

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0722-16T4

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

J.W.,

Defendant-Appellant,

and

K.S.,

Defendant.

IN THE MATTER OF THE GUARDIANSHIP
OF T.W., a minor.

Submitted September 25, 2017 - Decided October 13, 2017

Before Judges Accurso, O'Connor and Vernoia.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Hudson
County, Docket No. FG-09-0255-15.

Joseph E. Krakora, Public Defender, attorney
for appellant (Albert M. Afonso, Designated
Counsel, on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Lauren J. Oliverio, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Karen A. Lodeserto, Designated Counsel, on the brief).

PER CURIAM

Defendant J.W. appeals from a final judgment terminating her parental rights to her third child, Tamika,¹ now almost four years old. She contends the Division of Child Protection and Permanency failed to prove prongs two through four of the best interests standard of N.J.S.A. 30:4C-15.1a(2)-(4) by clear and convincing evidence. The Law Guardian joins with the Division in urging we affirm the judgment. Having considered defendant's arguments in light of the record and controlling law, we affirm the termination of her parental rights.

The facts are fully set forth in Judge DeCastro's comprehensive seventeen-page opinion, and need not be repeated here. We note only that J.W. came to the Division's attention in 2008, when she tested positive for PCP at the birth of her first child. She also tested positive at the birth of her

¹ This name is fictitious to protect the child's identity.

second child in 2010. Both children now live with relatives in kinship legal guardianships.

J.W. again tested positive for PCP in 2014 at Tamika's birth. The baby suffered severe withdrawal symptoms, including inability to sleep, extreme tremors, vomiting, sneezing and arching her back. She required morphine and spent over two months in the hospital being weaned from the drugs. The Division removed her from her mother at discharge and placed her shortly thereafter in the resource home where she has since remained.

Over the next two years, the Division attempted to assist defendant in overcoming her drug problem and provided supervised visitation to allow her to bond with the child her drug addiction prevented her from raising. Its efforts were largely unsuccessful. Defendant resisted in-patient treatment, insisting she could better address her addiction through an outpatient program on her own. She continued to often test positive for PCP or alcohol, doing so as recently as three months before trial in 2016.

Defendant visited Tamika twice a week for the first eighteen months of her life, although she sometimes arrived late or failed to show up. She stopped visiting entirely, however, for almost a year from September 2015 until June 2016 without

explanation, resuming her visits only three months before trial. The Division worker supervising those recent visits testified they were hard on the toddler. Although defendant was well disposed toward her daughter, the child cried and tried to leave the room.

The Division had defendant evaluated twice, first in June 2015 and again in May 2016. The results of those evaluations were almost identical. Defendant told the psychologist she started using PCP when she was eighteen and was still using it weekly when Tamika was born seven years later. She had not held a job in a long time, lived with her mother or one of her sisters and got by on assistance and food stamps.

The psychologist found no diagnosable psychiatric illness, but testified defendant was in no position to parent based on her untreated drug addiction. He opined she had no insight into her problem and no plan to address it. He testified the difficulty in overcoming a PCP addiction, and defendant's failure to avail herself of treatment opportunities, made it highly unlikely she would be able to sustain any remission she managed on her own. He testified that returning Tamika to defendant in the absence of sustained remission would expose the child to serious harm.

The same psychologist conducted two bonding evaluations between defendant and Tamika. During the first evaluation in 2015, the child was just under two years old. Although the psychologist observed that defendant was affectionate toward her daughter, the baby responded indifferently, and there were almost no reciprocal interactions between them. He found little, if any, attachment. When the psychologist saw the two together again the following year, Tamika avoided eye contact and even resisted her mother's attempt to hug or cuddle her. The expert found no evidence of any bond between the two.

The psychologist testified that his observations of Tamika and her resource mother stood in stark contrast to the interactions between Tamika and defendant. Tamika sought her resource mother's attention, who responded accordingly. Their interaction was spontaneous, warm and lively. The expert testified that the foster mother provided Tamika security and comfort, and the bond between the two was reciprocal and strong. He concluded that severing the bond between them would cause the child severe and enduring harm.

Defendant did not present an expert but testified in her own behalf that she wanted to be a parent to her daughter. She acknowledged past mistakes, but claimed she was on a different path now. She told the court she had gotten a job three weeks

before, had resumed visits with her daughter, was attending parenting classes and had not used PCP in the last two months. Although expressing her willingness to take a drug test, she conceded it would likely be positive because the PCP she took two months before would still be in her system.

Applying the statutory factors, N.J.S.A. 30:4C-15.1a, to the facts adduced at trial, Judge DeCastro entered a judgment terminating defendant's parental rights. The judge concluded there was no question but that defendant had caused Tamika actual harm by "failing to get treatment for her longstanding PCP addiction," resulting in the child suffering severe withdrawal symptoms at birth. She found defendant has never been able to support her daughter or provide her a safe and stable home. Defendant refused services, was unwilling to get the drug treatment she needs and does not acknowledge the risks her continuing addiction pose to Tamika.

Relying on the credible testimony of the Division's expert, the judge found defendant could not safely parent Tamika now or in the foreseeable future. Judge DeCastro concluded that there were "simply no alternatives to termination." The Division explored and ruled out all relatives offered. There were no viable placements and the child was "happy and well cared for" by a resource family willing to adopt her. In light of those

facts, the court concluded the Division had "met its burden of proving by clear and convincing evidence that termination of the defendant's parental rights will not do more harm than good."

Defendant appeals, presenting arguments contained in a single point with multiple subparts:

THE TRIAL COURT FAILED TO PROPERLY APPLY THE PREVAILING LEGAL STANDARD AND THE DIVISION FAILED TO PROVE THE FOUR PRONGS OF THE "BEST INTEREST" STANDARD CODIFIED IN N.J.S.A. 30:4C-15.1 BY CLEAR AND CONVINCING EVIDENCE.

A. THERE IS NO CLEAR AND CONVINCING EVIDENCE THAT J.W. IS UNWILLING OR UNABLE IN THE FORSEEABLE FUTURE TO ELIMINATE THE HARM FACING [TAMIKA].


B. THE DIVISION FAILED TO CONSISTENTLY PROVIDE REASONABLE EFFORTS TO J.W. BY FAILING TO FOSTER HER RELATIONSHIP WITH [TAMIKA].

C. THERE IS NO CLEAR AND CONVINCING EVIDENCE THAT TERMINATION OF PARENTAL RIGHTS WILL NOT DO MORE HARM THAN GOOD UNDER THE FOURTH PRONG.

We find no merit in these arguments and affirm substantially for the reasons set forth in Judge DeCastro's comprehensive and well-reasoned written opinion of September 29, 2016.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.


CLERK OF THE APPELLATE DIVISION