RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3401-15T4

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

R.L.,

Defendant-Appellant,

and

F.R.,

Defendant.

IN THE MATTER OF THE GUARDIANSHIP OF S.G.R., a Minor.

Submitted March 21, 2017 – Decided April 11, 2017

Before Judges Koblitz, Rothstadt and Sumners.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FG-07-239-15.

Joseph E. Krakora, Public Defender ,attorney for appellant (Victor E. Ramos, Assistant Deputy Public Defender, of counsel and on the brief).

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

Joseph E. Krakora, Public Defender, attorney for minor (Christopher A. Huling, Designated Counsel, on the brief).

PER CURIAM

Defendant R.L. (Ray)[1] appeals from the March 7, 2016 order terminating the parental rights to his daughter S.G.R. (Sarah). Ray contends that the Division of Child Placement and Permanency (the Division) failed to prove all four prongs of the best-interests-of-the-child standard, N.J.S.A. 30:4C-15.1(a), and that he had ineffective assistance of counsel during the termination hearing. The Division and the Law Guardian contend that the order should be affirmed. After reviewing the record in light of the applicable legal standards, we affirm substantially for the reasons stated by Judge David B. Katz in his oral opinion rendered on the date of the order.

The pertinent evidence was set forth in Judge Katz's opinion. A summary will suffice here. A few days after Sarah was born on December 27, 2013, she was removed from her mother F.R.'s (Francis) care, and placed with a resource family by the Division pursuant

[1] We use pseudonyms for the parties and their child. R. 1:38-3(d)(12).

to a Dodd[2] removal due to concerns over Francis's erratic behavior, mental health, lack of housing, and lack of a care plan for Sarah. Subsequent attempts by the Division to place Sarah with Francis's family members were unsuccessful because of lack of interest. Since Sarah's removal, Francis has not visited her despite being offered the opportunity to do so.

After paternity tests ruled out two putative fathers, Ray, was identified a possible father in August 2014. As a result of a paternity test on September 23, Ray learned on October 14 that he was Sarah's father. The Division initially planned for reunification because Ray, who only speaks Spanish, advised the Division that he was interested in caring for Sarah with the help of his two adult daughters. The Division's subsequent home visit found that Ray's apartment was unsuitable for Sarah; his basement apartment lacked an emergency escape exit, and the Division was unable to secure background checks of the men living in the house with access to Ray's living quarters.

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[2] A Dodd removal refers to the emergency removal of a child from the home without a court order, pursuant to the Dodd Act, which, as amended, is found at N.J.S.A. 9:6-8.21 to -8.82. Former Senate President Frank J. "Pat" Dodd authored the Act in 1974. N.J. Div. of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 609 n.2 (App. Div. 2010).

In November, Ray first met Sarah, and visited with her again in December and January 2015. However, he has not seen her since, having failed to appear for scheduled visits without notification to the Division. As a result of Ray's psychological examination in February 2015, the Division offered him therapy, parenting training, and substance abuse evaluation, but he never completed the services.

Outside of a telephone conversation in July 2015, the Division was unable to contact Ray, despite letters and caseworker visits to his last known address, calls to his cell phone, and inquiries with social service offices, local police, and correctional agencies to ascertain his whereabouts. Just as significant, Ray knew the location of the Division's office and how to contact his caseworker, but he never visited or contacted the Division to ascertain the status of his daughter or the proceedings. Apparently, assigned counsel also did not have contact with Ray.

At the termination hearing, defendant did not appear, but was represented by assigned counsel. Relying upon the testimony of the Division's lone witness, the caseworker, who was found by the judge to be conscientious, knowledgeable of the matter, and credible, Judge Katz determined that the Division had satisfied all four prongs of the best interests test, N.J.S.A. 30:4C-15.1(a),

and that termination of defendant's parental rights was in Sarah's best interest.

On this appeal, our review of the trial judge's decision is limited. We defer to his expertise as a Family Part judge, Cesare v. Cesare, 154 N.J. 394, 412 (1998), and we are bound by his factual findings so long as they are supported by sufficient credible evidence. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (citing In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)). After reviewing the record, we conclude that the trial judge's factual findings are fully supported by the record and, in light of those facts, his legal conclusions are unassailable. We add only the following comments.

The key fact underlying Judge Katz's prongs one and two findings was Ray's failure to provide Sarah with any contact, nurturance, or emotional support, and his resistance to any services that would enable him to do so. As the Supreme Court noted in In re Guardianship of K.L.F., 129 N.J. 32, 44 (1992), and In re Guardianship of D.M.H. 161 N.J. 365, 380 (1999), and was echoed by Judge Katz, withholding of emotional support and nurturance constitutes emotional harm and may warrant termination of parental rights. See also N.J. Div. of Youth & Family Servs. v. L.J.D., 428 N.J. Super. 451, 480-81 (App. Div. 2012).

We also conclude there is no merit to Ray's argument before us that he was denied effective assistance of counsel. There is no doubt that he was entitled to effective legal assistance. In N.J. Div. of Youth & Family Servs. v. B.R., 192 N.J. 301, 308-09 (2007), the Court adopted the standard announced in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), for parental termination cases. Under Strickland, in order for a defendant to obtain relief based upon ineffective assistance of counsel, he is obliged to show not only the particular manner in which counsel's performance was deficient, but also that the deficiency prejudiced his right to a fair trial. Strickland, supra, 466 U.S. at 687, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693. In this context, prejudice requires a showing that there is a reasonable probability that the trial outcome would have been different but for counsel's deficient performance. Id. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. In reviewing an ineffective assistance of counsel claim, we must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance[.]" B.R., supra, 192 N.J. at 307 (citations omitted).

Guided by these principles, we agree with the Division and law guardian that there is no evidence to support Ray's claim that his counsel failed to contact him, and did not advocate on his

behalf to explore kinship caretakers. Our review of the record satisfies us that counsel was not ineffective and that termination was warranted because of Ray's deficiencies. Ray's conduct belie his contention that trial counsel failed to contact him. After initially indicating he wanted custody of Sarah, Ray failed to show emotional support and concern regarding her welfare by: not seeing her for over a year prior to the termination hearing; not maintaining contact with or responding to the Division's communication efforts; not taking advantage of the offered services to support reunification; and failing to appear for the termination hearing. Simply put, Ray has failed to demonstrate that trial counsel could have done anything more to avoid termination of Ray's parental rights.

Affirmed.