RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3678-15T2

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

R.R.,

Defendant-Appellant.

IN THE MATTER OF THE GUARDIANSHIP OF K.F.R.,

Minor.

Submitted September 14, 2017 – Decided October 12, 2017

Before Judges Simonelli and Rothstadt.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Cape May County, Docket No. FG-05-0024-15.

Joseph E. Krakora, Public Defender, attorney for appellant (Theodore J. Baker, Designated Counsel, on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent (Melissa D. Schaffer, Assistant Attorney General, of counsel; Jennifer Russo-Belles, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Margot E.K. Hirsch, Designated Counsel, on the brief).

PER CURIAM

Defendant R.R.,[1] the biological father of K.F.R. (Ken), born in 2009, appeals from the April 18, 2016 Family Part judgment for guardianship, which terminated his parental rights to the child. The judgment also terminated the parental rights of the child's biological mother, L.D. (Linda), who was deported to the Republic of Palau (Palau) in 2015, and does not appeal.[2] On appeal, defendant contends the trial judge erred in finding respondent New Jersey Division of Child Protection and Permanency (Division) proved prong three of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence. Defendant also argues the judgment should be reversed because Linda was not represented by counsel in the guardianship proceeding. For the following reasons, we affirm.

[1] Pursuant to Rule 1:38-3(d), we use initials and fictitious names to protect the confidentiality of the participants in these proceedings.

[2] The judgment of guardianship also terminated Linda's parental rights to her son and Ken's half-sibling, D.P. (Dan), as well as the parental rights of Dan's biological father, P.R. Dan and D.P. are not involved in this appeal.

We will not recite in detail the history of the Division's involvement with defendant and Linda. Instead, we incorporate by reference the factual findings set forth in Judge John R. Rauh's April 18, 2016 oral opinion. However, we add the following comments.

Defendant has an extensive criminal history. Following his arrest on drug and weapons charges in April 2014, the Division effected a Dodd[3] removal of Ken and Dan, filed an amended complaint for custody, and placed the children with a non-relative caretaker. Thereafter, the Division evaluated numerous relatives that defendant and Linda identified as placement options, but none were willing or able to care for Ken.

In June 2014, defendant was convicted of first-degree robbery and third-degree bail jumping and sentenced to a fifteen-year term of imprisonment with an eighty-five percent period of parole ineligibility. That same month, defendant identified a friend, S.R. (Sally),[4] as a placement option. Sally stated she would care

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[3] A "Dodd removal" refers to the emergency removal of a child children 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. The Act was authored by former Senate President Frank J. "Pat" Dodd in 1974. N.J. Div. of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 609 n.2 (App. Div. 2010).

[4] Defendant uses the initials B.R. in his merits brief; however, the record refers to S.R., and defendant's arguments support a finding that he meant S.R.

for Ken and Dan, but the Division ruled her out as a caretaker because she had no prior relationship with the children.

In November 2015, the Division again contacted Sally, who stated she was only willing to care for Ken. Sally also stated, and defendant does not dispute, that she and defendant had a falling out and he told her not to apply to become a caretaker for the children. By that time, Ken had been with his resource family for eighteen months, and expressed his desire to remain with them. The Division's undisputed expert evidence present at the guardianship trial confirmed that Ken had a strong attachment to his resource parents, who want to adopt him, and would suffer severe and enduring harm if removed from them.

Judge Rauh determined the Division satisfied all four prongs of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence. Regarding prong three, the judge found the Division made reasonable efforts to provide services to defendant. The judge considered alternatives to termination and found none, and found the Division assessed and properly ruled out any alternatives. This appeal followed.

Our Supreme Court has established the standard of review in parental termination cases:

> Our task as an appellate court is to determine whether the decision of the family court in terminating parental rights is supported by

> substantial and credible evidence on the record. We accord deference to factfindings of the family court because it has the superior ability to gauge the credibility of the witnesses who testify before it and because it possesses special expertise in matters related to the family. . . . We 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. It is not our place to second-guess or substitute our judgment for that of the family court, provided that the record contains substantial and credible evidence to support the decision to terminate parental rights.
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> [N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012) (citations omitted).]

A court should terminate parental rights when the Division shows by clear and convincing evidence that:

> (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;
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> (3) The [D]ivision 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.
>
> [N.J.S.A. 30:4C-15.1(a).]

As part of the third prong inquiry, the court must consider whether the Division acted reasonably in assessing alternative placement options. N.J. Div. of Youth & Family Servs. v. A.G., 344 N.J. Super. 418, 434-35 (App. Div. 2001), certif. denied, 171 N.J. 44 (2002). "The reasonableness of the Division's efforts depends on the facts in each case." Id. at 435. Under the fourth prong, "[t]he question ultimately is not whether a biological mother or father is a worthy parent, but whether a child's interest will best be served by completely terminating the child's relationship with that parent." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 108 (2008).

Defendant does not address prongs one, two, four, or the part of prong three requiring the Division to make reasonable efforts to provide services to him. The issues, therefore, are deemed waived. N.J. Dep't of Envtl. Prot. v. Alloway Twp., 438 N.J. Super. 501, 505-06 n.2 (App. Div.), certif. denied, 222 N.J. 17 (2015); Pressler & Verniero, Current N.J. Court Rules, comment 5 on R. 2:6-2 (2018).

Defendant only challenges the part of prong three of N.J.S.A. 30:4C-15.1(a), which requires the court to consider alternatives

to placement. He argues the Division violated N.J.S.A. 30:4C-12.1 by not assessing Sally and not giving her the required notices, including her right to seek administrative review of the rule out decision. Defendant also argues the Division did not assess the maternal grandmother, who resides in Palau, and Dan's paternal uncle, who resides in Illinois. We disagree with defendant's arguments.

The Division has a statutory obligation to "search for relatives who may be willing and able to provide the care and support required by the child." N.J.S.A. 30:4C-12.1(a); N.J. Div. of Child Prot. and Permanency v. K.N., 435 N.J. Super. 16, 29 (App. Div. 2014), aff'd as modified, 223 N.J. 530 (2015). There is, however, no presumption in favor of placement with relatives or friends. N.J. Div. of Youth & Family Servs. v. K.L.W., 419 N.J. Super. 568, 578 (App. Div. 2011). The presumption of custodial placement only exists between a child and his biological parents, not a proposed placement with family or a friend. N.J. Div. of Youth & Family Servs. v. J.S., 433 N.J. Super. 69, 82 (App. Div. 2013), certif. denied, 217 N.J. 587 (2014).

"Delay of permanency or reversal of termination based on the Division's noncompliance with its statutory obligations is warranted only when it is in the best interests of the child." Ibid. (citations omitted). N.J.S.A. 30:4C-12.1(c) and N.J.A.C.

10:120A-3.1 permit the Division to rule out alternative placement options based upon considerations of a child's best interests, regardless of the person's willingness or ability to care for the child. Id. at 75 (upholding the Division's rule-out authority based on a person's unwillingness or inability to care for the child, as well the child's interest). N.J.A.C. 10:120A-3.1(b) prohibits a person who the Division has ruled out on best-interests grounds from pursuing an administrative appeal of that agency determination. Id. at 83-84.

Here, the Division properly ruled out Sally based on Ken's best interests. Sally was a stranger to Ken, and the record does not reveal she expressed an interest in adopting him. Thus, placing Ken with her would have been akin to kinship legal guardianship, which is not appropriate where, such as here, adoption is feasible and likely. See N.J. Div. of Youth & Family Servs. v. P.P., 180 N.J. 494, 509 (2004). More importantly, the undisputed expert evidence confirmed that Ken had a strong attachment to his resource parents and would suffer severe and enduring harm if removed from them.

The Division attempted to assess the maternal grandmother. The Division submitted an international social services application for placement of the children with her in Palau and attempted to facilitate the process between social workers in New

Jersey. However, the Division had no authority over Palau's social services agencies to expedite the process. Further, the maternal grandmother would not have been an appropriate caretaker because Linda was going to live with her after being deported. Ken could not be placed in the same home as Linda, who was found to have abused and neglected him and endangered his child's safety, health, or development. Lastly, Dan's paternal uncle in Illinois only presented himself as a caretaker for D.P., not Ken.

We are satisfied the record amply supports the judge's findings that the Division assessed and properly ruled out all alternatives. The relatives the Division assessed were either unwilling or unable to care for Ken, and his placement with Sally would have been against his best interests.

Defendant next argues that the judgment of guardianship should be reversed because Linda was not represented during the guardianship proceedings. We have considered this argument in light of the record and applicable legal principles and conclude it is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Defendant lacks standing to raise this argument. Nevertheless, the fact that Linda did not have counsel was of no consequence to the termination of defendant's parental rights.

Affirmed.