

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
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-5122-14T1
A-5124-14T1

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

I.O. and M.L.,

Defendants-Appellants.

IN THE MATTER OF THE
GUARDIANSHIP OF M.L. and K.L.,

Minors.

Argued January 11, 2017 – Decided February 16, 2017

Before Judges Accurso and Manahan.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex
County, Docket No. FG-12-0076-14.

Adrienne Kalosieh, Designated Counsel, argued
the cause for appellant I.O. (Joseph E.
Krakora, Public Defender, attorney; Ms.
Kalosieh, on the brief).

Christine Olexa Saginor, Designated Counsel,
argued the cause for appellant M.L. (Joseph
E. Krakora, Public Defender, attorney; Ms.
Saginor, on the brief).

Joel Clymer, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Mr. Clymer, on the brief).

David Valentin, Assistant Deputy Public Defender, argued the cause for minors (Joseph E. Krakora, Public Defender, attorney; Mr. Valentin, on the brief).

PER CURIAM

In these consolidated appeals, defendants I.O. (Irene) and M.L. (Martin) appeal the termination of their parental rights to their son, M.L. (Michael) and their daughter, K.L. (Kristen).¹ Both parents contend the Division of Child Protection and Permanency (Division) failed to prove the four prongs of the best interests standard, N.J.S.A. 30:4C-15.1(a)(1)-(4) by clear and convincing evidence. After reviewing the record, we affirm substantially for the reasons stated by the Family Part judge in her comprehensive oral opinion of June 30, 2015.

The trial evidence is set forth at length in the judge's opinion and need not be repeated here in the same level of detail. The Division initially became involved with Irene with regard to another child not the subject of this litigation. Custody of that child was thereafter granted to the Division. Michael and Kristen

¹ The names we have assigned to defendants and their children are fictitious.

were each removed at birth by the Division, predicated upon a finding of lack of appropriate housing.

The two children, both of whom have special needs, were placed with resource parents. Michael has been diagnosed with regressive autism and is non-verbal. Kristen has been diagnosed with global development delays. Irene and Martin also have cognitive limitations. Irene's cognitive functioning is in the borderline range. Martin has a mild mental disability. In addition, Irene has suffered from longstanding substance abuse for which, during the Division's involvement, she obtained and completed in-patient treatment at Eva's Village.

At the fact-finding hearing, the Division presented unrebutted expert testimony from two psychologists. The psychologists agreed that Irene and Martin's cognitive limitations, when combined with Michael's significant impairment, would adversely affect their ability to safely and effectively parent, both children, but especially Michael.

One expert, Dr. Elayne Weitz, explained in detail how Irene and Martin's limitations made them unable to care for the children. Weitz testified that Irene did not demonstrate a sufficient grasp of Michael's needs, including his medication, behavioral programming, and therapy. Concerning Martin's parenting role, Weitz found, because of his learning difficulties, he would be

incapable of implementing the behavioral training Michael received in school. From the bonding evaluation, Weitz found little evidence of the children bonding with the parents, although Martin was "more active in the bonding evaluation."

Weitz also addressed Irene's substance abuse. Weitz testified that, notwithstanding Irene's completion of the in-patient program, she failed to demonstrate that she could maintain sobriety in a non-controlled environment.

During the Division's involvement, and at its request, Dr. Alice Nadelman also performed a bonding evaluation. Originally, Nadelman was of the opinion that reunification efforts should continue to allow Irene and Martin the opportunity to acquire parenting skills. Nadelman's initial opinion was based, in part, on the progress made by both parents in the area of housing, as well as their expressed desire to become part of Michael's treatment. Nadelman did not recommend reunification with Kristen based upon her being with the resource family all her life and her strong attachment to the resource family. Nadelman also found that if Irene and Martin learned to parent Michael, it would require all of their time, energy, and resources, thus depriving Kristen of needed care.² By the time of the hearing, Nadelman altered her

² At the hearing, Kristen's resource parent testified that she was committed to adoption.

opinion on reunification with Michael due to the parents' non-compliance with the reunification plan and their demonstrated lack of capacity to learn and meet Michael's needs.

Three Division caseworkers testified relative to unsuccessful efforts over the course of several years of Division involvement to assist Irene with housing, employment, mental health, and substance abuse. Their testimony also detailed Martin's housing and employment instability while noting his positive efforts at participation in services. Concerning placement, a caseworker supervisor testified that she identified two homes willing to adopt Michael.

Both Irene and Martin testified at the hearing. Irene stated that she sought in-patient substance abuse treatment at Eva's Village because of her lack of stable housing and because she "needed help." She acknowledged her lack of visitation with Michael and Kristen, but attributed that to her illnesses, the illnesses of Kristen, and the Division's inability to supervise visits due to short staff. Martin testified relative to his recent employment as superintendent of a residential complex. Based on his employment, Martin was provided with a two-bedroom apartment, which he shared with Irene, along with \$200 a month salary. Regarding his parenting of Michael, Martin acknowledged his lack

of visitation and limited knowledge about autism, but expressed a willingness to learn.³

The judge found both Irene and Martin to be credible and that they "deeply cared for their children." However, the judge noted that Irene's procurement of stable housing was a "struggle throughout the case," and that at the time of Michael's birth, she was "non-compliant with mental health" treatment and made no effort to gain employment. The judge further noted that at the time of Kristen's birth, neither Irene nor Martin had a history of stable housing, and Martin had not found employment or followed through on his plan to move to Alabama with the children.⁴ In terms of Irene's substance abuse treatment, the judge noted her successful discharge, but also her failure to attend out-patient treatment or to secure employment.

Under the best-interests standard, the judge found the harm to the children under the first prong to be the lack of housing, the lack of substance abuse treatment by Irene, and the lack of ability to follow through with services. The judge noted these

³ The defense also called a senior counselor from Eva's Village, who testified that Irene's prognosis for relapse was "moderate to high" outside an in-patient setting.

⁴ Martin had family in Alabama, including five children, the youngest child being ten years of age when Martin moved to New Jersey in 2010.

problems, which negatively affected their parenting abilities, related to Irene and Martin's lack of motivation and lack of capacity to follow through.

In addressing the second prong, the inability to remove the harm facing the children, the judge pointed to the failure to provide a permanent housing plan. The judge noted the short duration of residence in the apartment in conjunction with a parental housing history that caused the children to linger in foster care for three years. Further, relying on Weitz's report, the judge found both parents' failure to understand the "severe trauma" to Kristen if she was removed from her foster parents, Irene's compromised ability "to apply skills learned in a familiar situation," and Martin's inability to "learn and apply the basic facts required in raising children."

As to the third prong, reasonable efforts to provide services, the judge noted the Division's referrals for substance abuse treatment, for mental health treatment, for housing assistance, and for psychological evaluations. The judge, however, acknowledged that there was no specific training provided for Irene and Martin regarding Michael's diagnosis in August 2014. Nonetheless, the judge noted that both Division experts opined, even with training, Irene and Martin lacked the capacity to acquire the skills to effectively parent Michael.

In analyzing the fourth prong, whether termination will not do more harm than good, the judge also provided substantial weight to the Division's experts' opinions that Irene and Martin lacked the psychological capacity to parent and that there were few indicators of parent/child attachment. The judge held:

[i]t is clear, based on the evaluations of the experts, that neither parent is able to provide this safe, stable environment and address the needs of these children. It [is] also clear that the children would not – [] be harmed if termination of parental rights occurred. In fact, they may not even notice that it has occurred.

On appeal, we owe deference to the trial judge's decision, "because [she] possesses special expertise in matters related to the family." N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012). Additionally, the judge has the ability "to make first-hand credibility determinations about the witnesses who appear on the stand; [the judge] has a feel of the case that can never be realized by a review of the cold record." N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014) (citation and internal quotation marks omitted). We will not interfere unless the judge's findings are not supported by substantial credible evidence and are "so 'wide of the mark' that our intervention is necessary to correct an injustice." F.M., supra, 211 N.J. at 448-49 (citations omitted). Here, after reviewing the

record, we conclude the judge's factual findings are fully supported and, in light of those facts, her legal conclusions are unassailable.

Unfortunately, Irene and Martin are not able to provide their children with a safe and stable home environment. The children were removed at birth and have resided in resource homes for all of their relatively short lives. In consideration of their best interests, we conclude that the judgment of guardianship was appropriate, as the children are entitled to the care and stability that adoption will provide.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION