

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-5165-14T2
A-5169-14T2

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

J.A. and M.P.,

Defendants-Appellants.

IN THE MATTER OF THE GUARDIANSHIP OF
F.A.P. and A.A.P.,

Minors.

Submitted February 14, 2017 – Decided March 7, 2017

Before Judges Yannotti, Fasciale and Gilson.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Morris County,
Docket No. FG-14-31-14.

Joseph E. Krakora, Public Defender, attorney
for appellant J.A. (Daniel DiLella, Designated
Counsel, on the briefs).

Joseph E. Krakora, Public Defender, attorney for appellant M.P. (Robert W. Ratish, Designated Counsel, on the briefs).

Christopher S. Porrino, Attorney General, attorney for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Michelle McBrian, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Elahna Strom Weinflash, Assistant Deputy Public Defender, on the brief).

PER CURIAM

J.A. and M.P. appeal from a judgment entered by the Family Part on June 30, 2015, which terminated their parental rights to their two minor children, F.A.P. and A.A.P. We have consolidated the appeals. For the reasons that follow, we affirm.

I.

J.A. and M.P. are the biological parents of F.A.P., who was born in July 2008, and A.A.P., who was born in June 2010. The Division of Child Protection and Permanency (Division) first became involved with the family in June 2011, when it received a report that F.A.P. was found alone outside the family residence. The Division implemented a safety protection plan and provided the family with services.

The Division thereafter became concerned about M.P.'s limited understanding of F.A.P.'s asthma; F.A.P.'s severe behavioral

problems; M.P.'s cognitive limitations, which affected her ability to parent the children; M.P.'s reported physical abuse of the children; J.A.'s consumption of alcohol and cocaine; and the reported physical and verbal violence in the home. In September 2012, J.A. was arrested after he sexually assaulted his mother.

The Division's worker spoke with family members and learned that J.A. had been regularly consuming alcohol and ingesting cocaine to the point of intoxication. The family members disclosed that when he was intoxicated, J.A. physically abused M.P., and regularly struck the children. J.A.'s mother described the sexual assault.

The Division removed the children on an emergency basis, and placed them in a resource home. After a few months, the resource parents asked the Division to remove the children due to F.A.P.'s disruptive behavior. In January 2013, the Division placed the children in another resource home, where they have remained since.

Thereafter, the Division provided J.A. and M.P. a variety of services with the goal of reunification. The services provided included substance abuse evaluations and treatment for J.A.; individual therapy and parenting-skills training; domestic violence education and counseling for M.P.; and psychological evaluations.

In November 2013, J.A. reported to the Division that he had relapsed. He admitted that he had been drinking alcohol, and his family was aware of the relapse. The Division's caseworker spoke with J.A. and he stated he would do whatever was necessary to regain custody of the children. However, when the caseworker explained that he would likely recommend an out-patient substance abuse program, J.A. said he would not be able to attend because he has to support the family.

The Division then changed its permanency plan to termination of parental rights followed by adoption. In January 2014, the court approved the plan.

In February 2014, the Division filed a verified complaint to terminate J.A. and M.P.'s parental rights and award the Division guardianship of the children. Judge Peter A. Bogaard later conducted a twelve-day trial in the matter.

At the trial, the Division presented testimony from Dr. Antonio Burr, a psychologist; one of the foster parents; Nichole Neal, a supervisor for family services in the Division; and Maria Ramos, a Division caseworker. The Law Guardian presented testimony from the Executive Director at Celebrate the Children, a State-approved private school for the disabled; and Dr. John Quintana, a psychologist.

J.A. testified and presented testimony from Dr. Barry Katz,

a psychologist; a volunteer from Alcoholics Anonymous (AA); various relatives, including his father, mother, aunts, and sisters; his employer; and a proposed babysitter. M.P. did not testify; however, she presented testimony from Dr. Melissa Rivera Marano, a psychologist; Jacqueline Aviles, a medical social worker clinician at Kid Connection; Rita Marks, a supervised visitation worker at Family Intervention Services; a babysitter; and her employer.

On April 30, 2015, after hearing summations by counsel, the judge placed an oral decision on the record, finding that the Division had established, by clear and convincing evidence, the four criteria of the best-interests-of-the-child standard in N.J.S.A. 30:4C-15.1(a). The judge memorialized his decision in a judgment filed on June 30, 2015.

Thereafter, J.A. and M.P. filed notices of appeal. On July 23, 2015, we consolidated the appeals. Judge Bogaard later filed a lengthy written opinion pursuant to Rule 2:5-1(b), amplifying the reasons for his decision.

II.

On appeal, J.A. and M.P. argue that the Division failed to establish the four criteria for termination of their parental rights in N.J.S.A. 30:4C-15.1(a) with clear and convincing evidence. The Division and the Law Guardian disagree and argue

that the trial court's judgment should be affirmed.¹

The best interests standard balances a parent's right to enjoy a relationship with his or her child, and the State's interest in protecting the welfare of children. In re Guardianship of K.H.O., 161 N.J. 337, 346-47 (1999). The four criteria that make up the best interests standard were established in New Jersey Division of Youth & Family Services v. A.W., 103 N.J. 591, 603-04 (1986), and thereafter codified in N.J.S.A. 30:4C-15.1(a). "The four criteria enumerated in the best interests standard are not discrete and separate; they relate to and overlap with one another to provide a comprehensive standard that identifies a child's best interests." K.H.O., supra, 161 N.J. at 348.

The scope of our review of the trial court's findings of fact is well established. The trial court's factual findings will be sustained on appeal as long as "they are supported by 'adequate, substantial and credible evidence' on the record." N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (quoting

¹ We note that at trial, the Law Guardian advocated for kinship legal guardianship (KLG) for F.A.P., based on F.A.P.'s wishes and the recommendation of an evaluator. The court found that KLG was not a legally-viable option, and it would also be inappropriate. On appeal, the Law Guardian represents that F.A.P.'s wishes have changed, and the Law Guardian now seeks affirmance of the court's judgment terminating J.A. and M.P.'s parental rights as to both children.

In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)).

Furthermore, our deference to the trial court's findings of fact is "especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" Cesare v. Cesare, 154 N.J. 394, 412 (1998) (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). We also give considerable deference to the factual findings of the Family Part, due to that court's "special jurisdiction and expertise in family matters." Id. at 413.

A. First Prong

Prong one of the best interests standard requires the Division to establish that "[t]he child's safety, health or development has been or will continue to be endangered by the parental relationship[.]" N.J.S.A. 30:4C-15.1(a)(1). To satisfy this element of the best interests standard, the Division must show that the parental relationship harmed the child's health, safety, or development, and the parental relationship will likely have a continuing deleterious effect on the child. K.H.O., supra, 161 N.J. at 347.

On appeal, J.A. notes that the Division's initial goal was reunification. He argues that when the Division recommended reunification, it was aware of his alcoholism, violent behavior,

and his attempt to rape his mother. He asserts that the Division only used those facts against him after he relapsed. J.A. contends that the judge erred by finding that he drank himself to unconsciousness on weekends. J.A. points out that he worked until the mornings on weekends and his employer only saw him drunk one time. J.A. also denies that A.A.P. was harmed when the child witnessed the attempted rape of his grandmother.

In her appeal, M.P. argues that she did not harm the children. M.P. asserts that she attended services and gained insight into her problems. She admits she has cognitive limitations, but asserts that they do not pose a threat to the children. She also claims that J.A. understood her limitations and the children's needs, and he was prepared to help comply with the parenting plan. M.P. acknowledges that she needs assistance in caring for the children, but argues that this is not a sufficient justification to terminate parental rights.

Here, the judge found that while they were in J.A. and M.P.'s care, the children were exposed to J.A.'s violent alcohol and cocaine-fueled attacks upon M.P. The children also were exposed to adult sexual acts, and subjected to inappropriate corporal discipline. The judge found that J.A. would drink on weekends to the point of blacking out, and his "reign of terror" only came to an end when he was arrested after attempting to rape his own

mother. The children also suffered from J.A.'s lack of attention to their medical and educational needs.

The judge noted that J.A. recognized M.P.'s parenting deficits, but still left the children in her care. F.A.P. also was hospitalized due in part to M.P.'s failure to understand how to administer the medications he required for his asthma. She also lacked the "internal resources" to ask for help. In addition, M.P. allowed F.A.P. to leave the home unsupervised when he was at the tender age of three years old.

There is sufficient credible evidence in the record to support the court's findings. J.A. and M.P.'s contentions that the children were not harmed by their relationships with them is without sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E). As Judge Bogaard determined, the evidence clearly and convincingly showed that the children's safety, health, and development had been harmed by their relationships with J.A. and M.P.

B. Prong Two

The second prong of the best interests standard requires the Division to establish that "[t]he 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." N.J.S.A. 30:4C-

15.1(a)(2). This prong may be satisfied in part by evidence that the child will suffer "serious and enduring emotional or psychological harm" if the child is separated from his resource parents. Ibid.

The second prong is aimed at determining whether the parent has cured or overcome the initial harm that endangered the health, safety, or welfare of the child. K.H.O., supra, 161 N.J. at 348. It "may be met by indications of parental dereliction and irresponsibility, such as . . . the inability to provide a stable and protective home[.]" Id. at 353. Furthermore, this part of the test can be satisfied "if there is clear and convincing evidence that the child will suffer substantially from a lack of stability and a permanent placement and from the disruption of [his or] her bond with foster parents[.]" Id. at 363.

On appeal, J.A. argues that he is able and willing to eliminate any harm to the children, which he claims is shown by the fact that he remained sober for one year prior to the trial. He asserts the judge erred by relying upon his failure to attend the AA meetings that he was instructed to attend. He maintains that some of the experts noted that relapse is something generally acknowledged during the recovery process for "addicts."

J.A. further argues that there is no evidence of any domestic abuse for more than a year before the trial, and he claims this

is further evidence that he has ceased inflicting harm upon the children. He also takes issue with the trial court's finding that he could not take care of F.A.P. He asserts the expert testimony shows that he understands what the children need, and he contends he could manage F.A.P.'s atypical behaviors. J.A. notes that, until he relapsed in November 2013, the Division supported reunification because he had demonstrated sobriety up until that point.

M.P. argues that the judge erred by finding that she is not able or willing to eliminate any harm to the children. She contends the judge erroneously found that she was incapable of performing complex parenting tasks, and did not have the ability to understand the children's needs or know when to ask for help. She contends the judge erred by finding that she was not able to protect the children from J.A.

M.P. further argues that the Division was committed to reunification until J.A. relapsed. Citing Aviles' testimony, M.P. asserts that relapse is "a part of recovery." M.P. states that she should not be faulted for believing that J.A. showed progress. She contends she was an active participant in services and demonstrated a willingness to do what is required in order to regain custody of the children.

M.P. also asserts that she has gained an understanding of

"the detrimental nature" of the "past family secrecy" regarding J.A.'s drinking and dysfunctional behaviors. M.P. contends she showed she is willing and able to address the circumstances that led to the children's removal in the parenting plan that she and J.A. submitted.

We are not persuaded by these arguments. Here, the judge found that, although he had completed numerous services, J.A. "failed to internalize and prioritize the importance of his sobriety," as shown by his "lack of commitment to attend the recommended relapse prevention program." The judge noted that J.A. has provided "a multitude of reasons" why he relapsed, claiming it was due to depression, loneliness, and fear he would not get his children back.

One month before his reported relapse, J.A. told Dr. Burr that he understood the importance of sobriety. M.P. also was told that she should immediately notify the Division if J.A. relapsed. Even so, neither parent immediately contacted the Division, and J.A. waited until his first unsupervised visit with the children was scheduled before reporting the relapse.

The judge noted that, after he relapsed, J.A. "said the right things and professed to want more intensive substance abuse treatment," but when he was told to immediately attend a substance abuse program, he said he could not do so because he had to work.

The judge pointed out that J.A. had lied about the extent of his relapse, and failed to mention that he drank vodka at work. J.A.'s own expert noted that J.A. needed additional services and treatment, and reunification at that time was premature.

In addition, the judge found that J.A. had not formulated an appropriate plan on how to address F.A.P.'s needs. J.A. understood the importance of this task but was unable or unwilling to perform it. The judge noted that despite being present during the trial, and hearing the testimony about F.A.P.'s therapies, J.A. could not articulate "in any meaningful" way the services that F.A.P. was receiving or why they were being provided.

Regarding M.P., the judge found that the evidence showed that, despite the "vast number of interventions" that had been provided to her, M.P. lacked the capacity to perform the more complex tasks involved in parenting the children. She does not understand the children's needs, or know when to ask for help. M.P. has learned some "concrete tasks with respect to parenting," but she was not consistently able to put them into practice.

The judge also found that M.P. had not been protective of the children. After J.A. attempted to rape his mother, M.P. was furious with J.A.'s mother for reporting the assault to the police. M.P. believed the "problem" could have been "handled by the family." The judge noted that this was the same sort of excuse that M.P.

gave for failing to disclose J.A.'s relapse in November 2013. The judge found that if reunified with the children, M.P. would continue to place J.A. before the needs and safety of the children.

The judge further found that neither parent understood the parenting plan that their attorneys had put forth. J.A. and M.P. could not provide any details regarding the services or treatment the children need, and they did not comprehend the "time and energy" required to ensure that the children's needs are met. The judge found, "[t]he family also lacks any adequate supports to make up for the deficits in the parents."

The judge noted that both children had bonded with their foster parents, and the experts agreed that A.A.P.'s bond with the foster parents was stronger than that of F.A.P. The judge stated that Dr. Burr and Dr. Quintana had agreed that J.A. and M.P. lack the ability to mitigate the harm that would result if the children are separated from their foster parents.

There is sufficient credible evidence in the record to support the judge's factual findings. The record supports the judge's conclusion that the Division established the second prong of N.J.S.A. 30:4C-15.1(a) with clear and convincing evidence. J.A. and M.P.'s contentions that the evidence shows they are able and willing to eliminate the harm to the children are without sufficient merit to warrant further comment. R. 2:11-3(e)(1)(E).

C. Prong Three

The third prong of the test for termination of parental rights requires the Division to establish that it "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 the termination of parental rights[.]" N.J.S.A. 30:4C-15.1(a)(3). "[A]n evaluation of the efforts undertaken by [the Division] to reunite a particular family must be done on an individualized basis." In re Guardianship of DMH, 161 N.J. 365, 390 (1999). The reasonableness of the Division's efforts are "not measured by their success." Id. at 393.

On appeal, J.A. argues that the Division's efforts were not reasonable. He contends that before he self-reported his relapse in November 2013, it was obvious that he was relapsing. He contends the Division should have taken concrete action at that point to address his substance abuse, including requiring additional urine screens, asking intense questions, providing substance abuse counseling, and making random visits to the home. He asserts that the Division's workers were aware of his potential for relapse, but "did nothing, except ignore the obvious signs of relapse."

In her appeal, M.P. argues that because the children were placed in an English-speaking foster home, she and J.A. had a

disadvantage in maintaining bonds with them. She asserts that the Division should have considered the paternal grandfather as a potential placement for the children. She also contends the court should have considered a KLG for F.A.P. so that he could maintain the relationship with his parents. She claims that adoption of F.A.P. is not feasible without placing the child at extreme risk of emotional harm.

In his written opinion, Judge Bogaard noted that the Division "provided countless services to the family" as described throughout the opinion. The judge observed, "[t]here was no service recommended by a provider or asked for by the parents that was not provided to the parents or the children."

The judge stated that the Division had also considered alternatives to termination of parental rights by extending the permanency goal of reunification twice, which provided the parents additional time in which to address their parenting issues. The Division also assessed numerous relatives, all of whom were ruled out.

In addition, the judge stated that adoption of A.A.P. and KLG for F.A.P. was not appropriate. The judge noted the difficulties that KLG would present since J.A. and M.P. had shown no insight into how their behavior affects the children, and they were "singular" in their insistence that the children should be returned

to them. The judge found that KLG also would not provide F.A.P. the permanency he needs, and it would separate the children who should remain together.

There is sufficient credible evidence in the record to support the judge's findings of fact. The record supports the judge's conclusion that the Division has established prong three with clear and convincing evidence.

We reject J.A.'s contention that the Division failed to take concrete actions to address his substance abuse. The Division's efforts in this regard were reasonable, as the judge found. We also reject M.P.'s contention that the Division acted unreasonably by placing the children in an English-speaking resource home. The record shows that initially, the Division placed the children in a home where Spanish was spoken, but the foster parents asked the Division to remove the children due to F.A.P.'s disruptive behavior.

There also is no merit to M.P.'s contention that the court erred by failing to consider placement of the children with the paternal grandfather. The grandfather's trial testimony showed that he did not fully understand J.A.'s substance abuse problem or the harm it caused the children. Furthermore, Dr. Burr testified that the grandfather did not understand the children's special needs. Dr. Burr opined that the grandfather was incapable of caring

for the children on his own, and he was "not an appropriate permanency resource for the children from a developmental standpoint."

In addition, the record does not support M.P.'s contention that the judge erred by failing to consider KLG for F.A.P. As the judge found, the foster parents are willing to adopt both children. Where, as here, adoption is feasible, KLG is not a defense to termination of parental rights. N.J. Div. of Youth & Family Servs. v. P.P., 180 N.J. 494, 509 (2004). M.P.'s contention that adoption is not feasible in this matter is not supported by the record.

D. Prong Four

The fourth prong requires the Division to show that termination of parental rights will not do more harm than good. N.J.S.A. 30:4C-15.1(a)(4). "Inherent in the fourth [prong] is that a child has a 'paramount need for a permanent and defined parent-child relationship' . . . as well as a deep need for a nurturing adult, commonly termed the 'psychological parent.'" N.J. Div. of Youth & Family Servs. v. C.S., 367 N.J. Super. 76, 119 (App. Div.) (quoting In re Guardianship of J.C., 129 N.J. 1, 26 (1992)), certif. denied, 180 N.J. 456 (2004).

When a parent has harmed a child through abuse or neglect and is unable to remediate the danger to the child, and when the child has bonded with foster parents who have provided a safe and

nurturing home, termination of parental rights likely will not do more harm than good. N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 108 (2008). "The 'good' done to a child in such cases in which reunification is improbable is permanent placement with a loving family[.]" Ibid.

Here, J.A. argues that the court's findings on this prong are not supported by the expert testimony. He asserts that the experts who testified each recommended something different for the children. J.A. states that the experts generally agreed the children should maintain some type of relationship with their parents, that they should remain together, and J.A.'s sobriety was the key to the case. J.A. maintains the critical fact is that he has been drug and alcohol free for over a year.

M.P. argues that the bonding evaluations showed that the children have a close connection to her and J.A. She contends she improved her parenting skills and had positive visits with the children. M.P. asserts that the Law Guardian's expert, Dr. Quintana, found that separating F.A.P. from his parents would cause him "enduring emotional turmoil."

M.P. also contends the foster parents are no better equipped to manage F.A.P.'s behavioral problems than she and J.A. She asserts that although one expert testified that she required support in parenting, this does not justify termination of her

parental rights. Many parents, she asserts, require some level of support in parenting.

There is sufficient credible evidence in the record to support the judge's finding that termination of J.A. and M.P.'s parental rights will not do more harm than good. The record supports the court's determination that the Division had established the fourth prong with clear and convincing evidence. We reject J.A. and M.P.'s contention that the expert testimony does not support the court's findings. Here, the trial judge assessed the testimony of the experts, and found Dr. Burr's testimony to be credible. Dr. Burr's testimony supports the court's conclusion that, upon consideration of all of the evidence, termination of J.A. and M.P.'s parental rights will not do more harm than good, and would be in the children's best interests. Our deference to the trial court's credibility findings is warranted here, where the judge had the opportunity to see and observe the witnesses and hear their testimony. Cesare, supra, 154 N.J. at 412.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION