

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2609-15T3
A-2612-15T3

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

S.D.-G. and T.W.,

Defendants-Appellants.

IN THE MATTER OF THE GUARDIANSHIP
OF M.M.C., a minor.

Argued February 28, 2017 – Decided March 7, 2017

Before Judges Yannotti, Fasciale and Gilson.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Essex County,
Docket No. FG-07-238-15.

Eric R. Foley, Designated Counsel, argued the
cause for appellant S.D.-G. (Joseph E.
Krakora, Public Defender, attorney; Mr. Foley,
on the briefs).

Stephania Saienni-Albert, Designated Counsel,
argued the cause for appellant T.W. (Joseph
E. Krakora, Public Defender, attorney; Ms.
Saienni-Albert, on the briefs).

Mary L. Harpster, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Andrea M. Silkowitz, Assistant Attorney General, of counsel; Thomas Ercolano, III, Deputy Attorney General, on the brief).

Suzanne M. Carter, Designated Counsel, argued the cause for minor M.M.C. (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Ms. Carter, on the brief).

PER CURIAM

In these consolidated cases, S.D.-G. (the mother) and T.W. (the father)(collectively defendants) appeal from a February 12, 2016 order terminating their parental rights to M.M.C. (the child), born in 2013. They contend that the Division of Child Protection and Permanency (Division) failed to meet its statutory burden under each prong of the best interests test, codified at N.J.S.A. 30:4C-15.1(a), by clear and convincing evidence. We disagree and affirm.

In reviewing a decision by the trial court to terminate parental rights, we give "deference to family court[s'] fact[-] finding" because of "the family courts' special jurisdiction and expertise in family matters[.]" Cesare v. Cesare, 154 N.J. 394, 413 (1998). The judge's findings of fact are not disturbed unless they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend

the interests of justice." Id. at 412 (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). "[T]he conclusions that logically flow from those findings of fact are, likewise, entitled to deferential consideration upon appellate review." N.J. Div. of Youth & Family Servs. v. R.L., 388 N.J. Super. 81, 89 (App. Div. 2006), certif. denied, 190 N.J. 257 (2007).

Here, the judge carefully reviewed the evidence presented, and thereafter concluded that the Division had met by clear and convincing evidence all of the legal requirements for a judgment of guardianship. His opinion tracks the statutory requirements of N.J.S.A. 30:4C-15.1(a), accords with In re Guardianship of K.H.O., 161 N.J. 337 (1999), In re Guardianship of D.M.H., 161 N.J. 365 (1999), and New Jersey Division of Youth & Family Services v. A.W., 103 N.J. 591 (1986), and is supported by substantial and credible evidence in the record. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012). We therefore affirm substantially for the reasons that the judge expressed in his comprehensive and well-reasoned opinion. We add the following remarks as to each prong.

As to prong one, the Division must prove that the child's "safety, health, or development has been or will continue to be endangered by the parental relationship." N.J.S.A. 30:4C-

15.1(a)(1). "[T]he relevant inquiry focuses on the cumulative effect, over time, of harms arising from the home life provided by the parent." N.J. Div. of Youth and Family Servs. v. M.M., 189 N.J. 261, 289 (2007).

"Serious and lasting emotional or psychological harm to children as the result of the action or inaction of their biological parents can constitute injury sufficient to authorize the termination of parental rights." In re Guardianship of K.L.F., 129 N.J. 32, 44 (1992). As a result, "courts must consider the potential psychological damage that may result from reunification as the 'potential return of a child to a parent may be so injurious that it would bar such an alternative.'" N.J. Div. of Youth & Family Servs. v. L.J.D., 428 N.J. Super. 451, 480-81 (App. Div. 2012) (quoting A.W., supra, 103 N.J. at 605).

"The absence of physical abuse or neglect is not conclusive." A.W., supra, 103 N.J. at 605 (quoting In re Guardianship of R., 155 N.J. Super. 186, 194 (App. Div. 1977)). "A parent's withdrawal of . . . solicitude, nurture, and care for an extended period of time is in itself a harm that endangers the health and development of the child." D.M.H., supra, 161 N.J. at 379. "Courts need not wait to act until a child is actually irreparably impaired by parental inattention or neglect." Id. at 383.

Here, the judge found that defendants' "incapacities to

parent and inability to obtain stable housing and employment placed [the child] at a risk of harm." As to the mother, he cited her low frustration tolerance level and her sense of being overwhelmed. This "low tolerance level" was particularly troublesome because the child had a propensity to act out, become angry, and display physical aggression. As to the father, the judge found that he lacked "the capacity to engage as a committed parental figure."

The judge also found that defendants failed to obtain stable housing and employment, and more importantly, the judge concluded that defendants did not understand the detrimental effect this sustained failure would have on the child. A judge may consider a parent's lack of appropriate housing, along with other factors, to support a prong one analysis. N.J. Div. of Youth & Family Servs. v. L.M., 430 N.J. Super. 428, 444 (App. Div. 2013).

We reject the mother's contention that the court erred by considering her prior physical abuse of one of her children. That abuse resulted in the child's removal for his safety. However, such reliance is not improper. "Predictions as to probable future conduct can only be based upon past performance." N.J. Div. of Youth & Family Servs. v. Robert M., 347 N.J. Super. 44, 68 (App. Div.) (quoting J. v. M., 157 N.J. Super. 478, 493 (App. Div.), certif. denied, 77 N.J. 490 (1978)), certif. denied, 174 N.J. 39 (2002). Nevertheless, the judge did not base his conclusion that

the Division produced sufficient evidence to prove prong one solely on the mother's abuse of the sibling. Indeed, the court relied on substantial credible evidence showing the mother's inability to safely parent the child despite having attended parenting skills classes and individual therapy with multiple providers, and her inability to provide a safe and stable home for the child.

Likewise, we see no merit to the father's argument that he did not harm the child. The evidence showed that he disputed paternity after it was proven by DNA testing, he demonstrated continued ambivalence towards planning for reunification with the child for more than two years, and at trial he did not offer himself as a viable caregiver for the child. "Children must not languish indefinitely in foster care while a birth parent attempts to correct the conditions that resulted in an out-of-home placement." N.J. Div. of Youth & Family Servs. v. S.F., 392 N.J. Super. 201, 209 (App. Div.), certif. denied, 192 N.J. 293 (2007). Here, there is no evidence that the father was capable of parenting the child.

As to prong two, the Division must prove that defendants are "unwilling or unable to eliminate the harm facing" the child or are "unable or unwilling to provide a safe and stable home . . . and the delay of permanent placement will add to the harm." N.J.S.A. 30:4C-15.1(a)(2); K.H.O., supra, 161 N.J. at 352-53. That

harm may include evidence that separating the child from his resource parents "would cause serious and enduring emotional or psychological harm." N.J.S.A. 30:4C-15.1(a)(2); K.H.O., supra, 161 N.J. at 352.

The second prong can be established by proving that a child will suffer substantially from a lack of stability and permanent placement, and from the disruption of a stable placement and bond with the resource parents. M.M., supra, 189 N.J. at 281. Because they are related, evidence supporting the first prong may also support the second prong "as part of the comprehensive basis for determining the best interests of the child." D.M.H., supra, 161 N.J. at 379.

Here, the court found that defendants are "unable and unwilling to eliminate the harm" because "they are unable to provide a stable home" and "suffer from a personality disorder that inhibits their ability to parent." The mother's "combination of . . . inability to sustain a stable home and her lack of experience with independently caring for a child would place [the child] in danger." The father "also does not have a viable plan" for the child and needed six more months to prepare for reunification.

The court relied on testimony from the Division's expert in psychology that even if defendants obtained stable housing and

employment, he would not recommend reunification with the child because defendants' narcissistic personality disorder affects their ability to parent safely. Moreover, there is no credible evidence in the record to suggest that stable housing was imminent for either parent.

As to prong three, the Division is required to make "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 must consider alternatives to termination of parental rights. N.J.S.A. 30:4C-15.1(a)(3). This third "prong of the [best interests of the child] standard contemplates efforts that focus on reunification of the parent with the child and assistance to the parent to correct and overcome those circumstances that necessitated the placement of the child into foster care." K.H.O., supra, 161 N.J. at 354.

The court found that the Division made reasonable efforts regarding the mother, both as a minor and as an adult, through psychological evaluations, therapy referrals, mentoring, tutoring, a clothing check, transportation, life skills referrals, family team meetings, placements, parenting skills referrals, and supervised visitation. Similarly, the court found that the Division made reasonable efforts with regard to the father through multiple psychological evaluations, a psychiatric evaluation,

therapy, parenting group, and supervised visitation.

There is ample evidence to support the judge's finding that there are no viable alternatives to termination of parental rights. The mother never proposed any credible alternatives, and the Division properly ruled out the father's aunt and his brother. The judge relied on the expert testimony that such placements were not in the child's best interests. See N.J. Div. of Youth & Family Servs. v. J.S., 433 N.J. Super. 69, 75 (App. Div. 2013), certif. denied, 217 N.J. 587 (2014). And here, the resource parents wished to adopt the child.

As to prong four, there exists sufficient credible evidence to show that termination of parental rights will not do more harm than good. N.J.S.A. 30:4C-15.1(a)(4). Relying on the expert testimony, the court found that there is "no realistic likelihood that [defendants] would be able to parent [the child] now or in the foreseeable future" and that their lack of planning and the delay in permanency would result in further harm.

In addition, the court found that the bonding evaluations showed that termination of defendants' parental rights would not do more harm than good. Indeed, defendants did not present any expert testimony, or effectively refute the testimony of the experts presented by the Division and Law Guardian. See N.J. Div. of Child Prot. & Permanency v. N.C.M., 438 N.J. Super. 356, 371-

73 (App. Div. 2014), certif. denied, 222 N.J. 18 (2015) (citing un rebutted expert testimony on secure attachment to a resource parent compared with an insecure attachment to a biological parent as basis for finding that termination will not do more harm than good).

The experts for the Division and Law Guardian agree that termination of parental rights will not do more harm than good. The evidence showed that no amount of services would make reunification safe because "[the child] has already formed firm bonds and attachments with the current caretakers." Furthermore, the evidence demonstrated that the resource parents are his psychological parents and central attachment figures, and that removal from them would cause severe and enduring harm at this stage in his psychological development, a condition that neither parent had the capacity to ameliorate.

Affirm.

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


CLERK OF THE APPELLATE DIVISION