SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4818-15T4

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

R.D.,

Defendant-Appellant.

IN THE MATTER OF THE GUARDIANSHIP OF H.S., a minor.

Submitted March 28, 2017 – Decided April 4, 2017

Before Judges Fasciale, Gilson and Sapp-Peterson.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Mercer County, Docket No. FG-11-06-16.

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 H. Raksa, Assistant Attorney General, of counsel; Jamie Jacobson, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Noel C. Devlin, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

R.D. (defendant) appeals from a June 2016 Family Part order terminating his parental rights to H.S., born in May 2012. After considering the record and briefs, we affirm substantially for the reasons expressed by Judge Craig L. Corson in his thorough and well-reasoned written opinion issued on June 28, 2016.

Defendant is the biological father of H.S., who currently lives in a resource home with her half-sister. In January 2016, S.S. (the mother), H.S.'s biological mother, voluntarily surrendered her parental rights and indicated that she would prefer that H.S. be adopted by the resource parents and remain with her half-sister. The resource parents had already adopted H.S.'s half-sister in 2012, after the court terminated the mother's parental rights to that child. The mother is not a party to this appeal.

In February 2016, Judge Corson held the guardianship trial. Defendant did not appear at trial, although he had been given notice. The Division of Child Protection and Permanency (Division) produced testimony from a permanency and adoption caseworker. The Division caseworker worker testified that over the four years of

litigation pertaining to H.S., neither the Division nor any expert deemed defendant an appropriate caregiver for H.S. Division records and expert reports were entered into evidence and defense counsel called no witnesses.

The facts are set forth at length in the trial judge's written opinion, and we will not repeat them. In his written opinion, Judge Corson concluded that the evidence clearly and convincingly proved each statutory prong required for termination of defendant's parental rights and awarded guardianship to the Division.

On appeal, defendant argues that the Division failed to meet its statutory burden under the third prong of the best interests test, codified at N.J.S.A. 30:4C-15.1(a), by clear and convincing evidence. Defendant also argues the trial court erred in relying on expert reports from a non-testifying expert in finding the first, second, and fourth prongs of the best interest test.

The scope of our review of a determination terminating a parent's rights is limited. "When a biological parent resists termination of his or her parental rights, the [trial] court's function is to decide whether that parent has the capacity to eliminate any harm the child may already have suffered, and whether that parent can raise the child without inflicting any further harm." N.J. Div. of Youth & Family Servs. v. R.L., 388 N.J. Super.

81, 87 (App. Div. 2006), certif. denied, 190 N.J. 257 (2007). The factual findings, which undergird such a judgment, "should not be disturbed unless 'they are so wholly insupportable as to result in a denial of justice,' and should be upheld whenever they are 'supported by adequate, substantial and credible evidence.'" In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993) (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 483-84 (1974); Meshinsky v. Nichols Yacht Sales, Inc., 110 N.J. 464, 475 (1988)). "[T]he conclusions that logically flow from those findings of fact are, likewise, entitled to deferential consideration upon appellate review." R.L., supra, 388 N.J. Super. at 89.

Defendant contends the Division failed to prove the third prong of the best interests of the child standard, N.J.S.A. 30:4C-15.1(a)(3), by clear and convincing evidence. N.J.S.A. 30:4C-15.1(a)(3) requires, in pertinent part, the Division to prove by clear and convincing evidence that it "made reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home." The third prong requires that the Division "undertake diligent efforts to reunite the family." In re Guardianship of K.H.O., 161 N.J. 337, 354 (1999). According to the statute,

> "reasonable efforts" mean attempts by an agency authorized by the division to assist the parents in remedying the circumstances and conditions that led to the placement of the child and in reinforcing the family structure, including, but not limited to:
>
> (1) consultation and cooperation with the parent in developing a plan for appropriate services;
>
> (2) providing services that have been agreed upon, to the family, in order to further the goal of family reunification;
>
> (3) informing the parent at appropriate intervals of the child's progress, development and health; and
>
> (4) facilitating appropriate visitation.
>
> [N.J.S.A. 30:4C-15.1(c)(1)-(4).]

Whether the Division undertook diligent efforts to reunite the parent with the child is a fact-sensitive, individualized inquiry. In re Guardianship of D.M.H., 161 N.J. 365, 390 (1999).

There is sufficient credible evidence in the record that the Division provided defendant with many services including substance abuse programs, supervised visitation, individual counselling, and batterers' intervention programs. The judge noted defendant's refusal to participate and his general noncompliance with these programs. The judge stated that the mother had surrendered her parental rights and other individuals suggested by defendant were investigated and ruled out. Defendant did not have contact

information for these potential relative caregivers and the Division tried repeatedly to obtain such information before ruling them out.

The Division caseworker testified that getting defendant to comply with services was difficult. Although defendant attended visits with H.S. consistently for a time, he began missing appointments. The Division caseworker testified that defendant was discharged from individual therapy, domestic violence programs, and substance abuse programs for noncompliance. Defendant told a Division worker that he would no longer participate in services and would not stop using illegal drugs. Defendant also threatened and cursed at the Division workers throughout their involvement. The Division showed it made reasonable efforts to provide defendant with services.

Defendant contends the Division should have provided him with services while he was incarcerated for approximately fifteen months of H.S.'s life. H.S. was not born when defendant was incarcerated for the first time and was a few months old when he was incarcerated for the second time. The Supreme Court encourages the Division to explore what services are feasible and appropriate for an incarcerated parent and mandates that the Division make an effort and not ignore requests to provide services. N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 563 (2014). The

Division was in contact with defendant while he was incarcerated and brought H.S. to visit once. There is no indication that starting parenting classes or other services while he was incarcerated would have made a difference.

Finally, we reject defendant's argument that the court committed reversible error by relying on Dr. Becker-Mattes's expert reports when she did not testify. Rule 5:12-4(d) permits the admission of "reports by staff personnel or professional consultants" into evidence provided the documents satisfy the requirements of the business records exception to the hearsay rule, N.J.R.E. 803(c)(6) and 801(d). N.J. Div. of Youth & Family Servs. v. B.M., 413 N.J. Super. 118, 129 (App. Div. 2010). If the report is offered without testimony from the expert, the trial judge must provide "specific findings regarding trustworthiness." N.J. Div. of Youth & Family Servs. v. M.G., 427 N.J. Super. 154, 174 (App. Div. 2012).

However, this ruling on admissibility is only required when an objection is timely made. See N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 339-41 (2010). Here, defense counsel objected to one of the Division reports on relevance grounds because it only related to the mother, not the defendant. There was no objection that the reports were untrustworthy or did not meet the requirements of Rule 5:12-4(d). The judge found that

he was able to properly consider the documents. The judge cited Rule 5:12-4(d), M.C., supra, 201 N.J. at 328, and N.J.R.E. 803(c)(6). As defense counsel did not make the proper objections at trial, and because there would be no credible basis to do so, there is no reversible error in the admission of the expert's reports in lieu of live testimony by the expert. Thus, there was clear and convincing evidence supporting the trial judge's findings of prongs one, two, and four of the best interest test.

Affirmed.