

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3934-15T1

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

S.A.,

Defendant-Appellant,

and

E.A., Sr.,

Defendant.

IN THE MATTER OF THE GUARDIANSHIP
OF N.A., Sh.A., and E.A., Jr.,
minors.

Argued March 21, 2017 – Decided May 2, 2017

Before Judges Ostrer, Leone and Vernoia.

On appeal from the Superior Court of New
Jersey, Chancery Division, Family Part, Hudson
County, Docket No. FG-09-107-16.

Christine Olexa Saginor, Designated Counsel,
argued the cause for appellant (Joseph E.

Krakora, Public Defender, attorney; Ms. Saginor, on the briefs).

Natasha C. Fitzsimmons, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Andrea M. Silkowitz, Assistant Attorney General, of counsel; Sara M. Gregory and Lauren J. Oliverio, Deputy Attorneys General, on the brief).

Lisa M. Black, Designated Counsel, argued the cause for minors (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Ms. Black, on the brief).

PER CURIAM

Defendant S.A. appeals from an April 28, 2016 judgment terminating her parental rights to her daughters, N.A. (Naomi) and Sh.A. (Sharie), and son, E.A., Jr. (Edwin), born, respectively, in 2007, 2009 and 2014.¹ Defendant contends the Division of Child Protection and Permanency (the Division) failed to establish any of the four prongs of the best interests test. See N.J.S.A. 30:4C-15.1(c). The Law Guardian joins the Division in supporting the judgment. We affirm substantially for the reasons stated by Judge Bernadette DeCastro in her written opinion.

¹ S.A.'s husband, E.A., Sr. (E.A.), does not appeal from the termination of his rights. Therefore, we use "defendant" to refer only to S.A. We use pseudonyms for the children to protect their privacy.

I.

The Division relied at trial on a voluminous documentary record, testimony of the adoption caseworker, and expert testimony of psychologists Gerard Figurelli, Ph.D., who evaluated defendant, and Antonio W. Burr, Ph.D., who conducted a bonding evaluation of the children and the foster mother. Defendant did not testify or present any witnesses, but she relies on the testimony of her husband E.A.

The trial court reviewed the evidence at length in its written opinion. It suffices to observe that the record supports the trial court's findings that defendant suffered from serious mental illness, including depression, anxiety, fixed delusional beliefs, and paranoid ideations. In summary, her illness manifested itself in erratic and bizarre behavior, and angry and threatening outbursts at Division staff and others. The children were exposed to these behaviors, and the two older children in turn acted out themselves. Defendant failed to comply with recommendations for treatment, to complete parenting skills training, or to participate in domestic violence counseling to address her turbulent relationship with E.A.

Prompted by multiple referrals, the Division initially attempted to assist defendant before it resorted to removal of the children. In April 2014, the Division implemented a safety plan

that provided defendant with around-the-clock homemaker assistance. However, the next month, after bailing E.A. out of jail, where he was held on charges of assaulting defendant, she abandoned the homemaker, and left with the children and E.A. That episode prompted the Dodd removal and placement of the children. Sharie and Edwin were initially placed together, and Naomi joined them a few months later. The three children have been with the same foster mother ever since.

Visitation was suspended after a session in December 2014, in which defendant physically and verbally assaulted a Division worker and threatened future violence. The children witnessed the incident. Therapeutic visitation resumed in May and June 2015. But, in June, defendant reported she lost her job and her section 8 housing; had relocated to Queens, New York; and was unable to attend visitation because she could not afford the cost of transportation from New York. Accommodations were made to allow for further visitation, but the visits were marked by defendant's angry outbursts in the children's presence, leading to termination of visitation. She last visited the children under the auspices of Catholic Charities in July 2015. Defendant did not cooperate with the Division's subsequent efforts to restore visitation.

Meanwhile, the children formed strong bonds with the foster mother, who served as their primary parent. Dr. Burr opined that

Edwin would suffer the least harm from severing his ties to defendant, as he was removed soon after his birth. The girls continued to love and retain attachment to their parents, as evidenced in their visits and their expressed desire to see them when visits did not occur. Dr. Burr noted they maintained "emotional allegiance and identification" with defendant and E.A.

But, he concluded the foster parent "would likely substantially mitigate the sense of loss the children . . . may experience if severed from their biological parents." He opined it was essential for the children to achieve permanency, particularly given the ages of the older children. Dr. Figurelli opined at trial that defendant was not able to parent adequately and that her failure to comply with services contributed to the children's lack of permanency.

Defendant failed to appear for a bonding evaluation or an updated psychological evaluation before trial. She did not testify. E.A. testified briefly that he and defendant should be given another chance to complete services and be reunited with their children.

Judge DeCastro determined that the Division had satisfied, by clear and convincing evidence, the four prongs of the best interests test. N.J.S.A. 30:4C-15.1(c)(1)-(4).

II.

We defer to the trial judge's fact findings that are rooted in her familiarity with the case, her opportunity to make credibility judgments based on live testimony, and her expertise in family matters. Cesare v. Cesare, 154 N.J. 394, 411-13 (1998). We will affirm a Family Part's decision to terminate parental rights when substantial credible evidence in the record supports the court's findings. N.J. Div. of Youth and Family Servs. v. E.P., 196 N.J. 88, 104 (2008). However, we are not bound by the trial court's legal conclusions. N.J. Div. of Youth & Family Servs. v. I.S., 202 N.J. 145, 183 (2010).

In order to overcome a parent's constitutional rights, see N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 599 (1986) (stating parental rights to conceive and raise one's children are "fundamental and constitutionally protected"), the Division must establish the following four factors by clear and convincing evidence:

- (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.

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

See also A.W., supra, 103 N.J. at 604-11. The four factors are interrelated. In re Guardianship of K.H.O., 161 N.J. 337, 348 (1999). Factors one and two in particular overlap. In re Guardianship of DMH, 161 N.J. 365, 378-79 (1999).

In challenging the court's finding of factors one and two, defendant contends the Division failed to prove actual harm or significant risk of harm. Defendant also argues the court overstated the nature of her mental illness and punished her because of her poverty. We disagree.

The trial record contains sufficient credible evidence that defendant suffers from significant mental illness that undermines her ability to safely parent her children and poses a threat of harm to them. The court did not base its findings on defendant's status as a person with mental illness, but on the impact of her illness. See N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J.

420, 449-51 (2012). Defendant's reliance on documentary records showing that she commenced treatment for several months in 2015, a year after the children were removed,² does not rebut the trial court's conclusion, based on the expert's testimony at trial, that defendant's persistent mental illness posed a threat of harm to the children.

Defendant also overstates the impact of her poverty, particularly her homelessness, on the court's decision. E.A. testified that he and defendant lost their subsidized housing in September 2015, although we recognize evidence in the record that defendant reported in June 2015 that she lost her housing assistance. Still, that unfortunate development did not explain her failure to comply with services for over a year beforehand. Moreover, even afterwards, the caseworker met with defendant and provided her with bus passes and other services.

Turning to factor three, we analyze the Division's efforts to provide services "with reference to the circumstances of the individual case." DMH, supra, 161 N.J. at 390. Such efforts are

² The records consist of an undated letter confirming that defendant was attending an adult outpatient treatment program, meeting a psychiatrist monthly and a therapist weekly to biweekly; and repeated entries in Division contact sheets, between June 2015 and January 2016 stating, in precisely the same terms, that defendant was attending mental health counseling, but refused to execute a release "to obtain collaterals." This evidence did not disclose defendant's diagnosis, treatment, or prognosis.

"not measured by their success," id. at 393, and their failure "does not foreclose a finding that the Division met its statutory burden," N.J. Div. of Youth & Family Servs. v. F.H., 389 N.J. Super. 576, 620 (App. Div.), certif. denied, 192 N.J. 68 (2007). Defendant misplaces reliance on the Division's alleged failure to remediate her homelessness after she and E.A. lost their subsidized housing. The Division provided appropriate referrals to housing agencies; it was not obliged to assure housing.

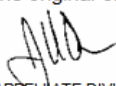
Defendant also contends the Division failed to make adequate efforts to find a relative placement. But the Division's caseworker testified that the parents provided names but no contact information – with the exception of one person, with whom the Division left a message. The Division also received a negative response from a cousin who adopted other children of defendant. Inasmuch as defendant did not identify a willing relative whom the Division ignored, the trial court did not err in concluding that the Division's efforts met its statutory obligation. See N.J. Div. of Youth & Family Servs. v. K.L.W., 419 N.J. Super. 568, 582 (App. Div. 2011).

Finally, we discern no error in the court's finding that the fourth factor was met. "[A] child's need for permanency is an extremely important consideration," N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 559 (2014), in determining whether

termination "will not do more harm than good," N.J.S.A. 30:4C-15.1(a)(4). Defendant points to her children's continuing bond with her. We do not minimize that bond, nor do we depreciate the genuine love that defendant has for her children. Yet, the court was not obliged to find that no harm would befall the children if parental rights were terminated. See K.H.O., supra, 161 N.J. at 355. Rather, the court's task was to discern whether terminating ties between defendant and her children would not do more harm than good. The court's conclusion was supported by the record. Termination shields the children from the threat of harm from the parental relationship and provides them with needed permanency in the home of a foster parent with whom they have bonded.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION