RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3701-15T1

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

N.S.,

Defendant-Appellant,

and

M.S.,

Defendant.

IN THE MATTER OF THE GUARDIANSHIP OF J.S. and A.S., MINORS.

Submitted March 27, 2017 – Decided March 31, 2017

Before Judges Sabatino and Currier.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Cape May County, Docket No. FG-05-27-15.

Joseph E. Krakora, Public Defender, attorney for appellant (Laura Orriols, Designated Counsel, on the brief).

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Aleli M. Crawford, Assistant Deputy Public Defender, on the brief).

PER CURIAM

Defendant N.S. appeals the Family Part's April 18, 2016 judgment terminating her parental rights to her minor children, J.S. ("Jason"), who is presently eight years old, and A.S. ("Allison"), who is presently six years old.[1] For the reasons that follow, we affirm.

The children's biological father, M.S. ("Matthew"), is not a party to the appeal because about three weeks before trial, he made an identified surrender of his parental rights to his sisters and their husbands, the children's paternal aunts and uncles, who have been serving as the children's resource parents. More specifically, Jason resides with, and is to be adopted by, his paternal aunt J.P. and her husband D.P., while Allison resides with, and is to be adopted by, her paternal aunt L.E. and her husband D.E.

[1] We use initials and pseudonyms for the family members to protect the privacy of the minors involved.

On appeal, defendant argues that the Division of Child Protection and Permanency ("the Division") did not prove prongs one, two, or four of the statutory "best interests of the child" test under N.J.S.A. 30:4C-15.1(a). She also argues that the judge should have recused himself from the guardianship trial because he formed a negative opinion about her while presiding over and making findings in the earlier abuse and neglect proceedings.

I.

We derive the following facts from the record that bear upon our consideration of the issues presented.

The Division first became involved with this family on April 30, 2012, when it received an allegation of inadequate shelter and environmental neglect. The referent alleged hoarding conditions in defendant's home, as well as the presence of dead rodents in the kitchen sink and around the home, with rodent poison scattered on the floors "like chicken feed." The referent reported that the home had a horrible smell, and there were electrical receptacles hanging out of the walls. Finally, the referent raised concerns about the parents' mental health and defendant's prescription drug use.

The Division investigated and found that the home was dirty, cluttered, and messy. There were medication bottles on the floor of the parents' upstairs bedroom, as well as missing outlet covers

in the hallway, and a missing light switch cover in the living room, with wires protruding from the wall.

Defendant denied that she was a hoarder. The Division's investigation caseworker did not observe any rodents or rodent poison in the home as alleged by the referent. However, defendant admitted there had been a dead rat in the kitchen sink "a month or two" earlier, which had since been thrown away. She also admitted that the family members used rodent poison during the winter months, but claimed they did so only in areas inaccessible to the children, including the closet, the upstairs bathroom, and behind the refrigerator in the kitchen. She stated that the poison had been cleaned up.

Defendant told the caseworker that she could not keep up with housework because the kids constantly made messes, she suffered from depression and an injured back, and she received no assistance from Matthew or other family members. Nevertheless, both defendant and Matthew separately assured the Division that they would clean up the house and remediate any safety issues.

Defendant stated that the home was owned by Matthew's parents, and she and Matthew were responsible for paying only taxes, insurance, and utilities. Defendant was not working outside the home, while Matthew worked as a janitor, and the family received government benefits, including food stamps.

Defendant disclosed to the caseworker that she suffered from depression, for which she took medication, and attended counseling. She also disclosed that she had back surgery about a year earlier, and she continued to take prescription medication for pain. Matthew, meanwhile, admitted attending counseling for anger management, taking medication for a chronic illness, and occasionally smoking marijuana.

Upon returning to the home on May 3, 2012, the Division caseworker did not note any safety concerns. The home at that point had been straightened up a bit, although the parents' upstairs bedroom still needed work. The Division consequently deemed the allegations of neglect at that time unfounded. Nevertheless, the Division kept the case open for services, in order to make sure the home remained clean and safe for the children.

Thereafter, defendants cooperated for a period of time with the services provided and monitored by the Division. These services included parenting skills and homemaking/life skills services, psychological treatment and medication monitoring for defendant, and anger management counseling for Matthew.

At times, the parents seemed to be making progress on the condition of the home, with the downstairs rooms appearing cleaner and less cluttered. At other times, the downstairs rooms appeared

cluttered and dirty. Moreover, the upstairs rooms were regularly in a messy condition, and defendants did not always permit caseworkers to examine them.

The observed conditions reflected more than inadequate housekeeping. For example, at a visit on April 25, 2013, the Division's caseworker noted concerns about the condition of the children, remarking on their dirty clothing and their faces smeared with dried food and mucus.

At a later visit on May 31, 2013, a caseworker observed trash, broken toys, and clothing strewn on the floor of Jason's bedroom, as well as smeared feces on the bedroom wall. Responding to the caseworker's statement that the wall needed to be cleaned immediately, defendant stated that she had left the feces on the wall because if Jason could smear his feces, then he could clean them up as well.

Jason was only four years old at the time. Moreover, as an infant he was diagnosed with a genetic condition known as Cornelia

de Lange Syndrome ("CDLS"), which causes behavioral and developmental problems,[2] for which he receives services.[3]

Several months later, on August 6, 2013, a caseworker observed Allison put a magnet in her mouth and told defendant. Defendant took the magnet away from the child and blamed Jason for the incident, stating that Allison copies her brother's behaviors. At the same visit, the caseworker again observed that Jason's bedroom was a mess, with bags of trash, toys, broken wood, and Pediasure bottles on the floor, and a potty chair was in the middle of the room with urine and a bowel movement in it.

Defendant did not accept responsibility for maintaining the home. After more than a year of services, she continued to blame her young children for making messes and not cleaning them up, and to disclaim any personal obligation to clean, citing her physical and mental limitations. She referred to the children as her "ball and chain."

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[2] CDLS, also known as de Lange syndrome, is "[a] congenital disorder of infants marked by failure to grow, mental retardation, a growing together of the eyebrows, a low hairline (down on the forehead), a depressed bridge of the nose, low-set ears, short and tapering fingers, and a small head. In some cases, the infant [also] has congenitally large muscles. . . ." J.E. Schmidt, M.D., Attorneys' Dictionary of Medicine, D-15-16 (edition 2009).

[3] Matthew was diagnosed with CDLS several years after his son, in 2015.

On September 19, 2013, more than sixteen months after the initial referral, a Division caseworker and a service provider conducted an unannounced visit to the home. No one responded to their knocks on the door, and they observed Allison standing on a dresser, banging on a first-floor window with an iPad.

They contacted the police and after the officer arrived, about thirty-five minutes after the workers' initial arrival, defendant and Matthew finally opened the door. She said she could not believe the worker had "called the f***ing police to come," and explained that she and Matthew had been upstairs sleeping while Allison napped and Jason was at school, and with the doors closed and the air conditioner on they had not heard any knocking. She claimed she woke up when she heard Allison on the baby monitor.

Defendant cursed at the workers and was belligerent during this entire visit. On the first floor of the home, the workers found broken and overturned furniture, as well as clothing, trash bags, loose trash, half-eaten food, dirt, flies, screws, construction tools, and dried dog food mixed with Cheerios strewn on the floor. Defendant did not intervene to stop Allison from picking through the dog food in order to eat the Cheerios, nor did she intervene to stop her from picking up a baby spoon on the windowsill, which was surrounded by mouse feces, so the workers did so.

As a result of these observations, the Division administratively substantiated defendant and Matthew for environmental neglect, substantial risk of physical injury, and lack of supervision for Allison. Because Jason was not home, the Division only substantiated environmental neglect and substantial risk of physical injury. The Division removed the children on an emergent basis under the Dodd Act.[4] After the Division filed a complaint for custody, the court approved the removal. Later, on January 6, 2014, defendants stipulated to being a family in need of services to ensure the health, safety, and welfare of their children.

Upon removal from their parents, the children were placed in a resource home for one night, after which they were placed with their paternal grandparents. They remained in that placement until spring 2015, after the grandmother experienced health issues. Thereafter, the children were placed separately, with paternal aunts and uncles (Matthew's sisters and their husbands). These relatives expressed a desire to adopt the children, and they preferred adoption to kinship legal guardianship.

[4] A Dodd removal is an emergent removal of a minor without a court order pursuant to N.J.S.A. 9:6-8.21 to -8.82 (the Dodd Act). N.J. Div. of Youth & Fam. Servs. v. P.W.R., 205 N.J. 17, 26 n.11 (2011).

A Division caseworker testified at the guardianship trial that, although the children are separated, the paternal family is close-knit. The paternal aunts both teach in the same school, they ensure that the children see each other at least three times during the week, and their families often spend time together on weekends. Moreover, the resource parents have engaged with the Division to ensure that the children receive all necessary services.

After the September 2013 removal, the Division's goal initially was family reunification. The areas of concern included the state of the home, the parents' mental health, and the family's financial stability, since defendant was not working and Matthew worked only seasonally. They struggled to pay their bills.

The Division continued to provide and monitor services, including: family team meetings, parenting capacity evaluations and a parenting program; psychiatric and psychological services for both parents, including both individual and couples counseling; and financial assistance, including furniture for the home and money to pay the family's electric bill. Division records also reflect that in the months after the removal, defendant sought substance abuse treatment, but only counseling was recommended.

During visits to the family home, caseworkers sometimes remarked on certain improvements that defendants had made in

cleaning and decluttering. However, they also continued to note serious problems, for example, an overwhelming odor of cat urine, dirty carpets and mattresses, mold, and excessive clutter and dangerous items left out in the open, both inside and outside the home. Moreover, on some occasions, the parents resisted showing the upstairs of the home.

Due to continued problems at the home, the Division took the extraordinary step of retaining a hoarding response company to assist the parents in cleaning and decluttering the home and yard. This occurred in May or June 2014, more than eight months after the children's removal.

Immediately after the hoarding company's intervention, the home was substantially improved.[5] Over time, however, issues returned.

The Division provided visitation services to the parents through the Robin's Nest agency, along with therapeutic and family support services. Defendants regularly attended visitation, and their interactions with the children were generally considered positive.

At first, the visitation was supervised. Over time, however, it progressed to being only partially supervised, with some

[5] Division records reflect that defendant was briefly employed in the summer of 2014. However, she lost the job in September 2014.

unsupervised time. In July 2014, the court granted an extension of the plan for reunification. By September 2014, the children were engaged in overnight weekend visits with their parents in the hope of reunification in the near future.

In October 2014, however, defendant suffered a mental health crisis. When workers visited the home on October 3, 2014, at the start of a weekend visit, defendant was disoriented, confused, and slurring her words. She reported hallucinations, stating that she had seen a dragon in the kitchen, and she could see things moving on the walls, but it was "no big deal." She further stated that she had been hiding knives around the home because she thought someone was breaking in when she was alone.

Matthew told the workers that defendant had been taking incorrect doses of her medication, and she had been hallucinating for months. He said he did not tell anyone about this earlier because he did not want to delay reunification.

Defendant was taken to the hospital, where she was evaluated and then released. The weekend visit proceeded with Matthew only.

When a caseworker visited four days later, on October 7, 2014, defendant admitted she had been having hallucinations off and on since the children were removed. At the same visit, Matthew cried and said he "was done"; he wanted defendant out of the home

because he did not want her problems to affect his chances of getting the children back.

About two weeks later, on October 23, Matthew reported that defendant became violent when he asked her to leave the home, so he called the police to remove her. When questioned by the Division, defendant admitted throwing a bottle at Matthew, but denied trying to choke him, as he had alleged. The following day Matthew obtained a temporary restraining order against defendant, and defendant began living with her sister.

Thereafter, the Family Part granted additional extensions of the plan for reunification, through April 2015. The Division had continued concerns about defendant's mental stability, so its plan was to seek reunification with Matthew only, first giving him some time to manage life on his own and become financially stable.

Robin's Nest provided services to both parents individually, with defendant's visitation fully supervised due to safety concerns. As time went on, Matthew was granted unsupervised visitation with the children, and reunification with him appeared likely.

On March 24, 2015, however, with reunification planned for the following month, Matthew advised the Division that he had dismissed the restraining order against defendant, and they planned to mend their relationship. Soon thereafter, the Division

learned that defendant had moved back into the marital home, and she had been in the home during one of the children's visits with Matthew, violating the requirement that her visits with the children be supervised by a Division-approved individual.

Given these changed circumstances, the Division delayed its plan for reunification. It also reinstated supervised visitation for both parents, due to concerns for the children's safety as a result of defendant's mental health issues and the animosity between the parents. Nevertheless, some visits occurred in the home.

The Division requested another extension of time for reunification. However, by order dated April 15, 2015, the court denied that request "because of continuing concerns and the lack of sufficient progress[.]"

In May 2015, the Family Part approved a permanency plan of termination of parental rights followed by relative adoption. Then in June, the Division filed a complaint for guardianship, and terminated the abuse and neglect litigation.

Thereafter, the couple's relationship remained unstable. In August 2015, they reported they might divorce. However, the following month, they reported they would remain a couple and hoped to parent the children together. Defendant's mental health

also was uncertain, as she told her therapist in August 2015 that she was having hallucinatory thoughts about a mechanical bug.

Moreover, notwithstanding that supervised visits were allowed at the home, the condition of the home remained problematic. On visits conducted during this time period, the Division found the downstairs area to be moderately clean, although it sometimes smelled of garbage. However, even as late as December 2015, the upstairs area was still partially under construction, as well as dirty and unkempt. The outside of the home was problematic because the porch was under construction, and the yard was overgrown and full of trash, including construction materials, scrap metal, and non-working vehicles.

The testifying Division caseworker stated that reunification was not possible at the time of trial due to both the condition of the home, and defendant's failure to acknowledge the seriousness of the condition, which raised concerns for the children's well-being if they were returned to her care. The caseworker conceded, however, that defendant was engaged in individual counseling, she was employed, and her mental health had improved such that the Division did not have any present concerns for her personal well-being.

The Division's expert psychologist, Dr. James Loving, testified about his January 2016 psychological evaluation of

defendant, and his bonding evaluations between defendant and the children, and of the children and their resource parents (with the exception of Allison's uncle, who could not attend due to illness).

Dr. Loving diagnosed defendant with major depressive disorder that is recurrent and cyclical but in partial remission. He also diagnosed her with an anxiety disorder, opioid use disorder in sustained full remission, and dependent personality traits. He credited her with complying with services and persistently working to regain custody of her children.

Nevertheless, Dr. Loving cited a number of factors that rendered defendant unable to provide a safe, stable, and healthy home to the children at present or within the foreseeable future, including: her failure to consistently maintain a clean and safe home; her failure to recognize her personal obligation to do so as opposed to blaming others for the problems; and her failure to recognize the risk of physical and emotional harm to the children from conditions in the home. Dr. Loving also underscored the risk that defendant's anxiety and debilitating depression would recur, and that she would fail to seek treatment; the risk of recurrent substance abuse; and her dependent personality traits, which caused her to remain stuck in unhealthy situations and not function independently.

Dr. Loving testified that defendant's relationship with Matthew posed "a double-edged sword" as relates to reunification. On the one hand, Dr. Loving noted that the relationship was full of conflict and characterized by mutual defiance and immaturity. Thus, if the couple remained together, the children would be at high risk from the household conditions and marital conflict, which had not been fully remediated notwithstanding years of services. Indeed, Dr. Loving believed it likely that the home would devolve to much dirtier and unsafe conditions if reunification occurred and the family were not closely monitored.

On the other hand, Matthew had expressed to Dr. Loving an intention to end his relationship with defendant, and, if the couple separated, defendant would need to establish independent living for the first time in years, with no plan for doing so, and very few financial resources or sources of support. Reunification under these circumstances, Dr. Loving opined, "would be a very long-term plan at best." In the meantime, the children would be kept "in a situation of limbo that would be unhealthy for them over time." Moreover, Dr. Loving noted that the plan was risky because termination of the marital relationship would cause defendant severe stress, which in the past contributed to her debilitating depression and anxiety.

In terms of bonding, Dr. Loving found that the children had strong, positive attachments to their parents and to each other, as well as fairly strong and positive attachments to their resource parents. Although Allison's uncle could not attend the bonding session, Dr. Loving stated that "[t]here is every indication that she experiences a similar attachment with" him as she does with her aunt, noting that through her play Allison indicated she perceived her uncle as part of her family.

Dr. Loving acknowledged that if the children were permanently separated from their parents, they would suffer at least temporary confusion and be upset. Jason would be at greater risk than Allison due to his age, the greater amount of time he spent in his parents' care, and his disabilities. But Dr. Loving also predicted if the children remained in their current homes and progressed toward adoption, which would allow them a sense of permanency, they would be capable of overcoming the loss of their parents and they would not suffer severe or enduring harm.

Ultimately, Dr. Loving supported the Division's plan for termination of defendant's parental rights, followed by adoption by the children's resource parents, because defendant was unable to provide a safe, clean, stable, and healthy home to her children at present or in the foreseeable future.

In terms of defendant's future contact with the children, Dr. Loving testified that both aunts had expressed the same sentiment, that is, "ideally" defendant would remain involved. However, the aunts were unsure what those arrangements would be given the history of conflict between defendant and Matthew's family. In terms of the children's continued relationship with each other, the aunts told Dr. Loving that their families were very close, the children saw each other on a regular basis, and they would continue to facilitate frequent contact between them.

The Law Guardian's expert psychologist, Dr. Jo Anne González, also testified at trial. Dr. González performed a psychological evaluation of defendant, as well as bonding evaluations of the children and defendant, and of the children and their resource parents. Allison's other resource parent, her paternal uncle, did attend this evaluation. Her conclusions were largely the same as Dr. Loving's.

Dr. González's psychological examination revealed that defendant is self-centered, needy, and manipulative; she resists accepting responsibility for her actions; and she blames others for the problems in her life. Moreover, her parenting assessment revealed that defendant has serious deficits in her parenting skills, rendering her unable to understand or meet her children's needs.

Dr. González diagnosed defendant with mood disorder, anxiety disorder, personality disorder, and a history of opioid dependence. She further concluded that defendant could not safely parent her children due to her mental health issues. Dr. González also noted defendant's failure to acknowledge responsibility for her situation or her ability and obligation to remediate the problems that led to the children's removal.

In terms of bonding, Dr. González found that the children had a strong and affectionate, yet insecure, attachment to defendant. In particular, the Law Guardian's expert found that the children were insecure about whether defendant could meet their needs; in this regard, she noted that during the bonding examination the children were hesitant to share information with their mother about their current homes, for fear of upsetting her.

Dr. González believed the children would suffer a sense of loss if defendant's parental rights were terminated, with Jason more affected than Allison since he was older and had been in defendant's care for longer than his sister. However, the expert concluded the termination would not cause the children irreparable emotional damage. Rather, they would recover with guidance from their resource parents, with whom they had strong and secure attachments.

By contrast, Dr. González found that if the children were placed with defendant they would suffer from the loss of their relationships with their resource parents and resource siblings (cousins),[6] which defendant would not be able to remediate because she would neither understand nor be sensitive to the children's sense of loss. Moreover, Dr. González testified that if the children were returned to defendant they would face a significant risk of neglect, and defendant would have particular difficulty dealing with Jason, who is more challenging due to his disabilities and special needs.

Finally, Dr. González perceived no benefit in granting defendant additional time to eliminate the risks she posed to the children, because the children needed permanency. In this regard, she estimated that if defendant's plan were to parent the children on her own, it would take between eighteen months and two years for her to establish her ability to do so. Thus, Dr. González recommended that defendant's parental rights be terminated due to defendant's inability to provide safe and adequate parenting, and the children be adopted by their resource parents.

Commenting on defendant's ability to see the children in the future after a termination, Dr. González testified that the aunts

[6] Allison's resource sibling participated in the bonding evaluation.

told her "they're not closing the door on having contact with [defendant], but they want other things to change before" that happens. At the same time, Dr. González did not recommend family counseling due to the level of animosity and distrust between defendant and Matthew's family members.

Defendant did not testify at trial, nor did she present any fact or expert witnesses.

II.

A.

Turning to the issues raised on appeal, we note the law in this area is well-established. "Parents have a constitutional right to raise their children. . . . But that right is not absolute. It is a right tempered by the State's parens patriae responsibility to protect children whose vulnerable lives or psychological well-being may have been harmed or may be seriously endangered by a neglectful or abusive parent." N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 447 (2012).

Under N.J.S.A. 30:4C-15.1(a):

> The division shall initiate a petition to terminate parental rights on the grounds of the "best interests of the child" . . . if the following standards are met:
>
> (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 Division must prove all four prongs of the statutory standard, which are interrelated, by clear and convincing evidence. F.M., supra, 211 N.J. at 447-48.

On appeal from a termination of parental rights, we must recognize the Family Part's "specialized knowledge and experience in matters involving parental relationships and the best interests of children." Id. at 427. Thus, "[w]e defer to the family court's findings unless they are so wide of the mark that our intervention is required to avert an injustice. So long as the record contains substantial and credible evidence to support the family court's decision, we may not second-guess its judgment." Ibid. See also N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552-53 (2014); N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261,

278-79 (2007). We also "defer to the trial court's credibility determinations." R.G., supra, 217 N.J. at 552.

B.

Here, the trial court specifically found the witnesses presented by the Division and the Law Guardian to be credible, and found Dr. González's testimony particularly compelling. The court noted that all of the evidence was unrebutted.

Regarding the first prong of the Title Thirty statutory test for termination, the court found that the children's safety and welfare would continue to be endangered by the parental relationship, since defendant was unable or unwilling to provide a safe and clean home for her children. The court pointedly stated in this regard:

> Much of the theme and history of this case has to do with [defendant] and her deflection of responsibility for the conditions in the home that led to the removal. She'd blame her husband for the conditions of the home; she'd blame third parties; she even blamed the children for the conditions of the home. At one point [Jason's] feces was observed to be smeared against the wall. The Division inquired . . . why it hadn't been cleaned up. [Defendant] indicated that it was [Jason's] responsibility to clean it up because he put it there. This fundamental lack of insight and acceptance of responsibility has not changed during the four years the Division has been involved with this family and it's not going to change.

Regarding the second prong of the statute, the court found that defendant was unwilling or unable to eliminate the harm, incorporating its prior analysis and noting the "multitude of services" provided by the Division. Even defendant "herself reported that the home wasn't acceptable for the children to return to." The court cited Dr. González's testimony for its conclusion that defendant "lacks the insight necessary to make the changes to allow her to provide a safe home for the children and that's not going to change[.]" Finally, the court relied upon the expert testimony to conclude that delaying the matter would be harmful to the children, who were entitled to permanency. As the court observed: "[f]our years is enough."

Regarding the third prong, the court cited the many services provided by the Division, and concluded that they constituted "more than reasonable efforts." Moreover, the court found there was no alternative to termination of parental rights because the children were in safe and loving resource homes, and their resource parents wanted to adopt and were not interested in kinship legal guardianship.

Finally, regarding the fourth prong, the court concluded that termination of defendant's parental rights would not do more harm than good because the children were in safe homes with resource parents committed to adoption, and defendant was not in a position

to safely parent her children, nor would she be "within an acceptable or reasonable time frame that it makes a difference for these kids." In this regard, the court noted that defendant had no plan for her own future, let alone the children. The court acknowledged that the children would suffer a loss if defendant's rights were terminated, but concluded that the loss was "significantly outweighed by the possibility of adoption by a safe and loving home which can provide the safe environment [defendant] cannot."

C.

Defendant disputes the court's findings with respect to prongs one and two of the statutory test. She argues that, since at least June 2014, the house did not present a safety concern for the children, as evidenced by the fact that visitation was allowed in the home.

Defendant acknowledges that, during this time frame, the home and yard were cluttered. However, particularly with respect to the downstairs of the home, the Division allegedly noted only "housekeeping" concerns, not safety concerns, and as a matter of law "a messy house" that does not endanger the safety, health, or development of the children is insufficient to prove the first or second prongs of the statutory test.

Defendant maintains that the court erred by relying heavily upon the condition of the home at the beginning of the Division's involvement, as opposed to the time of trial. Further, she argues that the second floor of the home is irrelevant to the court's consideration because the children could be excluded from that portion of the home.

Also with respect to the first and second prongs of the statutory test, defendant argues that the court erred by concluding she lacked insight and personal accountability to improve the conditions of the home. In this regard, she notes her voluntary enrollment in therapy to manage her depression and anxiety, her compliance with services, and notations by service providers indicating that she had shown progress and improvement in her acceptance of responsibility.

Defendant further argues that the experts who concluded she lacked insight relied upon "imperfect information and a misunderstanding of the underlying facts," particularly because they never visited the home and instead relied upon the caseworkers' assessments. She claims their opinions that she would not continue to improve were inconsistent with the observations of her treatment providers. Moreover, she claims the court erred by crediting the experts merely because she did not present any expert testimony of her own.

Having carefully considered these arguments by defendant, we find no error in the court's conclusions as to prongs one and two of the statutory test. The record amply supports the trial court's conclusion that defendant endangered the welfare of her children through the condition of her home, she was unable or unwilling to eliminate the harm facing the children or provide a safe and stable home, and the delay of permanent placement would add to the harm.

"The first two elements of the best interests of the child standard relate to the finding of harm arising out of the parental relationship." In re Guardianship of D.M.H., 161 N.J. 365, 378 (1999). Thus, "evidence that supports one informs and may support the other as part of the comprehensive basis for determining the best interests of the child." Id. at 379.

Turning to defendant's specific arguments, we first disagree with her contention that the court erred by addressing the early conditions of the home. These conditions were relevant to the prong one analysis and the harm caused to the children. We note, however, that the court did not limit its analysis to the Division's initial involvement with the family. It also addressed evidence of current conditions at the home, including defendant's admission to Dr. González that the home was not currently appropriate for the children to be returned.

Moreover, contrary to defendant's argument, the record in this case does not reflect merely inadequate housekeeping. As a result of defendant's incapacitating depression and anxiety, her immature and conflicted relationship with Matthew, and her failure to recognize the needs of her children, conditions at the home have regularly presented concerns for the children's safety should they be returned to defendant's care.

Specifically, the evidence shows that at various times in 2012 and 2013, the home was routinely dirty and cluttered, both upstairs and downstairs, and ultimately the children were removed due to the deplorable and unsafe conditions found on September 19, 2013. After the hoarding company's intervention in June 2014, conditions at the home appeared to have improved such that Division intended to reunify the family. Just four months later, however, in October, the Division learned that defendant had been concealing the deteriorating status of her mental health, including hallucinations that convinced her to hide knives around the home, which presented a danger to the children.

Thereafter, between October 2014 and March 2015, defendant was out of the home. While in-home visitation was reinstated for Matthew, the condition of the home at this time was unrelated to defendant.

After defendant's March 2015 return to the home, visitation was supervised, sometimes in the home, and the Division found the downstairs to be adequately clean. However, the caseworker testified that the upstairs still remained dirty and unkempt, as well as partly under construction, the porch was under construction, and the yard was overgrown and full of materials that posed a danger to the children. In the caseworker's opinion, the current condition of the home precluded family reunification, and Dr. González testified that defendant admitted as much during her December 2015 examination.

Taken as a whole, this record manifestly supports the court's conclusions as to defendant's endangering the safety and welfare of her children, and her inability and unwillingness to maintain a safe and stable home. See, e.g., N.J. Div. of Youth & Family Servs. v. K.M., 136 N.J. 546, 550-53, 562 (1994) (affirming finding of abuse and neglect based, in part, upon dangerous and filthy living conditions in the home). Moreover, we disagree with defendant's argument that the condition of the yard and the upstairs of the home are irrelevant to the court's consideration. The record reflects that the home is accessed through the front yard, and the children play in the yard. Therefore, the presence of dangerous items in the yard is relevant to the overall safety of the home.

We further note that the second floor of the home is not unused space from which the children can be excluded. It contains living space that is currently being used by the family, including the parents' bedroom. This is an area of the home the children should be able to safely access, especially given the parents' history of leaving the children unattended downstairs during waking hours, while the parents are upstairs.

Contrary to defendant's argument, we find no error in the court's conclusions regarding her lack of insight and her failure to take personal accountability to improve the conditions of the home. The evidence sufficiently shows that defendant lacked insight into her children's developmental needs and abilities, and her own obligations as a parent. She excused the condition of the home by pointing to her mental and physical condition, or she blamed her husband for failing to maintain the home. Most disturbingly, she at times blamed the children for creating messes and not cleaning them up, failing to take into account their young ages and their developmental abilities.

The experts and the trial court did acknowledge defendant's engagement with services provided by the Division, as do we. Unfortunately, however, notwithstanding years of services, her efforts have not produced significant results in improving the factors that led to the children's removal. Indeed, when examined

by Dr. González in December 2015, defendant effectively failed the parenting assessment, indicating that she continued to have little insight into her children's developmental needs or how to fulfill them.

In this regard, the court reasonably relied upon the testimony of both Dr. Loving and Dr. González that defendant is presently incapable of safely parenting her children, and she will remain so for the foreseeable future. The court also reasonably relied upon the experts' opinions that the children required permanence, and that a delay to allow defendant further time to prove herself would merely add to the harm already suffered.

Finally, regarding the court's credibility assessments, we agree with defendant that the court was not bound to accept the testimonial evidence as true simply because defendant presented no witnesses. Considering the opinion as a whole, it is clear the court accepted the witnesses' testimony because it was credible and supported by the documentary record, as well as the experts' examinations of defendant.

Furthermore, contrary to defendant's suggestion, the experts' opinions are not invalid or less valuable because they did not visit the home. To the contrary, the caseworkers' observations are the best evidence as to the condition of the home over the course of the Division's involvement. A single visit by the

experts would be of little value. Thus, we perceive no error in the court's credibility determinations.

We likewise reject defendant's argument that the court erred in finding the Division had proven the fourth prong of the statutory test. This element is addressed to whether the termination of parental rights will do more harm than good. N.J.S.A. 304C-15.1(a)(4). The fourth prong "is related to the first and second elements of the best interests standard, which also focus on parental harm to the children." D.M.H., supra, 161 N.J. at 384. It "serves 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 (2007).

The fourth prong does not require "a showing that no harm will befall the child as a result of the severing of biological ties." In re Guardianship of K.H.O., 161 N.J. 337, 355 (1999). Rather, the question to be addressed is whether, after considering and balancing the children's relationships, the children will suffer a greater harm from the termination of the ties with their mother than from the permanent disruption of their relationships with their resource parents. Ibid. Accord M.M., supra, 189 N.J. at 281 (noting that expert testimony on bonding should be submitted by the Division). The question is not which set of parents can provide a "better" home for the child, but what is in the child's

best interests. N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 603 (1986).

In making an assessment under prong four, courts must be cognizant of the State's "strong public policy in favor of permanency," and they "must not lose sight of time from the perspective of the child's needs." K.H.O., supra, 161 N.J. at 357. Accord R.G., supra, 217 N.J. at 559. They must consider the children's ages, their overall health and development, and "the realistic likelihood that [defendant] will be capable of caring for the child[ren] in the near future." K.H.O., supra, 161 N.J. at 357.

We first address defendant's arguments questioning the validity of the experts' bonding assessments of Allison and her resource parents, and the court's reliance upon the experts' conclusions. Specifically, defendant faults Dr. Loving for going forward with the bonding evaluation of Allison and her resource parents without the presence of the uncle, and simply assuming the results would apply to him as well. She also faults Dr. González for allowing Allison's cousin to participate in the bonding evaluation, because this changed the dynamic and the ability of Dr. González to assess the bond between Allison and her resource parents.

We perceive no basis for reversal based upon these arguments. We agree that Dr. Loving's assessment about Allison's bond with her resource father was impeded by the latter's non-participation in the bonding evaluation. Townsend v. Pierre, 221 N.J. 36, 53-55 (2015) (addressing the net opinion rule). However, his conclusion that Allison was bonded with her resource mother was supported independently by factual evidence and appropriately considered by the court. Moreover, the court had the benefit of Dr. González's credible separate professional opinion that Allison was bonded with both of her resource parents. Hence, the court did not err in concluding she was bonded with her uncle as well as her aunt.

We also find no error in the court's reliance upon Dr. González's bonding assessment of Allison and her resource parents because their biological daughter participated in the session. The trial judge heard competing views as to whether it is appropriate to conduct a bonding evaluation with an entire family, or just the parents and the child at issue. Dr. Loving testified that he generally does not include other family members, but he admitted there were both "pros and cons" to including them. On the other hand, Dr. González testified that her preference was to include all who live in the household; and in this particular case, Dr. González wanted the cousin to be present because Allison

had a close relationship with her, and Allison had expressed fear of the assessment.

In sum, the court was able to assess defendant's critique of Dr. González's methodology, and we have no basis for rejecting the court's acceptance of her conclusions. A trier of fact, in this instance the Family Part judge, is free to accept or reject the opinions of any testifying expert, in full or in part. See, e.g., Becker v. Baron Bros., 138 N.J. 145, 159, 164-65 (1994); Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 85-86 (App. Div. 1961).

Defendant faults both experts for allegedly ignoring concerns about the commitment of both sets of resource parents to the children, and the level of care they provide. We find no merit to this argument. The experts' reports indicate they considered the Division records, which included factual accounts of the caseworkers' interactions with the resource parents. See N.J.R.E. 703 (authorizing experts to consider written materials and other factual evidence not provided in admissible testimony). Moreover, the experts met with the resource parents, except as previously discussed, and were able to assess their level of commitment to the children. There is no indication that the children are mistreated in their resource homes, nor any reason to question the resource parents' commitments to adopt.

Next, defendant faults both experts for failing to adequately address the separation of the children, arguing that the "glaring absence of sibling evaluation data renders all the bonding evaluations deficient as a matter of law because the opinions fail to consider the harm that would be visited upon the children by remaining in separate homes."

We disagree. Defendant cites no legal authority requiring a bonding evaluation between the siblings. There is a preference for siblings to be placed together, N.J.S.A. 9:6B-4(d), but this is not always possible. In this case, the Division initially placed the children together in the home of their paternal grandparents, but that placement became untenable when the paternal grandmother became ill. Only at that point, in spring 2015, were the children placed separately with their paternal aunts. Although separated, the children as of the time of trial maintained close ties. The aunts ensured that the children saw each other during the week and often on weekends as well. The experts rightly considered these facts in recommending the termination of parental rights, and the court agreed with their recommendations.

Finally, defendant emphasizes her strong bond with the children, which was undisputed, and the caseworker's testimony that she was employed at the time of trial and the Division had

no present concerns for her well-being. Based upon these factors, she argues that there was no reason to believe she would be unable to care for the children independently. She argues that she should be given an opportunity to establish herself as a single parent prior to a termination of her parental rights, and that concerns over possible future instability "cannot reasonably be held to significantly outweigh the harm that will stem from termination."

We disagree with defendant's assessment of the record. The sincerity of her love for her children, or them for her, is not doubted. Both experts found that the children had strong, positive attachments with their parents, and the visitation reports support that opinion. However, Dr. González also opined, without contradiction, that the children's attachment to defendant was insecure. Neither expert believed defendant was presently capable of caring for them.

Thus, to the extent defendant wished to parent the children on her own, the record is bereft of evidence that it could happen immediately, as she argues on appeal. Dr. Loving testified that reunification under such circumstances "would be a very long-term plan, at best," and Dr. González similarly opined that it could take up to two years for defendant to prove her ability to care for the children on her own. Neither expert believed this plan would be in the children's best interests, because the children

had been placed outside the home for so long, and they required permanency. The trial court credited these experts' opinions, and we have no basis for rejecting that credibility assessment. The court appropriately gave much weight to the children's vital needs for permanency. R.G., supra, 217 N.J. at 559.

D.

In her final argument, defendant maintains that the judge should have recused himself from the guardianship trial because he had overseen the case since its inception as an abuse and neglect proceeding, and because he denied the Division's April 2015 request for an extension of time for reunification. She contends that the judge was "frustrated" with her, and he had already formed an opinion about her that prevented him from engaging in a fair analysis of the record. In this regard, she notes the judge's reliance upon "stale data" and his conclusion that there was a pattern of regression in the home conditions, when in reality the home had remained safe for an extended period of time.

There is no requirement that guardianship proceedings be heard by a different judge than the one who presided over the abuse and neglect proceedings. N.J. Div. of Youth & Family Servs. v. L.C., 346 N.J. Super. 435, 438-40 (App. Div. 2002). To the contrary, there are policy justifications and efficiencies for

generally having the same Family Part judge hear both matters. Id. at 439.

In addition, "judges are constantly required to adjudicate matters involving parties and related disputes which have come before the judge in a different proceeding." Id. at 440. They "are perfectly capable of recognizing the different issues involved, different standards of proof required and different remedies sought without 'prejudging' a defendant so as to implicate due process concerns." Ibid. "Ultimately, the judge, on appropriate application from a litigant, must consider whether her involvement in a case warrants that judge recusing herself from further consideration of the issues." Ibid.

Here, defendant never moved for recusal under Rule 1:12-2. Moreover, we discern no evidence of improper bias in the judge's handling of the case. His denial of the Division's April 2015 request for an extension of time for reunification was not unreasonable, as the children had been in resource homes for more than eighteen months. Nor does that denial constitute evidence that he had unfairly pre-judged the guardianship proceedings.

As clearly set forth in the court's oral opinion, the judge appropriately reached his guardianship conclusions based upon a reasonable assessment of the entirety of the trial record. We find no basis to set aside his careful judgment of this case.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION