

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2987-15T4
A-2988-15T4

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

J.J. and T.D.,

Defendants-Appellants.

IN THE MATTER OF THE GUARDIANSHIP
OF C.D.-D., a minor.

Submitted January 31, 2017 – Decided March 3, 2017

Before Judges Messano and Guadagno.

On appeal from the Superior Court of New
Jersey, Chancery Division, Family Part,
Burlington County, Docket No. FG-03-44-15.

Joseph E. Krakora, Public Defender, attorney
for appellant J.J. in A-2988-15 (Carleen M.
Steward, Designated Counsel, on the briefs).

Joseph E. Krakora, Public Defender, attorney
for appellant T.D. in A-2987-15 (Marina
Ginzburg, Designated Counsel, on the
briefs).

Christopher S. Porrino, Attorney General,
attorney for respondent (Melissa Schaffer,
Assistant Attorney General, of counsel;
Jennifer St. Mary, Deputy Attorney General,
on the brief).

Joseph E. Krakora, Public Defender, Law
Guardian, attorney for minor (Joseph H.
Ruiz, Designated Counsel, on the brief).

PER CURIAM

In these consolidated appeals, we review a judgment of guardianship terminating the parental rights of defendants J.J. (Jane)¹ and T.D. (Tom), to their daughter, C.D.-D. (Cathy).

Jane argues that the trial judge disregarded the law, misstated the facts, and the Division of Child Protection and Permanency (Division) failed to prove the four prongs of the best interests test, N.J.S.A. 30:4C-15.1(a), by clear and convincing evidence. Tom also challenges the Division's proofs on each of the four prongs, and argues that his actions did not affect his daughter's health, safety, or development, and his continued parental relationship will not endanger his child. Finding no merit to either appeal, we affirm.

Cathy was born in September 2013. She is the tenth child fathered by Tom, and Jane's fourth child. At the time of trial, none of these children were in the care of either parent.

¹ We employ pseudonyms to protect the privacy of the minor and for ease of reference.

When Cathy was twelve weeks old, her paternal grandmother, D.J. (Donna), brought her to a local hospital emergency room where she was diagnosed with second-degree burns on her left cheek, left area of her lips, the roof of her mouth, and her tongue. A triage nurse at the hospital spoke with Tom who explained that four days earlier, he warmed the milk for Cathy's feeding but did not check the temperature, which resulted in the child's injuries. The attending physician, Dr. Abdullah spoke with Jane who admitted she and Tom did not seek medical attention after the child was burned. Although Dr. Abdullah did not believe the injuries were intentionally inflicted, he contacted the Division due to the delay in obtaining medical care for the child. Dr. Abdullah intended to prescribe medication for Cathy, but the family walked out of the emergency room while he was on the phone with the Division.

A Division caseworker was assigned and interviewed Tom later that day. Tom told the caseworker he did not bring Cathy to the hospital after she was burned because he believed, based on his prior experience with the Division, that she would have been removed from his care. Tom confirmed that Jane was aware of the incident and they both decided to treat the burn themselves rather than take Cathy to the hospital. When Cathy

became "fussy," Tom took her to Donna's house. Donna then decided to take Cathy to the hospital.

Jane told the caseworker that she was at work when the incident occurred and saw the burns when she returned home that night. Jane said she did not take the child to the doctor because she was concerned for Tom and did not want him to get into trouble.

The Division initially decided to leave Cathy in defendants' custody subject to a safety protection plan, but conducted a Dodd² removal when the parents failed to comply with the plan. The child was placed temporarily with a family member.

The following day, Cathy was taken by a caseworker for a medical evaluation by Dr. Monique Higginbotham, who determined that the child was not getting enough fluids and was at risk for dehydration. The doctor found that Cathy may have permanent scarring on her face and/or lips as a result of the burn. In a subsequent report, Dr. Higginbotham noted "[a]ny reasonable parent would be expected to seek medical attention for their baby with burns of this severity."

² A "Dodd removal" is an emergency removal of a child from the custody of a parent without a court order, as authorized by N.J.S.A. 9:6-8.29 of the Dodd Act, N.J.S.A. 9:6-8.21 to -8.82.

Dr. Higginbotham also observed that Cathy had subconjunctival hemorrhage on the left eye, which is associated with non-accidental trauma of an infant. The doctor recommended that Cathy be referred to Cooper Hospital for the severe facial and oral burns, risk of dehydration, and the presence of an unexplained subconjunctival hemorrhage.

Cathy was brought to Cooper Hospital Emergency room where CT scans, skeletal scans, and x-rays determined that Cathy had a healing fractured radius in her left arm and two healing fractured ribs. Cathy underwent surgery for the healing fracture in her left arm to ensure that she did not lose mobility in her left hand.

Dr. Higginbotham concluded that the left forearm fracture and rib fractures are definitive for non-accidental trauma: "There is nothing that a 3-month-old baby could do on her own power that could cause a broken arm and two broken ribs." She found Cathy suffered "severe pain" from these injuries and concluded that the new findings confirmed that the child was subjected to physical abuse. Both parents were arrested and charged criminally in connection with the injuries suffered by Cathy. Subsequently, Tom pled guilty to endangering the welfare of a child, and Jane pled guilty to child neglect for failing to seek immediate medical care for Cathy.

The Division offered services to both parents. Jane engaged in substance abuse treatment and completed the program. Jane also completed a parenting program, but her discharge letter indicated she failed to fully benefit from it as she did not understand the relevance of many of the topics and that she maintained she did not need parenting classes. Tom also completed parenting training in 2014, but was non-compliant with recommended substance abuse treatment.

Jane submitted to a psychological evaluation with Dr. Linda Jeffrey, who found that Jane suffered from "adjustment, substance abuse and personality disorder problems that are likely to adversely affect and decrease her parenting capacity." As a result, Dr. Jeffrey concluded that Cathy would likely be at risk for harm if placed in Jane's care and expressed "grave concerns" as to Jane's ability to provide even a minimal level of safe parenting to Cathy.

Dr. Jeffrey also conducted a bonding evaluation between Cathy and Jane and found an insecure attachment. She concluded that it was unlikely Cathy would suffer serious or enduring harm if her relationship with Jane was terminated. Dr. Jeffrey found a strong attachment between Cathy and her foster mother and concluded there would be a significant risk of serious and enduring emotional harm if that relationship was severed.

Dr. Alan Lee also conducted a psychological evaluation of Jane and found a number of "ingrained and maladaptive personality character traits" and expressed "significant concerns" as to her ability to function as an independent caretaker for Cathy.

Dr. Lee also conducted bonding evaluations and found an "ambivalent and insecure attachment" between Cathy and both defendants, but a "significant and positive psychological bond" between Cathy and her foster mother.

In March 2015, the Division filed a guardianship complaint against both defendants. The case was tried before Judge Mark P. Tarantino over six non-consecutive days. Dr. Lee and caseworker Jenna Scott testified on behalf of the Division. Jane testified on her own behalf and called caseworker Syretta Brown and A.M., a family friend. Jane attempted to call Tom, but he invoked his Fifth Amendment privilege. Dr. Jeffrey was called as an expert witness by the law guardian and testified on behalf of Cathy. Neither defendant called an expert witness to rebut the testimony of Dr. Lee and Dr. Jeffrey.

On March 8, 2016, Judge Tarantino entered a judgment of guardianship terminating the parental rights of both defendants as to Cathy, accompanied by an oral decision he read into the record that day. In his decision, the judge made extensive

credibility determinations as to each witness and provided detailed observations supporting those findings. The judge addressed each prong of the best interests test and made comprehensive findings supported by record evidence.

We have considered the arguments raised by both defendants on appeal and find them without sufficient merit to warrant further discussion in our opinion. R. 2:11-3(e)(1)(E). We affirm the judgment of guardianship substantially for the reasons expressed by Judge Tarantino in his cogent and comprehensive decision.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION