

**RECORD IMPOUNDED**

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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4558-15T2

NEW JERSEY DIVISION OF  
CHILD PROTECTION AND  
PERMANENCY,

Plaintiff-Respondent,

v.

T.B.,

Defendant,

and

E.T.,

Defendant-Appellant.

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IN THE MATTER OF THE GUARDIANSHIP  
OF I.A.F.B. and I.A.J.B.,

Minors.

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Argued February 1, 2017 – Decided February 16, 2017

Before Judges Alvarez and Manahan.

On appeal from the Superior Court of New  
Jersey, Chancery Division, Family Part, Essex  
County, Docket No. FG-07-183-15.

Ryan T. Clark, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Mr. Clark, on the briefs).

Julie B. Colonna, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Andrea M. Silkowitz, Assistant Attorney General, of counsel; Ms. Colonna, on the brief).

Charles Ouslander, Designated Counsel, argued the cause for minors (Joseph E. Krakora, Public Defender, attorney; Mr. Ouslander, on the brief).

PER CURIAM

Defendant E.T. (Edward) appeals from an order terminating his parental rights to his son, I.A.F.B. (Ian), and awarding guardianship to Ian's maternal great aunt.<sup>1</sup> Based upon the testimony of a Division of Child Protection and Permanency (Division) supervisor, the sole witness at the fact-finding hearing, the Family Part judge held that the Division proved by clear and convincing evidence that terminating Edward's parental rights was in the best interests of the child, in accord with N.J.S.A. 30:4C-15.1(a). We affirm.

The evidence is outlined in the judge's opinion. A summary will suffice here. The judge found: Edward's lengthy incarceration; his failure to maintain any significant contact or

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<sup>1</sup> The names we have assigned to defendant and the children are fictitious.

relationship with his son both while in prison and after his release; his failed drug test after release from prison; his repeated refusal to cooperate with the Division; his non-compliance with court orders requiring he undergo a psychological evaluation; Ian's positive response to living in a stable home with his great aunt and two siblings; and the Division's documented attempts at reunification formed the basis for her decision.<sup>2</sup>

Edward contends that the trial court failed to clearly state its factual findings and correlate them with the relevant legal conclusions pursuant to Rule 1:7-4(a). Furthermore, he asserts that the judge erred in finding that the Division proved all four prongs of the best interests test by clear and convincing evidence.

As we noted, the judge's decision relied on the testimony of one witness, who she found to be credible. No expert testimony was offered by the Division as to Edward's fitness as a parent or on bonding due to the fact that Edward, on three separate occasions, refused to comply with court orders requiring he undergo a psychological examination.

On appeal, Edward raises the following arguments:

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<sup>2</sup> Ian's mother, T.B., was the focus of the Division's involvement with the family, which commenced in 2010. After an emergent removal and institution of the FN proceeding, T.B. stipulated to abuse and neglect of Ian and his two siblings. After the institution of the FG proceedings, T.B. entered into an identified surrender of her parental rights to her great aunt for adoption.

POINT I

THE TRIAL COURT'S FINDINGS WERE INCOMPLETE AND INADEQUATE TO SUSTAIN A JUDGMENT TERMINATING [EDWARD'S] PARENTAL RIGHTS BY CLEAR AND CONVINCING EVIDENCE AS REQUIRED BY N.J.S.A. 30:4C-15 AND 30:4C-15.1.

[A]. By failing to correlate its factual findings to its relevant legal conclusions, the trial court prejudiced appellant's ability to perfect this appeal and deprived the Appellate Division of a sufficient record upon which to review the record below.

[B]. The trial court erred in finding that [the Division] demonstrated by clear and convincing evidence that the child's health and development had been or will continue to be endangered by the parental relationship under the first prong.

[C]. The trial court erred in finding that [the Division] demonstrated by clear and convincing evidence that the appellant was 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 under the second prong.

[D]. The trial court erred in finding that [the Division] demonstrated by clear and convincing evidence that it has made reasonable efforts to provide services to help the father correct the circumstances which led to the

child's placement outside the home under the third prong.

[E]. The trial court erred in finding that [the Division] demonstrated by clear and convincing evidence that termination of the father's parental rights will not do more harm than good.

We conclude these arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following.

Attributable in part to his history of incarceration, Edward spent little time with Ian since his birth. For two years while incarcerated, Edward, by his choice, did not seek visitation with Ian nor have any other contact with him. Pointedly, the record is replete with proof of Edward's absence in the care of Ian, even during those times when he was not incarcerated.

After his release, a Division adoption worker personally served Edward with the guardianship complaint and a form for assigned counsel. She reviewed the timelines and explained the Division's concern that Ian had already spent a lengthy time in placement. The worker emphasized that despite Edward's parenting history, he could still be reunified with Ian if he participated in services and developed a plan of care. In response, Edward

expressed a desire to participate in Division services and the guardianship proceedings.

Despite this expression of desire, Edward did not submit to a requested urine screen, was absent from the guardianship proceeding except for two hearings, failed to comply with psychological and bonding evaluations, and failed, except on three occasions, to attend visitation sessions with Ian. In sum, Edward exhibited an overall lack of interest in reunification and in participation in court proceedings.<sup>3</sup> None of this conduct could be attributed to Edward's incarceration since, as noted, it occurred post-release.

While the judge found Edward's incarceration to be a factor, she properly found with particularity how the incarceration affected each prong of the best interests standard. See N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 556 (2014) (citing In re Adoption of Children by L.A.S., 134 N.J. 127, 137-38 (1993)). The judge did not apply a different standard for termination due to Edward's incarceration. See id. at 559 (citing N.J. Div. of Youth & Family Servs. v. T.S., 417 N.J. Super. 228, 240-43 (App. Div. 2010), certif. denied, 205 N.J. 519 (2011)). Further, the judge found that in part due to Edward's periods of incarceration,

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<sup>3</sup> Edward was assigned counsel who participated in all court proceedings.

his relationship with Ian was virtually nonexistent. "[O]nce a parent is imprisoned, a relationship with one's children that was nonexistent prior to incarceration will not likely be fostered[.]" T.S., supra, 417 N.J. at 243 (quoting L.A.S., supra, 134 N.J. at 139).

Predicated upon the hearing record, the judge found the Division had proven all four prongs of the best interests test, and that termination of defendant's parental rights was in the child's best interests. On this appeal, our review of the judge's decision is limited. We defer to her expertise as a Family Part judge, Cesare v. Cesare, 154 N.J. 394, 412 (1998), and we are bound by her 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 our independent review of the hearing record, we conclude that the judge's factual findings are fully supported and, in light of those facts, her legal conclusions are unassailable.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION