RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1019-16T4

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

J.S.,

Defendant-Appellant.

IN THE MATTER OF THE GUARDIANSHIP OF J.E,,

Minor.

Submitted June 6, 2017 – Decided June 15, 2017

Before Judges Fisher and Ostrer.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FG-02-000054-15.

Joseph E. Krakora, Public Defender, attorney for appellant (Mark E. Kleiman, 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 (James J. Gross, Designated Counsel, on the brief).

PER CURIAM

Defendant J.S. is the mother of three children. Of the three, only the future of her youngest child, J.E. (the child), who was born in 2013, and only defendant's parental rights to that child,[1] are at stake in this guardianship action.[2]

In a proceeding on February 23, 2016, defendant, who was residing in an inpatient substance abuse program in Florida, appeared by telephone; her attorney was present in the courtroom. Defense counsel and the judge questioned defendant about her decision to surrender her rights and the voluntary surrender form that had been sent to defendant by her attorney earlier that day. In responding, defendant said: "yes" when asked whether her decision was voluntary; "no" when asked whether she had been threatened, coerced or pressured; "no" when asked whether she was under the influence of drugs, alcohol or medications; "no" when asked whether she was suffering from any mental or physical disability that would affect her judgment; and "yes" when asked

[1] The child's father is deceased.

[2] Because of mental health and substance abuse issues, defendant surrendered her rights to the two older children, who were born in 2007 and 2012, to relatives in 2009 and 2014, respectively.

whether she believed the identified surrender was in the child's best interests. Based on these and other one-word answers,[3] the judge concluded that defendant "has voluntarily entered into this identified surrender [and] that she believes it's in the child's best interest." A confirming order was entered that day.

Seven months later, with the assistance of new counsel, defendant moved for relief from the February 23, 2016 judgment, pursuant to Rule 4:50. In her certification, defendant claimed she surrendered her rights while under enormous pressure and without the ability to solemnly consider that decision. She recounted that, on February 11, 2016, she was admitted to a substance rehabilitation facility in Florida and was under "a dire psychological condition" that was "so severe [she] had to receive the highest possible dosages of anti-depressant drugs." Defendant claimed she was then "in the throes of addiction and heavily medicated" and "incapable of returning to New Jersey to fight for" the child; she believed at that time that the "only solution" was for her to surrender the child to her aunt.

[3] By our count, defendant was asked fifty-seven questions during that proceeding. She answered fifty-five of those questions with a single word: either "yes," "no," or "okay." As to the other two, she gave very brief answers as well. When asked her relationship to C.S., the person to whom she was surrendering the child, defendant said "[s]he's — she's my aunt." And when asked to identify the person who witnessed her signature on the voluntary surrender form, defendant responded, "[m]y social worker."

At the time she filed the Rule 4:50 motion, defendant was living in a halfway house in Florida and attending both an intensive outpatient program and cosmetology school. In her motion, defendant provided additional information about the circumstances surrounding the February 23, 2016 proceeding. She stated that before entry into the inpatient program, she had been homeless in Florida and limited in her ability to meaningfully communicate with her attorney. Even upon admission to the rehabilitation facility, defendant could only use a telephone in the facility's "day room," which offered no privacy for discussions with her attorney; she explained in her certification the nature of the surroundings at the time of the February 23, 2016 hearing:

> I was crying the entire time [and] so embarrassed to participate in such a private proceeding in the presence of a room full of complete strangers, who were staring at me. I felt pressured and overwhelmed. I had arrived at the facility less than two weeks before the surrender date and only just met my worker, so she was not a support to me.

Defendant further asserted that, "[i]n retrospect," she did not believe she was in "a capable frame of mind" when she decided to surrender and as she stated her intentions on the record. Defendant claimed in her certification that:

> I was suffering from a mental condition and I was under the influence of medications. I believe that the combination of these circumstances impaired my judgment and did not

> allow me to make a meaningful decision on that day.

In moving for relief from the judgment, defendant alleged her condition had greatly improved and claimed it would be in the child's best interests to restore her parental relationship.

Defendant also sought additional time to provide greater specificity about the medications she was taking when she surrendered her rights. In a certification, defendant's attorney explained the difficulties encountered in attempting to communicate with defendant that hampered their ability to further buttress defendant's grounds for Rule 4:50 relief.[4] The judge denied this request.

The judge also denied the motion because of the lack of specifics regarding defendant's circumstances at the time of the February 23, 2016 hearing. Without allowing testimony, the judge concluded that issues of permanency and stability for the child "cut[] in favor" of denial, and that defendant had neither demonstrated "she's currently ready to assume a parental role" nor "established . . . she is capable of providing a safe and stable

[4] Counsel explained in her certification that defendant's cellphone "died" while they were speaking about the motion in September and that counsel's own intervening vacation further hampered their ability to speak about the motion. In a later certification, defendant explained that her telephone was "not in working order for an extended period of time, so [she] could not receive calls or texts from [her] lawyer."

home" for the child. An order denying relief was entered on October 26, 2016.

Defendant appeals the October 26, 2016 order, arguing:

> I. THE TRIAL COURT'S DENIAL OF [DEFENDANT'S] MOTION TO VACATE THE IDENTIFIED SURRENDER MUST BE REVERSED PURSUANT TO RULE 4:50-1(f) BECAUSE TRULY EXCEPTIONAL CIRCUMSTANCES NECESSITATE SUCH RELIEF IN THE INTEREST OF EQUITY AND JUSTICE.
>
> II. THE TRIAL COURT'S FAILURE TO GRANT [DEFENDANT'S] REQUEST TO ADJOURN THE MOTION WAS IMPROPER BECAUSE IT PREVENTED [DEFENDANT] FROM DEMONSTRATING PURSUANT TO RULE 4:50-1(e) THAT IT WAS NO LONG EQUITABLE FOR THE IDENTIFIED SURRENDER ORDER TO HAVE PROSPECTIVE APPLICATION (Not Raised Below).
>
> III. DUE PROCESS AND FUNDAMENTAL FAIRNESS REQUIRE THAT THIS COURT REVERSE THE TRIAL COURT'S DENIAL OF [DEFENDANT'S] MOTION TO VACATE THE IDENTIFIED SURRENDER OF HER SON AND THAT [THE TRIAL COURT] ORDER . . . BE REVERSED, OR IN THE ALTERNATIVE, THAT THE MATTER BE REMANDED FOR A PLENARY HEARING (Not Raised Below).
>
> IV. THE COURT'S FAILURE TO GRANT [DEFENDANT] ADDITIONAL TIME TO PROVIDE DOCUMENTATION TO ESTABLISH "CHANGED CIRCUMSTANCES" WAS FUNDAMENTALLY UNFAIR AND CONSTITUTED PLAIN ERROR (Not Raised Below).

We do not reach the merits of Point I. Instead, we agree with defendant that, in these circumstances, the judge mistakenly exercised his discretion when he denied defendant's request for an adjournment. And we agree with defendant that, in either event,

the issues raised in the motion should have been developed and examined at an evidentiary hearing.

Permanency and the child's best interests are paramount in any such proceeding. Following entry of a judgment terminating parental rights, a movant must demonstrate sufficient grounds for reopening the matter. Defendant attempted this in two ways. She claimed she did not voluntarily surrender her rights due to her state of mind and, in any event, in a relatively brief period of time her circumstances changed for the better and to the point where she could ably resume parenting the child.

To be sure, defendant's factual assertions do not provide all that would be helpful in understanding her state of mind on February 23, 2016, or in the days before, nor do her assertions provide a complete understanding of defendant's present status or her ability to resume the role of parent. See In re Guardianship of J.N.H., 172 N.J. 440, 474-75 (2002); N.J. Div. of Youth & Family Servs. v. T.G., 414 N.J. Super. 423, 434-35 (App. Div.), certif. denied, 205 N.J. 14 (2010), cert. denied, 563 U.S. 1013, 131 S. Ct. 2925, 179 L. Ed. 2d 1255 (2011). Nevertheless, defendant's motion provided sufficient information to justify her reasonable request for additional time to provide greater specificity. Although our courts endeavor to expeditiously resolve disputes regarding the care and custody of children, we are satisfied from

our close examination of the record, that the judge erred in failing to allow defendant an opportunity to supplement her presentation on the Rule 4:50 motion and in failing to conduct an evidentiary hearing at which time — and for the first time — the judge would obtain the opportunity to see defendant in person and assess her credibility and the earnestness of her request.

In vacating the order under review and in remanding for further proceedings in conformity with this opinion, we express no view of the merits of defendant's application for relief from the February 23, 2016 judgment; we conclude only that the circumstances should be further developed and assessed at an evidentiary hearing.

Vacated and remanded for further proceedings in conformity with this opinion. We do not retain jurisdiction.