

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DIANE BURTON, ¹	§
	§ No. 514, 2012
Respondent Below-	§
Appellant,	§ Court Below—Family Court
	§ of the State of Delaware,
v.	§ in and for Kent County
	§ File No. 11-06-04TK
DIVISION OF FAMILY SERVICES,	§ Petition No. 11-19501
	§
Petitioner Below-	§
Appellee.	§

Submitted: December 19, 2012

Decided: January 15, 2013

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

ORDER

This 15th day of January 2013, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26.1, her attorney's motion to withdraw, and the respective responses filed by the Division of Family Services (DFS) and the Court Appointed Special Advocate (the CASA), it appears to the Court that:

(1) The respondent-appellant, Diane Burton (“Mother”), filed this appeal from the Family Court’s opinion, dated August 24, 2012, which terminated her parental rights with respect to her six minor children.

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

Mother's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26.1. Counsel asserts that she has made a conscientious review of the record and the law and can find no arguable grounds for appeal. Mother did not respond to her counsel's motion and brief and thus has not raised any issues for this Court's consideration on appeal. DFS and the CASA both filed responses to the brief and have moved to affirm the judgment below.

(2) The record reflects that Burton is the maternal great aunt of the children. In June 2008, Burton adopted the children through the State of Florida. In December 2010, DFS filed a petition for custody of the children, alleging that the children were dependent/neglected in Burton and her husband's care.² Burton consented to DFS taking custody of the children. She waived her right to a preliminary protective hearing as well as an adjudicatory hearing and requested to proceed to a dispositional hearing to develop a reunification plan. Prior to the dispositional hearing, DFS filed a motion seeking to forego the requirement of a case plan. The Family Court held a hearing on the motion and concluded that DFS was not required to offer a reunification plan to Burton because the evidence established that Burton had subjected the children to torture and life-threatening abuse and

² Burton's husband is not the adoptive father of the children and was not a party to the proceedings below.

that it was not in the children's best interests to reunify with Burton. By separate order, the Family Court granted DFS' motion to change the case goal from reunification to termination of parental rights (TPR).

(3) The TPR hearing was initially scheduled for February 16, 2012 but was continued because of pending criminal charges against Burton and her husband arising from the child abuse allegations. The State dismissed the criminal charges against Burton, and she filed a motion to reinstate custody. The Family Court consolidated Burton's motion with the TPR petition for a hearing on July 26, 2012.

(4) At the hearing, DFS presented the testimony of numerous witnesses familiar with the children and their case, including DFS workers, a guidance counselor, a forensic interviewer, a therapist, a physician, a nurse, police officers, foster parents, the CASA, and the children themselves. This testimony established that Mother and her husband had engaged in systemic and severe physical beatings and other forms of punishment that included withholding food, excessive forced exercise, and watching the children bathe. Burton testified and denied much of the children's testimony, but the Family Court found that Burton was not credible. The Family Court found clear and convincing evidence that Burton had subjected the children to

torture, chronic abuse, and/or life-threatening abuse and that termination of Burton's parental rights was in the children's best interests.³

(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 If the trial judge has correctly applied the law, our review is limited to abuse of discretion.⁷

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

³ Del. Code Ann. tit. 13, § 1103(7) (2009).

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 *Id.*

⁸ Del. Code Ann. tit. 13, § 1103(a) (2009).

⁹ *Shepherd v. Clemens*, 752 A.2d 533, 537 (Del. 2000).

evidence, whether termination of parental rights is in the child's best interests.¹⁰

(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 Burton's parental rights on the statutory basis that she had subjected the children to torture, chronic abuse, and/or life-threatening abuse and because termination was clearly in the children's best interests. We find no abuse of discretion in the Family Court's factual findings and no error in its application of the law to the facts. Accordingly, the judgment below shall be affirmed.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

¹⁰ *Id.*