RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3584-15T2
A-3585-15T2

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

C.C.M. and J.M.,

Defendants-Appellants,

IN THE MATTER OF THE GUARDIANSHIP OF I.C., a Minor.

Submitted February 2, 2017 – Decided February 27, 2017

Before Judges Lihotz and O'Connor.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FG-02-50-15.

Joseph E. Krakora, Public Defender, attorney for appellant C.C.M. in A-3584-15 (Beryl Foster-Andres, Designated Counsel, on the brief).

Joseph E. Krakora, Public Defender, attorney for appellant J.M. in A-3585-15 (Albert M. Afonso, Designated Counsel, on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Julie B. Colonna, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Melissa R. Vance, Assistant Deputy Public Defender, on the brief).

PER CURIAM

In these consolidated appeals, defendants C.C.M. (mother) and J.M. (father) are the biological parents of I.C. (Ian), presently three-and-a-half years of age.[1] Defendants appeal from the April 12, 2016 Family Part judgment terminating their parental rights and awarding plaintiff Division of Child Protection and Permanency (the Division) guardianship. Defendants seek reversal, arguing the Division failed to present clear and convincing evidence to sustain the judgment terminating their parental rights. We disagree and affirm.

I

In lieu of reciting at length the evidence presented by the Division at trial in support of its petitions for guardianship, we incorporate by reference the trial court's factual findings because they are supported by competent evidence presented at

[1] We use a fictitious name for defendants' son to protect his privacy.

trial. See N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012). We highlight only the salient facts.

Ian was removed from his parents' physical custody at birth after the hospital contacted the Division expressing concern over the parents' ability to care for the baby. Subsequent psychological and psychiatric evaluations of the parents confirmed these concerns. Those evaluations revealed the following.

The mother has significant deficits in intellectual functioning, and also has been diagnosed with bipolar disorder, impulse control disorder, and dependent personality disorder. One of the Division's expert witnesses, Gianni Pirelli, Ph.D., opined the mother's cognitive limitations significantly deprive her of the ability to parent effectively, rendering her unfit to parent Ian. Moreover, her capacity to engage in meaningful treatment and to learn to become a more effective parent is limited because of these intellectual deficits. Two other Division experts, psychiatrist Samiris Sostre, M.D., and psychologist Nicholas I. Tolchin, Ph.D., concurred the mother's ability to parent is severely limited. The trial court found all three experts credible.

Dr. Pirelli conducted a bonding evaluation of the mother and Ian, which revealed their relationship was "fair to poor";

the mother does not know how to bond with her son, making the risk of a failed reunification relatively high. On the other hand, Ian's resource parents, with whom Ian has lived since shortly after his birth, have "begun to establish" a healthy and strong bond with him. The resource parents wish to adopt Ian. Dr. Pirelli found termination of the mother's rights will not do more harm than good.

Dr. Tolchin's testing and evaluation of the father showed he also had limited cognitive functioning, and was at high risk for neglecting his child physically and emotionally. Dr. Tolchin determined the father's cognitive functioning may impair him from fully participating in and benefitting from therapeutic services. Dr. Pirelli and Dr. Sostre similarly found the father unfit to parent Ian.

Dr. Pirelli's bonding evaluation of the father and Ian showed the father interacted "fairly well" with Ian at times, but overall the father's lack of appreciation for Ian's needs indicated the father had an impaired understanding of how to establish a bond with him. Like the mother, the risk of a failed reunification with the father was also high, and it would not do more harm than good to terminate the father's parental rights.

The parents were offered a host of services by the Division, but defendants did not complete any of them, even those that were court-ordered. Although Dr. Tolchin noted the prognosis for both defendants is highly guarded due to their low cognitive functioning, to optimize the chances of improving their parenting skills, he did recommend they engage in parenting classes specifically tailored for those with cognitive deficits. The Division did not provide this particular service.

However, while Dr. Tolchin observed some cognitively impaired parents may be able to competently parent their child with the right kind of therapeutic services, such as one-on-one parenting instruction, he did not opine defendants fell into this class of parents. Moreover, Dr. Sostre noted if a parent requires this kind of instruction, such parent likely lacks the intellectual capacity to take care of a child.

Neither parent testified, called any witnesses, or introduced any documentary evidence.

II

On appeal, the mother contends the Division's proofs were insufficient to satisfy the four-prong standard codified by the

Legislature in N.J.S.A. 30:4C-15.1(a).[2] The father maintains the Division failed to prove the first and third prongs of the statute.

The applicable substantive law and our scope of review is well established. When petitioning for the termination of parental rights, the Division must establish all four prongs under N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence.

---

[2] These four prongs are:

> (1) The child's safety, health, or development has been or will continue to be endangered by the parental relationship;
>
> (2) The parent is unwilling or unable to eliminate the harm facing the child or is unable or unwilling to provide a safe and stable home for the child and the delay of permanent placement will add to the harm. Such harm may include evidence that separating the child from his resource family parents would cause serious and enduring emotional or psychological harm to the child;
>
> (3) The division has made reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home and the court has considered alternatives to termination of parental rights; and
>
> (4) Termination of parental rights will not do more harm than good.
>
> [N.J.S.A. 30:4C-15.1(a).]

"Those four factors are not 'discrete,' but rather 'relate to and overlap with one another to provide a comprehensive standard that identifies a child's best interests.'" N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 103 (2008) (citing In re Guardianship of K.H.O., 161 N.J. 337, 348 (1999)).

Appellate review of a trial court's decision to terminate parental rights is limited. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 278-79 (2007) (citing In re Guardianship of J.N.H., 172 N.J. 440, 472 (2002)). The reviewing court should not disturb the factual findings of the trial court if they are supported by "adequate, substantial and credible evidence." Id. at 279 (quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)). Moreover, we accord substantial deference to the expertise of judges sitting in the Family Part who preside over Title 30 guardianship trials. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 427 (2012).

Here, we have no hesitation in concluding the Division proved with clear and convincing evidence all four prongs of N.J.S.A. 30:4C-15.1(a) as to the mother and the father were met.

Defendants contend the Division did not prove the first prong because there was no evidence they harmed or put Ian at risk for harm. We note, in general, the first prong is met if there has been an "endanger[ing] of the child's health and

development resulting from the parental relationship," and there will be future harm to the child's safety, health, or development if the parental relationship is not terminated. K.H.O., supra, 161 N.J. at 348. The harm "must be one that threatens the child's health and will likely have continuing deleterious effects on the child." Id. at 352.

But courts "need not wait to act until a child is actually irreparably impaired by parental inattention or neglect." In re Guardianship of DMH, 161 N.J. 365, 383 (1999). The inability of a parent to provide any care for his or her child for a prolonged period constitutes a harm under this standard. Id. at 356. The fact a parent may be morally blameless is not a sufficient reason to tip the scales in his or her favor. N.J. Div. of Youth & Family Servs. v. A.G., 344 N.J. Super. 418, 438 (App. Div. 2001), certif. denied, 171 N.J. 44 (2002).

Here, the first prong has been met. There is uncontroverted evidence the parents suffer from intellectual deficits that preclude them from effectively parenting Ian. These impairments are not of a kind that can be easily remedied with treatment over a short period of time. Even if they could be, defendants declined to participate in some services and failed to fully avail themselves of others. Thus, the child's

safety, health, or development has been or will continue to be endangered by the parental relationship.

The second statutory prong requires the Division to show the parent is unable or unwilling to eliminate the harm facing the child. N.J.S.A. 30:4C-15.1(a)(2). This prong was clearly met in this case. Defendants are unable to eliminate the harm they pose to Ian. Again, even if they were able, their conduct revealed they are unwilling to overcome those obstacles which preclude them from regaining custody of their son.

Both parents complain the Division failed to meet the third prong of N.J.S.A. 30:4C-15.1(a), because it failed to provide parenting classes designed to instruct individuals with cognitive limitations. However, there was no expert testimony such parenting classes would have benefitted defendants to any appreciable degree. Even if there were, defendants' commitment to improving their parenting skills was questionable, as evidenced by their failure to consistently take advantage of the services the Division offered. Finally, the mother complains the Division failed to prove the fourth prong, but the expert evidence, which the judge found credible, demonstrated termination of her parental rights will not do more harm than good to the child.

Because there was substantial credible evidence the best interests of the child justified termination of defendants' parental rights, we find no basis to interfere with the trial court's conclusion to enter the judgment of guardianship.

Affirmed.