RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0686-16T4
A-0687-16T4

NEW JERSEY DIVISON OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

T.R. and S.T.,

Defendants-Appellants.

IN THE MATTER OF THE GUARDIANSHIP OF I.T.,

a Minor.

Argued February 6, 2018 – Decided February 16, 2018

Before Judges Fasciale, Sumners and Moynihan.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Cape May County, Docket No. FG-05-0004-16.

Mary Potter, Designated Counsel, argued the cause for appellant T.R. (Joseph E. Krakora, Public Defender, attorney; Mary Potter, on the brief).

James D. O'Kelly, Designated Counsel, argued the cause for appellant S.T. (Joseph E. Krakora, Public Defender, attorney; James D. O'Kelly, on the briefs).

Jennifer Russo-Belles, Deputy Attorney General, argued the cause for respondent (Gurbir S. Grewal, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Jennifer Russo-Belles, on the brief).

Joseph H. Ruiz, Designated Counsel, argued the cause for minor (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Joseph H. Ruiz, on the brief).

PER CURIAM

In these consolidated appeals, T.R. (the mother) and S.T. (the father) (collectively defendants) appeal from a September 29, 2016 order terminating their parental relationship to I.T. (the child) born in 2012. We affirm.

On appeal, the mother argues primarily that the judge erred by suspending visitation with the child, which she maintains deprived her of a fair trial. She also contends that the Division of Child Protection and Permanency (the Division) failed to prove each prong of the best interests of the child standard under N.J.S.A. 30:4C-15.1(a). We conclude the suspension was in the best interests of the child, and that the Division produced sufficient proof on all four prongs.

On appeal, the father argues the Division relied on hearsay evidence as to the first two prongs of the test, and otherwise failed to prove those prongs of the test. We are satisfied that there exists sufficient evidence as to all four prongs, and that the hearsay argument is without merit.

In reviewing a decision by a trial court to terminate parental rights, we give "deference to family court factfinding" because of "the family courts' special jurisdiction and expertise in family matters." Cesare v. Cesare, 154 N.J. 394, 413 (1998). The judge's findings of fact are not disturbed unless they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Id. at 412 (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). "[T]he conclusions that logically flow from those findings of fact are, likewise, entitled to deferential consideration upon appellate review." N.J. Div. of Youth & Family Servs. v. R.L., 388 N.J. Super. 81, 89 (App. Div. 2006).

Here, the judge carefully reviewed the evidence presented, and thereafter concluded that the Division met, by clear and convincing evidence, all of the legal requirements for a judgment of guardianship. His opinion tracks the statutory requirements of N.J.S.A. 30:4C-15.1(a), accords with In re Guardianship of

K.H.O., 161 N.J. 337 (1999), In re Guardianship of DMH, 161 N.J. 365 (1999), and N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420 (2012), and is supported by substantial and credible evidence in the record. We therefore affirm substantially for the reasons that the judge expressed in his comprehensive and well-reasoned opinion. We add the following remarks as to each prong.

On the first prong, the judge stated that the father

> continues to have unresolved mental health and substance abuse issues and basic legal and lifestyle issues [from which I] conclude inescapably that [the child's] health and safety will continue to be endangered by the parental relationship. He's never really acted as a parent to [the child]. He attended visits but he really didn't avail himself of the other services. He failed to attend two psychological and bonding evaluations that were scheduled for his benefit in the context of this litigation.
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> He expressed no plan, whatsoever, for the care of himself, if and when he's released from incarceration, let alone the child.
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> His legal history alone, specifically, his history of incarceration renders it highly doubtful that he'll be at his liberty for any significant period of time to be physically available to take care of [the child], given his inability and unwillingness to perform even the most basic of parental functions. It is clear that continuing his relationship with the child will continue to cause harm and endanger [the child's] safety and welfare.

As to prong two, the judge found that the father was mostly non-compliant with services, was unable to stay out of jail, had

unresolved substance abuse and mental health issues, and that further delay of permanency would add to the child's risk of harm.

As to the third prong, the judge found that although the father complied with some of the services offered,

> he is still, basically, non-compliant. Although, he did visit, he did little else. He failed to show to his psychological and bonding evaluation, probably, the most important service at this particular point to his maintaining a relationship with the child.

The judge found the Division correctly considered and ruled out potential placement options for the child. The mother's aunt ruled herself out after realizing that the mother would not be living with her to help take care of the child. The mother's cousin and his girlfriend, and the father's aunt, were not interested in participating.

On prong four, the judge found that termination of the father's parental rights would not do more harm than good. The judge referenced the child's bond with her resource parent and the lack of testimony that she would suffer harm if her relationship with the father terminated.

As to the mother, the judge found the Division proved prong one. The judge stated that her "fundamental lack of insight or inability or unwillingness to take responsibility is a major theme of this case." The judge relied on testimony from the Division's

expert clinical psychologist, James Loving. The judge also determined that unacceptable environmental conditions and the mother's relationship with the father constituted significant dangers to the child.

As to the second prong, the judge found, based on Loving's testimony, that the mother was unwilling or unable to eliminate the harm she posed to the child. The judge explained that "[Loving] sees little hope of change. And I find that there's little hope of change. . . . In the words of Dr. Loving[:] . . . 'She just doesn't get it and she's not going to get it anytime soon. These behaviors are [deep-seated] and long[-]standing.'"

As to the third prong, the judge concluded that the Division provided the mother with extensive counseling, which did no good. The judge added that she lacked the "fundamental ability to recognize dangerous situations for children . . . be it in the form of bad men or a bad home environment. . . . And that's not going to change regardless of what services have been offered or will be offered." In addition, the judge concluded that the Division considered alternative placements and the resource parent was willing to adopt.

As to the fourth prong, in concluding that termination would not do more harm than good, the judge noted that separation had already occurred "due, in large part, to my order in August of

2015." The judge stated:

> [T]his is a mother who did not know how to protect and take care of this child. And a termination of parental rights will bring significant good to [the child] because she will be freed up for adoption, hopefully, by this resource parent. But, if not, by some suitable parent at some particular point.

After the Division rested, the father objected to the admission of medical records containing diagnoses of his medical conditions because no expert testified regarding the diagnoses. The judge ruled that the records were admissible but that he would disregard any referenced hearsay. The judge reiterated this point at the beginning of his decision stating:

> Moved and admitted into evidence were P-1 through P-27, and they've been reviewed by the [c]ourt. Those exhibits were the subject of certain defense objections, which I overruled, but, I also indicated that to the extent those exhibits may include impermissible hearsay or irrelevant matters. And the objection was, basically, hearsay and relevance that I would disregard them, and I have.

The judge did not rely on any embedded hearsay in making his determination. From our review of the extensive record, we have no reason to believe that the judge failed to follow that express intention. Moreover, even disregarding the referenced hearsay, the Division produced sufficient proof to terminate the father's parental rights.

We now turn to the mother's contention that the suspension in visitation deprived her of a fair trial. She claims that the order suspending visitation "led directly to the termination" of her parental rights. The mother asserts that she was denied adequate notice and opportunity to be heard before the order was granted, and that judge relied on an unauthenticated letter that was "rife with embedded hearsay" in entering the order.

On August 15, 2015, L. Michelle Codington, director of Where Families Thrive and a therapist who evaluated the child, submitted a letter recommending that the child's visitation with the mother be suspended for six weeks because of the "ongoing signs of distress" surrounding their weekly visitations. On August 24, 2015, three days prior to the visitation hearing, Codington wrote another letter stating, in part:

> Resource parent described [the child's] behavior when it was time to go on her weekly visit on August 19 as unusually intense and concerning. [Resource parent] explained that [the child] literally screamed and wailed when she was put into the DCPP van, clutching at [resource parent's] arm in an attempt to pull her into the van.
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> . . . .
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> According to DCPP workers and three different resource homes, [the child] has consistently communicated that she does not wish to go on visits, both verbally and behaviorally. . . . Continuing to force her

> to engage in these visits only seems to exacerbate the trauma she has already endured.

Codington also reported that the mother kept telling the child that the resource parent's daughter was not her sister and that the resource family members were "strangers." Codington stated that the bond the child had with her resource family was "particularly significant, considering the major trust issues [the child] had with adults a few short months ago." Thus, it was her "strong recommendation that weekly visits be temporarily suspended."

The day after the guardianship complaint was filed, August 26, 2015, the judge conducted a hearing. Defendants objected to the suspension of visitation with the mother. In suspending visitation, the judge stated:

> I can't ignore it when I'm supplied information like this . . . which . . . indicates again, that it is this clinician's strong recommendation that weekly visits be temporarily suspended for a minimum of six weeks, at which time, [the child's] readiness for contact can be reassessed.
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> . . . .
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> I can't ignore a recommendation like that, and I don't want to . . . .
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> But there's something there that was written by a therapist that says that the child's struggling, and she's struggling around the visits.

At the next hearing date on September 23, 2015, the judge continued the suspended visitation until a new bonding evaluation in two months' time. His determination was based on a new submission by Codington recommending that visitation be discontinued indefinitely.

On January 6, 2016, the judge continued the visitation suspension because the monthly reports submitted by Codington continued to support the conclusion that the visitations would "cause the child significant discomfort and significant, in the [judge's] view, harm."

In his termination decision, the judge commented further on his cessation of visitation order:

> [T]hat the cessation of the . . . visits was in the child's best interest, I guess, is perhaps, 20/20 hindsight. And it's one of the things in this case that bothered me at the time and one of the things that I thought about in preparing this decision. And I know at the time that I was doing it that it would impact [the mother's] ability to reunify with the child . . . . And I, also, knew at the time that it could very well impact any expert's ability to perform an effective bonding evaluation.
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> However, I would make that order, again, today and I stand by that order. I was presented with reports of [the child] acting out and experiencing stress around those visits.

"[C]hildren . . . have the right to visit with their parents

after they have been removed from the parent's home." S.M. v. K.M., 433 N.J. Super. 552, 558 (App. Div. 2013). This is true even if the child verbalizes a desire not to see the parent. Ibid. Generally, "[t]he denial of visitation rights is such an extraordinary proscription that it should be invoked only in those exceptional cases where it clearly and convincingly appears that . . . visitation will cause physical or emotional harm to the children or where it is demonstrated that the parent is unfit." V.C. v. M.J.B., 163 N.J. 200, 229 (first alteration in original) (quoting Barron v. Barron, 184 N.J. Super. 297, 303 (Ch. Div. 1982)). Thus, in order to deny visitation, "the Division is required to show that visitation would be inconsistent 'with the health, safety, and physical and psychological welfare of the child' and is inappropriate 'to the individual circumstances of the child's physical or mental development.'" In re D.C., 203 N.J. 545, 565 (2010) (quoting N.J.S.A. 9:6B-4).

To determine whether visitation should be granted, the primary concern is the best interests of the child. Wilke v. Culp, 196 N.J. Super. 487, 497 (App. Div. 1984); Hallberg v. Hallberg, 113 N.J. Super. 205, 209 (App. Div. 1971). "The preference of the child is only a factor to be given consideration, it is not determinative." Wilke, 196 N.J. Super. at 498.

Here, the court was presented with evidence that visitation

with the mother would cause the child significant harm and would not be in the child's best interests. The mother did not offer evidence to challenge that conclusion, or that the child's "psychological welfare" and "mental development" were at risk if visitation were suspended.

The mother contends that the judge's suspension of visitation warrants reversal of the guardianship determination because the suspension damaged the bond between her and the child and led directly to the termination holding. She claims that the judge relied on the diminished bond that flowed from the suspension of visitation in deciding to terminate her parental rights under the four-prong test.

After careful consideration of the record, defendants' remaining arguments are without sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(1)(E).

Affirmed.