SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1196-16T4

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

H.T.,

Defendant,

and

M.D.,

Defendant-Appellant.

IN THE MATTER OF THE GUARDIANSHIP OF J.D. and G.D., minors.

Submitted April 12, 2018 – Decided May 7, 2018

Before Judges Simonelli and Rothstadt.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FG-02-0068-15.

Joseph E. Krakora, Public Defender, attorney for appellant (Albert M. Afonso, Designated Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Jason W. Rockwell, Assistant Attorney General, of counsel; David G. Futterman, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Todd Wilson, Designated Counsel, on the brief).

PER CURIAM

Defendant M.D.[1] appeals from the Family Part's November 7, 2016 judgment of guardianship terminating his parental rights to his children, J.D., born April 2014, and G.D., born August 2015. Defendant contends that the plaintiff, Division of Child Protection and Permanency (Division), failed to prove the second and fourth prongs of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence. We find no merit to defendant's arguments and affirm substantially for the reasons stated by Judge William R. DeLorenzo in his comprehensive written decision, also dated November 7, 2016.

In his thorough eighty-two page decision, Judge DeLorenzo found the Division demonstrated, through the submission of clear and convincing evidence, that all four prongs supported termination of defendant's parental rights. Because the judge's

[1] Pursuant to Rule 1:38-3(d), we use initials to protect the confidentiality of the participants in these proceedings.

findings were supported by evidence the judge found credible, we are obligated to defer to his findings. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012).

The pertinent findings of fact were set forth in detail in Judge DeLorenzo's decision and need not be repeated here at length. They are summarized as follows. Defendant and H.T.[2] are J.D.'s and G.D.'s parents. Other than for a brief period after J.D.'s birth, neither child has ever been in defendant's custody or care, primarily due to his long standing mental health and substance abuse issues, criminal and domestic violence history, and failure to adequately attempt to address any of his problems.

Psychological evaluations revealed that defendant had a history of depression and that he needed to participate in therapy, substance abuse treatment, domestic violence counseling and parenting classes. He suffered from anxiety and experienced major bouts of depression.[3] Specifically, defendant has been diagnosed

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[2] H.T. has not appealed from the Family Part's guardianship judgment terminating her parental rights and has not participated in this appeal.

[3] His mental health history included a September 2012 hospitalization after he attempted to commit suicide. While hospitalized he tested positive for cocaine and benzodiazepine and confirmed that he drank beer and used various controlled substances including marijuana, cocaine and various medications that had been prescribed for H.T.

with alcohol dependence, depressive disorder, anxiety disorder, and a personality disorder with borderline narcissistic features.

Based upon defendant's mental health and substance abuse issues, which he tended to minimize and not seek treatment for, that caused him to act out in an aggressive manner, defendant was never a candidate for parenting his children. The uncontroverted expert testimony suggested that the children's placement with defendant could not even be considered until he participated in counselling and therapy for at least one year to eighteen months. Despite that recommendation, defendant did not fully participate in any services and only visited with his children on an inconsistent basis throughout the guardianship litigation.

Because defendant never had any meaningful parental relationship with his children, a bonding evaluation was never performed. According to the Division's psychologist, it was unlikely any attachment or bond existed beyond defendant's children considering him no more than a visitor rather than a caregiver or parent.

At the guardianship trial, the Division presented as witnesses its caseworkers and psychologist. Defendant did not testify or present any witnesses. After considering the evidence adduced at trial, Judge DeLorenzo issued a written decision setting forth his reasons for terminating defendant's parental rights.

The judge made detailed credibility findings and determined that the Division proved by clear and convincing evidence all four prongs of the best interest test set forth in N.J.S.A. 30:4C-15.1(a). As to the first prong, the judge cited to defendant's history of substance abuse and psychiatric issues, arrests, lack of progress in services designed to address his issues and his lack of employment as endangering his children.

Turning to the second prong, Judge DeLorenzo found that defendant was unwilling or unable to address his issues as demonstrated by his inability to provide his children with a safe and stable home, failure to complete services intended to help him reunify with his children, and lack of sobriety. Specifically, Judge DeLorenzo found that defendant failed to appear for several substance abuse evaluations that the Division scheduled for him, that after attempting suicide, he tested positive for cocaine and marijuana while he was hospitalized and that he also "reported to the hospital that he was drinking between six (6) and ten (10) beers daily, and . . . taking . . . Klonopin" prescribed for H.T. The judge observed that despite receiving recommendations from two different doctors that he "attend weekly psychotherapy" defendant "ha[d] yet to engage in such treatment on a consistent basis[.]" He also relied upon expert testimony that it would take at least

eighteen months of therapy and sobriety before defendant could be considered as a viable parent for his children.

Addressing the third prong, the judge found that the Division made reasonable efforts by providing numerous services to defendant and properly considering alternatives to the termination of his parental rights. The judge delineated the services provided and the relatives considered by the Division, but ruled out as possible caregivers for the children.

Finally, as to the fourth prong, Judge DeLorenzo found that termination of defendant's parental rights would not do more harm than good. The judge concluded that due to the risk of harm that defendant's mental health and substance abuse issues created for the children, his never having provided any care for his children for any meaningful duration, and the lack of any attachment between him and his children, the termination of his parental rights would not be of any consequence to the children. Relying on expert testimony, he explained that "the reason no bonding evaluations were conducted with regard to [the] children and [defendant] was because [defendant is] not fit to take care of [the children] at this time." The judge noted that the children "are situated in a committed, loving home, which is also dedicated to ensur[ing] their proper development and maintaining their relationship to their biological siblings." Defendant, on the other hand, "(1)

[does] not have a realistic plan for care of the [c]hildren; (2) [does] not have verifiable, full-time employment; (3) does not have independent, stable shelter; and (4) . . . has not engaged in therapy as recommended." This appeal followed.

We begin our review by acknowledging that parents have a constitutionally protected right to the care, custody and control of their children. Santosky v. Kramer, 455 U.S. 745, 753 (1982); In re Guardianship of K.H.O., 161 N.J. 337, 346 (1999). "The rights to conceive and to raise one's children have been deemed 'essential,' 'basic civil rights . . .' and 'rights far more precious . . . than property rights[.]'" Stanley v. Illinois, 405 U.S. 645, 651 (1972) (second alteration in original) (citations omitted). "[T]he preservation and strengthening of family life is a matter of public concern as being in the interests of the general welfare . . . ." N.J.S.A. 30:4C-1(a); K.H.O., 161 N.J. at 347.

The constitutional right to the parental relationship, however, is not absolute. N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 553 (2014). At times, a parent's interest must yield to the State's obligation to protect children from harm. See N.J. Div. of Youth & Family Servs. v. G.M., 198 N.J. 382, 397 (2009); see also In re Guardianship of J.C., 129 N.J. 1, 10 (1992). To effectuate these concerns, the Legislature created

a test for determining when a parent's rights must be terminated in the child's best interests. N.J.S.A. 30:4C-15.1(a) requires that the Division prove by clear and convincing evidence the following four prongs:

> (1) The child's safety, health, or development has been or will continue to be endangered by the parental relationship;
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> (2) The 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. . . .;
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> (3) The [D]ivision 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 termination of parental rights; and
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> (4) Termination of parental rights will not do more harm than good.

See also See also N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 604-10 (1986).

Based on our review of the record, we find that Judge DeLorenzo's conclusion that the Division proved all four prongs was supported by substantial credible evidence. See F.M., 211 N.J. at 448-49. We also conclude that defendant's appellate arguments "are without sufficient merit to warrant discussion in a written opinion[.]" R. 2:11-3(e)(1)(E). Suffice it to say that

although there are "very few scenarios in which comparative [bonding] evaluations" are not required, N.J. Div. of Youth & Family Servs. v. A.R., 405 N.J. Super. 418, 440 (App. Div. 2009), this case presents such a scenario. The argument that the fourth prong is satisfied here is not that the children would be harmed by losing their relationship with their resource parents, which plainly would require comparative evaluations. See J.C., 129 N.J. at 18. Rather, the harm posed is defendant's unfitness as a parent, irrespective of any attachment the children have to their resource family.

Affirmed.