**RECORD IMPOUNDED**



SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3266-15T1

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

T.N.,

Defendant-Appellant,

and

C.L. (deceased),

Defendant.

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IN THE MATTER OF THE GUARDIANSHIP OF L.L., a minor.

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Submitted March 14, 2017 – Decided April 18, 2017

Before Judges Fisher and Leone.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Ocean County, Docket No. FG-15-36-15.

Joseph E. Krakora, Public Defender, attorney for appellant (Gilbert G. Miller, Designated Counsel, on the briefs).

Christopher S. Porrino, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Angela Melchionna, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Nancy P. Fratz, Assistant Deputy Public Defender, on the brief).

PER CURIAM

Defendant T.N. (Mother) appeals the March 24, 2016 order terminating her parental rights.

I.

We summarize the factual findings made by Judge Madelin F. Einbinder in her March 24, 2016 oral opinion.

Mother has three children from two different fathers. L.L., her youngest child and the sole subject of this termination proceeding, was born in May 2009. In May 2014, L.L.'s father, C.L., passed away of a heroin overdose. Mother's oldest child, B.N., died due to a heroin overdose in June 2014. Her other child, J.N., currently resides with the parents of his father in South Carolina under kinship legal guardianship.

The Division of Child Protection and Permanency (Division) first became involved with Mother's family in November 2004.[1] It

[1] At that time, the Division was known as the Division of Youth and Family Services. It was renamed effective June 29, 2102. L. 2012, c. 16.

is undisputed that during the following years Mother drank heavily, became dependent on oxycodone, was declared disabled due to her bipolar disorder, took prescription opiates without a prescription, and repeatedly refused to engage in services offered by the Division. Ultimately, in December 2013, the trial court granted the Division custody of L.L. due to Mother's continuing substance abuse.

During 2014, Mother continued to test positive for cocaine, amphetamines, marijuana, and alcohol, and repeatedly refused to engage in or comply with substance abuse and mental health services. In December 2014, the Division filed a Complaint for Guardianship.

At the termination trial in early 2016, the Division presented the testimony of two caseworkers and its psychological expert, Dr. David Brandwein. Based on that testimony, Judge Einbinder found that Mother's parental rights should be terminated, and that L.L.'s adoption by his paternal grandparents was in his best interest. Mother appeals.

II.

We must hew to our deferential standard of review. "Appellate review of a trial court's decision to terminate parental rights is limited[.]" In re Guardianship of J.N.H., 172 N.J. 440, 472 (2002). Our task is to determine whether the decision "is

supported by '"substantial and credible evidence" [i]n the record.'" N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012) (citation omitted). "We ordinarily defer to the factual findings of the trial court because it has the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand; it has a 'feel of the case' that can never be realized by a review of the cold record." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008) (citation omitted). "Particular deference is afforded to family court fact-finding because of the family courts' special jurisdiction and expertise in family matters." N.J. Div. of Child Prot. & Permanency v. N.C.M., 438 N.J. Super. 356, 367 (App. Div. 2014) (citing Cesare v. Cesare, 154 N.J. 394, 413 (1998)), certif. denied, 222 N.J. 18 (2015). Thus, "[w]e will not overturn a family court's factfindings unless they are so '"wide of the mark"' that our intervention is necessary to correct an injustice." F.M., supra, 211 N.J. at 448 (citation omitted).

III.

"A parent's right to enjoy a relationship with his or her child is constitutionally protected." In re Guardianship of K.H.O., 161 N.J. 337, 346 (1999). However, this protection "is tempered by the State's parens patriae responsibility to protect the welfare of children." Id. at 347; see N.J.S.A. 30:4C-1(a).

The Division must prove by clear and convincing evidence termination of parental rights is in the best interests of the child. N.J.S.A. 30:4C-15(c); F.M., supra, 211 N.J. at 447. Under N.J.S.A. 30:4C-15.1(a), the Division must show:

> (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.

The trial court properly found the Division proved each prong by clear and convincing evidence. We affirm substantially for the reasons stated by Judge Einbinder in her thorough oral opinion. We add the following.

IV.

The first two prongs, N.J.S.A. 30:4C-15.1(a)(1) and (2), are related "components of the harm requirement." In re Guardianship of DMH, 161 N.J. 365, 379 (1999). Because "evidence that supports one informs and may support the other as part of the comprehensive basis for determining the best interests of the child," ibid., we address both prongs together. E.P., supra, 196 N.J. at 104.

Mother's history of frequent substance abuse and unaddressed mental health issues predated L.L.'s birth, and continued through his early years until shortly before trial. There was substantial credible evidence showing Mother's substance abuse and mental illness caused L.L. significant harm. For example, when L.L. was removed from Mother's custody, he was "much younger developmentally and psychologically than he really was," was non-verbal, and was still wearing diapers even though he was four-and-a-half years old.

Our Supreme Court has ruled that harm is shown "by indications of parental dereliction and irresponsibility, such as the parent's continued or recurrent drug abuse, the inability to provide a stable and protective home, the withholding of parental attention and care, and the diversion of family resources in order to support a drug habit." K.H.O., supra, 161 N.J. at 353. Mother's chronic substance abuse threatened obvious harm to the young L.L. N.J.

Div. of Child Prot. & Permanency v. B.O., 438 N.J. Super. 373, 385 (App. Div. 2014). Unabated substance abuse "causes continuing harm by depriving . . . children of necessary stability and permanency." N.J. Div. of Youth & Family Servs. v. T.S., 417 N.J. Super. 228, 245 (App. Div. 2010), certif. denied, 205 N.J. 519 (2011). "[P]arents dabbling with addictive substances must accept the mandate to eliminate all substance abuse." Ibid.

In addition, Mother suffered from "unspecified bipolar and related disorder, other specified personality disorder with narcissistic, histrionic and personality features and unspecified anxiety disorder." Her personality disorders caused her to "feel like [she's] superior and . . . the center of attention" while simultaneous causing her to have a complete lack of independence and a desire to "depend on stronger people to help [her] and . . . [primarily] worry about meeting [her] own needs." The trial court properly found these conditions "place[d] a child at risk of harm if untreated."

Indeed, despite substantial disability benefits, Mother was unable to maintain stable housing, or to pay for utilities or food for her children. "[L]ack of appropriate housing . . . pose[s] a risk to . . . children." N.J. Div. of Youth & Family Servs. v. L.M., 430 N.J. Super. 428, 444 (App. Div. 2013). "[H]arm and risk of harm [can be] proven [where] the parents' drug use resulted in

their failure to provide a stable home, with appropriate nurture and care of the young child[.]" N.J. Div. of Youth & Family Servs. v. H.R., 431 N.J. Super. 212, 222 (App. Div. 2013). Here, there was ample evidence Mother's substance abuse and mental health problems impaired her ability to parent, retarded L.L's development, and required his removal from her care.

The same evidence showed Mother was "unwilling or unable to eliminate the harm facing the child [and was] unable or unwilling to provide a safe and stable home for the child." N.J.S.A. 30:4C-15.1(a)(2); see N.J. Div. of Youth & Family Servs. v. L.J.D., 428 N.J. Super. 451, 479 (App. Div. 2012). Dr. Brandwein cited the two-year period of Mother's "pervasive," "enduring," indeed "monumental non-compliance" with the substance abuse and mental health services offered by the Division. Mother was negatively discharged from multiple outpatient substance abuse treatment centers, and Dr. Brandwein testified she largely failed to benefit from the services she did attend. His testimony was unrefuted. We agree "[t]here is ample evidentiary basis for crediting the expert's conclusion[s]." K.H.O., supra, 161 N.J. at 356.

Mother presented no testimony or evidence at trial, but makes several arguments on appeal. Mother notes the trial court mentioned the Division received twenty-one referrals between 2011 and 2013. She points out the Division did not substantiate her.

We agree unfounded allegations may not be used to support the requisite findings. See N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 36 & n.15 (2011). However, the court placed little or no weight on the referrals. Further, there was ample well-founded evidence of Mother's substance abuse and mental disorders during this period and thereafter.

Mother argues that her positive drug tests were for prescription drugs. However, she repeatedly failed to provide prescriptions, and admitted she took opiates without valid prescriptions on numerous occasions. Moreover, Mother admitted marijuana and alcohol use, and tested positive for cocaine and marijuana in August and September 2014. She argues those positive results were caused by the deaths of her former husband and her eldest son, but those occurred months earlier.

Mother cites her participation in substance abuse programs and the lack of positive test results, between September 2014 and April 2015. However, during this period her attendance at this outpatient program was poor, she relapsed when she tested positive twice for alcohol in April 2015, and she was discharged for non-compliance.

Mother stresses she attended an intensive five-days-a-week combined substance abuse counseling and mental health treatment program beginning in August 2015, and successfully completed the

program on January 29, 2016, approximately one week before the termination trial began. She also obtained housing and a car. Nonetheless, Dr. Brandwein evaluated Mother after this treatment and found she still was not capable of independently parenting L.L., and still posed "a rather high risk of child neglect." He found the prognosis that Mother would become an appropriate parent even after receiving services was "extremely poor." Nonetheless, Mother was "in the infancy of her stability" and "to put [L.L.] back into instability would be risking [L.L.'s] psychological and physical well-being." He testified that before reunification could be considered, Mother would need to demonstrate sobriety, stable housing, consistent compliance with medication, and more positive visitation with the child, for at least a year.

Mother argues that she could meet Dr. Brandwein's requirements if given another year, and that "a delay of permanency of one year could hardly be harmful to [L.L.]." However, New Jersey's courts and statutes recognize "the delay of permanent placement will add to the harm." N.J.S.A. 30:4C-15.1(a)(2). "[T]o the extent that adults . . . delay the permanent decision, they lose sight of the child's concept of time." N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 608 (1986). Courts have "'long emphasized New Jersey's strong public policy in favor of permanency.'" N.J. Div. of Youth & Family Servs. v. I.S., 202

N.J. 145, 197 (2010) (citation omitted). New Jersey has shifted its "emphasis 'from protracted efforts for reunification with a birth parent to an expeditious, permanent placement to promote the child's well-being.'" Id. at 198 (citation omitted). "The child should not 'languish indefinitely in foster care while a birth parent attempts to correct the conditions that resulted in an out-of-home placement.'" H.R., supra, 431 N.J. Super. at 227. "Keeping the child in limbo, hoping for some long term unification plan, would be a misapplication of the law." 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).

L.L. has waited over two years while Mother refused to engage in substance abuse and mental health services. The trial court credited Dr. Brandwein's testimony and properly held that while Mother made recent efforts, she would not attain stability soon enough to justify denying L.L. permanency. While Mother commendably took positive steps at the eleventh hour, we cannot fault the trial court's findings that her efforts were too little and too late and that she cannot provide sufficient assurance of the stability L.L. needs in the reasonably foreseeable future.

V.

Mother does not challenge the trial court's finding that the Division made reasonable efforts to provide Mother with services and met the third prong of N.J.S.A. 30:4C-15.1(a).

VI.

Prong four acts "as a fail-safe against termination even where the remaining standards have been met." N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 609 (App. Div. 2007). The trial court must discern "'whether, after considering and balancing the two relationships, the child will suffer a greater harm from the termination of ties with h[is] natural parent[] than from permanent disruption of h[is] relationship with h[is] foster parents.'" N.J. Div. of Youth & Family Servs. v. I.S., 202 N.J. 145, 181 (2010) (citation omitted). "[W]here it is shown that the bond with foster parents is strong and, in comparison, the bond with the natural parent is not as strong, that evidence will satisfy the requirement of N.J.S.A. 30:4C-15.1(a)(4)[.]" K.H.O., supra, 161 N.J. at 363.

Dr. Brandwein conducted bonding evaluations. He found that L.L. has a secure and stable bond with his paternal grandparents and that they have the capacity to sustain the relationship throughout L.L.'s adolescence and adulthood. The trial court found L.L. was "thriving in the care of his paternal grandparents."

Conversely, Dr. Brandwein found Mother lacked that capability. L.L. recognized Mother as his biological mother, but their bond was not secure, and he demonstrated "negative reactions" to their visits.

Dr. Brandwein testified if the bond between L.L. and his paternal grandparents was severed, the results would be "devastating," causing "a negative grief reaction [which] would have a long-term effect on [L.L.]'s life," which Mother could not ameliorate. By contrast, Dr. Brandwein opined that separation from Mother would only result in a "short-term grief reaction" which the grandparents could mitigate.

Crediting Dr. Brandwein's testimony, the trial court held "termination of [Mother's] parental rights to enable [L.L.] to be adopted by his paternal grandparents does far more good than harm." The court's finding was supported by substantial credible evidence.

Mother's remaining arguments lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.