat baffled how the State of Minnesota could approve the Grandfather as a placement resource for two young children considering his minimal financial resources and health issues."

Court's rejection of Sanders' plan for the children to reside with the Grandfather was supported by substantial evidence that the Grandfather was neither financially nor physically capable of caring for them.

13) The Family Court relied on the Grandfather's testimony that he earned a monthly income of about $1,800,[15] and had monthly expenses of $1,800 to $1,900. The Grandfather testified that he lives month-to-month, has no savings, and that he and his wife already support three children.[16] The Grandfather did claim that he could financially support Sanders' children with his wife's income, which (he testified) was $35,000 in 2010. In an addendum to the Minnesota ICPC report, however, the Grandfather told the ICPC that his wife received only $8,000 as income in 2010 from her business. Moreover, the Grandfather's wife did not testify that she would, or could, support the children with her income.

14) The Grandfather also testified that he planned to earn additional income as a registered daycare provider, as he had done in the past.[17] In early 2011, however, both the Grandfather and his wife lost their licenses to provide daycare, because the Grandfather's wife was convicted of welfare fraud. Although

[15] The only specific testimony of how the Grandfather makes income was that he receives $709 a month in disability and retirement payments.

[16] The Grandfather testified (by telephone) that he could not afford to purchase a plane ticket to attend the termination hearing in person.

[17] The Grandfather testified that he last provided daycare in 2010 to his minor relatives, and last earned money as a daycare provider in 2009.

the Grandfather testified that he believed he could be re-licensed as a daycare provider, he had made no attempt to do so by the time of the hearing.[18]

15) In addition to finding the Grandfather financially unable to support the children, the Family Court found that the Grandfather was not physically capable of caring for them, especially given the children's behavioral problems and the fact that the Grandfather was already caring for three children. The Grandfather, who is 59 years old, testified that he suffers from hypertension, high cholesterol, and a medical condition where fluid flows through his spinal column, requiring him to move slowly and at times walk with a cane. Thus, the record supports the Family Court's determination that the Grandfather is neither financially nor physically capable of caring for the children. Accordingly, Sanders' sole claim of error in this appeal is without merit.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

---

[18] In its order terminating the parental rights of Father, the Family Court stated that it is . . . "alarmed that [the Grandfather] was licensed until February 2011 to provide daycare services in light of his drug use, criminal background, age, and the fact that he walks with a cane, suffers from hypertension, and has fluid in his spine."