

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY SCOTT,	§	
	§	No. 528, 2011
Respondent Below,	§	
Appellant,	§	Court Below—Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
DEPARTMENT OF SERVICES	§	
CHILDREN, YOUTH AND THEIR	§	
FAMILIES, DIVISION OF FAMILY	§	
SERVICES,	§	
	§	
Petitioner Below,	§	
Appellee,	§	
	§	
and	§	
	§	
GUARDIAN AD LITEM,	§	
	§	File No. 11-07-04TN
Appellee.	§	Pet. No. 11-22383
	§	

Submitted: February 13, 2012
Decided: February 27, 2012

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

ORDER

This 27th day of February 2012, it appears to the Court that:

(1) The appellant, Gary Scott, has appealed the Family Court's August 30, 2011 termination of his parental rights in his minor child, Thomas, born June

26, 2010.¹ Scott’s counsel (“Counsel”) has filed an opening brief and a motion to withdraw pursuant to Supreme Court Rule 26.1(c).² Counsel represents that she has made a conscientious review of the record and the law and found no meritorious argument in support of the appeal. Scott has submitted no points for the Court’s consideration. In response to Counsel’s submission, the appellees, Division of Family Services (“DFS”) and Thomas’ guardian *ad litem*, have moved to affirm the Family Court’s termination of Scott’s parental rights.

(2) It appears that on July 19, 2011, DFS filed a termination of parental rights (“TPR”) petition³ on the ground that Scott had not planned adequately for Thomas’ physical needs or mental and emotional health and development.⁴ At an August 23, 2011 TPR hearing, the Family Court heard testimony from Scott, Thomas’ mother, a DFS treatment worker, and a DFS permanency worker. At the conclusion of the hearing, the Family Court granted the TPR petition.⁵ The Family Court issued a written decision on August 30, 2011. Scott’s appeal followed.⁶

(3) On appellate review of the termination of parental rights, this Court is required to consider the facts and the law as well as the inferences and deductions

¹ Previously the Court assigned a pseudonym to the appellant. Del. Supr. Ct. R. 7(d). In this Order, we assign a pseudonym to the appellant’s minor child.

² See Del. Supr. Ct. R. 26.1(c) (governing appeals without merit in termination of parental rights cases).

³ The TPR proceeding evolved from a dependency/neglect proceeding initiated in July 2010 when Thomas was ten days old.

⁴ The petition was also filed against Thomas’ mother.

⁵ The court terminated the parental rights of Scott and Thomas’ mother.

⁶ Thomas’ mother did not file an appeal.

made by the Family Court.⁷ We review implicated legal rulings *de novo*.⁸ We review implicated factual findings to assure that they are sufficiently supported by the record and are not clearly wrong.⁹ The Court will not disturb inferences and deductions that are supported by the record and that are the product of an orderly and logical deductive process.¹⁰

(4) The Delaware statutory procedure for terminating parental rights requires two separate inquiries.¹¹ First, there must be proof of an enumerated statutory basis for termination.¹² Second, there must be a determination that termination of parental rights is in the best interests of the child.¹³ Furthermore when the statutory basis for termination is “failure to plan”¹⁴ there must be proof of at least one additional statutory condition¹⁵ and that DFS made *bona fide* reasonable efforts to preserve the family unit.¹⁶ All of these requirements must be established by clear and convincing evidence.¹⁷

⁷ *Wilson v. Div. of Family Serv.*, 988 A.2d 435, 439-40 (Del. 2010).

⁸ *Id.* at 440.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

¹² *Id.* See Del. Code Ann. tit. 13, § 1103(a)(1)-(8) (2009) (listing grounds for termination of parental rights).

¹³ *Id.* See also Del. Code Ann. tit. 13, § 722(a)(1)-(8) (listing factors when determining best interests of child).

¹⁴ Del. Code. Ann. tit. 13, § 1103(a)(5).

¹⁵ See Del. Code Ann. tit. 13, § 1103(a)(5)(a)-(b) (listing additional conditions).

¹⁶ *In re Hanks*, 553 A.2d 1171, 1179 (Del. 1989).

¹⁷ *Stewart v. Dept’ of Serv. for Children, Youth and Their Families*, 991 A.2d 750, 758 (Del. 2010); *Powell v. Dep’t of Serv. for Children, Youth and Their Families*, 963 A.2d 724, 731 (Del. 2008).

(5) In this case, the Family Court found, by clear and convincing evidence, that Scott's parental rights should be terminated on the statutory basis of his failure to plan for Thomas' physical needs or mental and emotional health and development. In its August 30, 2011 decision, the Family Court found, in part:

[Scott] has not been involved in the care of [Thomas] since his birth thirteen months ago. [Scott] has only met [Thomas] one time and has never provided any support for him. He remains unemployed and has had at least three different residences during the thirteen months [Thomas] has been in DFS custody. [Scott] has presented no specific and realistic plan of how he would care for [Thomas]. He conceded that he had not completed any element of his case plan. Moreover, he acknowledged that he has never cared for or supported any of his other six children.¹⁸

The Family Court also found, by clear and convincing evidence, the presence of at least one additional statutory condition and that DFS had made reasonable efforts to preserve the family unit.

(6) The Family Court next considered whether DFS had proven by clear and convincing evidence that the termination of Scott's rights was in the best interests of Thomas. Guided by its factual findings and the weight it assigned to each of the best interests factors, the Family Court found, by clear and convincing evidence, that terminating Scott's parental rights was in Thomas' best interests.¹⁹

¹⁸ *Dep't of Serv. for Children, Youth and Their Families v. RS GS*, 2011 WL 5346034, at *6 (Del. Fam. Ct.).

¹⁹ *See Barr v. Div. of Family Serv.*, 974 A.2d 88, 98 (Del. 2009) (holding that the Family Court

(7) The Court has carefully considered the parties' submissions on appeal and the Family Court record, including the transcript of the TPR hearing. We conclude that the termination of Scott's parental rights should be affirmed on the basis of the Family Court's August 23, 2011 bench ruling and the court's well-reasoned August 30, 2011 written decision. We can discern no abuse of discretion in the Family Court's factual findings and no error in the Family Court's application of the law to the facts.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED. Counsel's motion to withdraw is moot.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

must consider all of the best interests factors, but when balancing the relevant factors, the court may give different weight to different factors).