

**RECORD IMPOUNDED**

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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-1021-16T2

NEW JERSEY DIVISION OF CHILD  
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

N.D.L.<sup>1</sup>

Defendant-Appellant.

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IN THE MATTER OF THE GUARDIANSHIP  
OF D.M.S., a minor.

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Submitted November 29, 2017 – Decided March 26, 2018

Before Judges Fuentes, Koblitz and Manahan.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Essex County,  
Docket No. FG-07-0174-16.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Ryan T. Clark, Designated  
Counsel, on the brief).

Christopher S. Porrino, Attorney General,  
attorney for respondent (Andrea M. Silkowitz,  
Assistant Attorney General, of counsel; Lara

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<sup>1</sup> We use initials to refer to adult litigants and a pseudonym to refer to a child to comply with Rule 1:38-3(d)(12).

J. Fogel, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (David Valentin, Assistant Deputy Public Defender, on the brief).

PER CURIAM

Defendant N.D.L. is the biological mother of D.M.S. (Donna), a child now ten years old. Defendant appeals from the order of guardianship entered by the Family Part terminating her parental rights to Donna.<sup>2</sup> Defendant argues the Division of Child Protection and Permanency (Division) did not present sufficient evidence to satisfy the criteria for termination of her parental rights under N.J.S.A. 30:4C-15.1(a). Defendant also claims she received ineffective assistance from her trial attorney. We reject these arguments and affirm.

After hearing the evidence presented by the Division over a period of three days, Judge Wayne J. Forrest concluded there was clear and convincing evidence warranting the termination of defendant's parental rights over Donna. Judge Forrest stated his factual findings and explained his conclusions of law in a

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<sup>2</sup> Donna's biological father, D.S., was initially named as a defendant in the guardianship complaint. While represented by independent counsel, D.S. executed an identified surrender of his paternal rights to the child's paternal grandmother. He is thus not a part of this appeal.

memorandum of opinion dated October 20, 2016. In lieu of restating the evidence presented at trial, we incorporate by reference Judge Forrest's comprehensive recitation of this evidence as described on pages four through twenty-two of his thirty-eight-page memorandum of opinion. We make only the following brief comments.

Defendant is currently thirty years old. She has had a total of four children, three boys and Donna. She was seventeen years old when she had her first child; eighteen when her second son was born; twenty when Donna was born; and twenty-four when she gave birth to her fourth child. Through the intervention of the Division, all three of her sons were removed from defendant's custody and care and placed with family members. In December 2014, the Division filed an Order to Show Cause and Verified Complaint in the Family Part under N.J.S.A. 9:6-4 and N.J.S.A. 30:4C-12, to obtain legal and physical custody of seven-year-old Donna and two of her brothers.

The court granted the Division's application. The judge found defendant physically abused and neglected her daughter. The judge accepted the results of the Division's investigation, including reports from the staff at Donna's school concerning the child's poor hygiene and soiled clothes that emitted a foul odor. The court expressed concerns about defendant's abuse of illicit drugs and defendant's lack of proper supervision over Donna and

her siblings. As result of the Division's timely intervention, the court placed Donna in the care and custody of her paternal grandmother where she has remained ever since.

At a fact-finding hearing held on March 16, 2015, the Family Part found, by a preponderance of the evidence, that the Division had proved defendant committed educational neglect by allowing Donna to be excessively truant and tardy at school. Although represented by counsel, defendant did not attend the fact-finding hearing. On November 19, 2015, the Family Part conducted a permanency hearing and approved the Division's plan to seek the termination of defendant's parental rights to Donna. The Division filed the guardianship action on January 14, 2016.

Judge Forrest presided over the guardianship trial over a three-day period ending on October 6, 2016. Defendant, again represented by counsel, attended only part of the proceedings of the first trial day. The Division presented expert testimony from psychologist Mark Singer, Ed. D. on the issue of bonding. Two Division caseworkers testified about the child's progress while under the care of her paternal grandmother. Defendant did not testify or call any witnesses.

Judge Forrest's comprehensive memorandum of opinion reviewed the evidence presented by the Division and applied the relevant statutory standard under N.J.S.A. 30:4C-15.1(a). He found, by

clear and convincing evidence, that termination of defendant's parental rights was in Donna's best interest. In reviewing a trial court's order terminating parental rights, we are bound to uphold the court's factual findings that are supported by adequate, substantial, and credible evidence. N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008). We discern no legal basis to disturb Judge Forrest's factual findings.

We are equally impressed with Judge Forrest's legal analysis as reflected on pages twenty-six to thirty-seven of his memorandum of opinion. The record shows Donna will receive the permanency and stability she deserves only after defendant's parental rights are terminated and she is permanently placed with her paternal grandmother, with whom she has resided for the past several years.

Finally, we address defendant's claim of ineffective assistance of trial counsel. In N.J. Div. of Youth & Family Services v. B.R., 192 N.J. 301, 305-07 (2007), our Supreme Court adopted the two-prong standard established in Strickland v. Washington, 466 U.S. 668 (1984) and State v. Fritz, 105 N.J. 42 (1987), for determining ineffective assistance of counsel in criminal cases to litigants who claim they have been denied the right to counsel in termination of parental rights cases. A defendant alleging ineffective assistance of counsel must prove:

(1) counsel's performance must be objectively deficient - i.e., it must fall outside the broad range of professionally acceptable performance; and

(2) counsel's deficient performance must prejudice the defense - i.e., there must be "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

[B.R., 192 N.J. at 307 (quoting Strickland, 466 U.S. at 694).]

Here, in her appellate brief, defendant claims the Division records admitted at trial incorrectly described her history of interactions with the Division and Donna, and wrongfully labels her as being addicted to drugs. Appellate counsel lists eight separate factual allegations that purportedly contradict the Division's evidence and are "favorable" to defendant. Appellate counsel claims that "trial counsel did not bring up any of these facts at trial, or cite to the Division's own exhibits when addressing the court[.]"

Defendant's claim of ineffective assistance of trial counsel lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Even assuming that trial counsel's failure to bring this list of "facts" to the trial judge's attention satisfies the first prong under Strickland, defendant cannot overcome the mountain of evidence proving, by clear and convincing evidence, that termination of her parental rights to Donna is

clearly in the child's best interest. We affirm the judgment of guardianship substantially for the reasons expressed by Judge Forrest in his memorandum of opinion.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION