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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1561-16T1

NEW JERSEY DIVISION OF CHILD  
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

H.B.,

Defendant-Appellant,

and

S.F.,

Defendant.

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IN THE MATTER OF THE GUARDIANSHIP  
OF T.R.B.,

Minor.

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Submitted December 14, 2017 – Decided January 16, 2018

Before Judges Simonelli and Gooden Brown.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Essex County,  
Docket No. FG-07-0183-16.

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

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Nancy P. Fratz, Assistant Deputy Public Defender, on the brief).

PER CURIAM

Defendant H.B., the biological father of T.R.B. (Tina),<sup>1</sup> born in July 2013, appeals from the December 2, 2016 judgment of guardianship terminating his parental rights to the child. On appeal, defendant contends the trial judge erred in finding respondent New Jersey Division of Child Protection and Permanency (Division) proved all four prongs of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence. We affirm.

We will not recite in detail the history of the Division's involvement with the family. Instead, we incorporate by reference the factual findings set forth in Judge Linda L. Cavanaugh's comprehensive written opinion, dated December 2, 2016. We add the following comments.

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<sup>1</sup> Pursuant to Rule 1:38-3(d), we use initials and fictitious names to protect the confidentiality of the participants in these proceedings.

The Division became involved with the family the day after Tina's birth on a report that the child tested positive for marijuana and visible bruises and swelling were seen on her mother, defendant S.F. (Susan), during a prenatal hospital visit the prior month, which Susan blamed on defendant.<sup>2</sup> After their discharge from the hospital, Susan and Tina lived with defendant's sister, Teresa. Defendant lived with his mother at the time, but visited Tina frequently.

At a hearing in August 2013, the court ordered defendant to participate in a domestic violence program, submit to psychological and substance abuse evaluations, and comply with any recommendations. The Division made appropriate arrangements for defendant and also referred him for parenting skills classes.

Defendant was incarcerated in September 2013, when Tina was approximately three months old, and released in June 2015, just before her second birthday. During that time, the Division arranged for a psychological evaluation, with which defendant complied, to assess his parenting abilities, mental health, and need for treatment. The court also ordered defendant to investigate and advise the Division what services were available to him in prison. Between November 2014 and April 2015, defendant

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<sup>2</sup> On October 21, 2016, the court entered a judgment of guardianship terminating Susan's parental rights. She did not appeal.

visited with Tina five times with the Division's facilitation, first in prison, then at a halfway house.

Meanwhile, concerned about Susan's failure to adequately address her substance abuse and mental health issues, in October 2014, the Division removed Tina from her custody after she abandoned the child with Teresa and fell out of contact. The Division sought to place Tina with Teresa, but a criminal background check uncovered issues Teresa had to first resolve. Teresa promised to address those issues, as well as a problem with welfare, but she never successfully alleviated the Division's concerns. The Division ultimately sent her a letter in June 2015, ruling her out on the grounds that she had been substantiated for using drugs while pregnant, never provided requested documentation regarding her problem with welfare, had relatives and friends living in her home and no space for Tina's crib, and failed to consistently visit with the child. The Division advised Teresa of her right to an administrative review of that determination, but the record does not indicate she requested review.

The Division initially placed Tina in a non-relative foster home following her removal, but her maternal grandmother, Gail, who had already adopted Susan's other child, Tina's half-sister, was soon offered and investigated as a resource parent. The Division placed Tina with Gail in June 2015. The child has

remained in Gail's care ever since, and she is committed to adoption.

Following defendant's release from prison, the Division resumed making arrangements for services, and the court approved the Division's three-month reunification plan in light of defendant's compliance and his efforts to find stable housing and employment. Over the next few months, defendant visited with Tina ten times, and would have done so on another occasion were it not for a scheduling failure on the Division's part. Defendant did not attend a hearing in September 2015, but the court nevertheless ordered him to continue his efforts in preparing for reunification.

Reunification efforts were halted on October 21, 2015, when defendant was arrested on charges of aggravated assault and unlawful possession of a weapon just one month after completing parole on his previous sentence. He remained incarcerated for the next six months, during which he declined to visit with Tina because he did not want her to see him in prison. The Division changed course shortly thereafter, and the court approved a permanency plan for adoption, citing defendant's re-incarceration.

Defendant was released from prison on April 26, 2016, when Tina was nearly three years old and the guardianship litigation had commenced. Nonetheless, defendant resumed compliance with services the Division offered, completing a parenting skills

course in August 2016, and attending a domestic violence program. However, he visited with Tina only once between his release from prison and entry of the judgment of guardianship. The Division also referred him for a substance abuse evaluation in June 2016, and recommended outpatient treatment, but he missed three intake appointments. He was arrested in June 2016 on charges of heroin distribution, but claimed to the Division he was the victim of mistaken identity. In August 2016, he tested positive for alcohol, marijuana, and benzodiazepines.

During this period, defendant offered his mother as a resource parent, but the Division ruled her out in May 2016, because he was still living in her home. The Division advised defendant's mother of her right to an administrative review of the decision, but she did not request review.

At the guardianship trial, the Division's expert psychologist, Eric Kirschner, Ph.D., the only expert presented, testified about his psychological evaluation of defendant and comparative bonding evaluations between defendant and Tina and Gail and Tina. Kirschner described defendant's criminal behavior as the one thing that had been "consistent in his life[.]" During his interview, defendant recounted an extensive history of numerous incarcerations both as a juvenile and an adult for a range of offenses, including robbery, drug possession, and

receiving stolen property. Even when he was sentenced to probation or completed a sentence for an offense, he often failed to comply with conditions of probation or parole, exposing himself to even further legal consequences. This pattern, which manifested itself throughout Tina's life, made him largely unavailable to her, and his lack of visitation, even when not incarcerated, showed an unwillingness to make Tina a priority in his life.

Kirschner observed that defendant failed to address his substance abuse problems. Defendant admitted using marijuana frequently when he was younger, and, though "he portrayed that that was not something that was part of who he is" now, he had just recently tested positive for drugs notwithstanding that he was on parole and in the midst of this litigation, and subject to close monitoring on both counts. While Kirschner allowed that this and defendant's subsequent positive screen for drugs were not dispositive of whether he continued to use any substance on an abusive level, Kirschner noted it did speak to the quality of defendant's judgment.

Defendant also acknowledged to Kirschner that his relationship with Susan involved domestic violence, but portrayed her as the initiator, attributing her aggression to her drug use. Defendant never admitted having struck Susan and, although he did recall one occasion when "there was a door that swung and hit

her[,] " did not "portray it as something that he had done with any sort of intention"

With regard to Tina, defendant told Kirschner that he planned to get a steady job so he could support her and afford a home of his own to live with her on reunification. However, Kirschner noted defendant had a poor track record of supporting himself financially through any means that were not "off the books." In light of that and defendant's criminal history, Kirschner considered it "unlikely" defendant would be able to have his plan come together within the reasonably foreseeable future. Moreover, defendant's expression that he was "waiting for something good to happen, a door to open for [him]," suggested he was taking a relatively passive approach to achieving his goal.

Kirschner testified that defendant's scores on two of the five scales of the APPI-II test, a parenting assessment, fell into the below average range. In particular, defendant's score on the empathy scale carried implications for his ability to recognize a child's emotional state and appropriately respond to it, while his low score on the role reversal scale spoke to a probable tendency to put a child into situations the child would not be developmentally prepared to handle.

Kirschner concluded that defendant was not in a position to safely assume custody of Tina and was unlikely to become fit to



do so within the foreseeable future. Kirschner explained that defendant did not have the psychological capability to meet Tina's needs, and Tina would be placed at a heightened risk of harm if reunified with him.

Regarding the bonding evaluation between defendant and Tina, Kirschner characterized defendant's interaction with her as largely "positive." Tina recognized defendant, readily went to him, sat on his lap, and was comfortable with physical contact with him. As the two played with various toys in the room, they smiled, laughed, and made eye contact. The observation ended with a standard exercise, in which the adult is asked to leave the room temporarily, so that the evaluator can observe the child's reaction to the adult's departure, absence, and then reappearance. Kirschner noted that, during the exercise, Tina did not display any distress in reaction to defendant's departure or absence, but merely "took it in stride." When they were reunited in the waiting room, where Tina's half-sister was also sitting, Kirschner found significant that Tina went past defendant to see her sister. Kirschner concluded from these observations that, while Tina displayed familiarity with defendant and had formed some bond with him, notwithstanding their limited interaction in the past, she nonetheless did not view him as her primary attachment figure.

Regarding the bonding evaluation between Tina and Gail,

Kirschner characterized their interactions as "very healthy and positive[.]" Tina sat on Gail's lap, and they engaged in age-appropriate play with plenty of eye contact. During the exercise in which Gail was asked to leave the room, Tina recognized that she was leaving, pointed it out verbally, and responded positively to her return, handing her a plate of the play food the child was pretending to make at the time. Kirschner concluded from these observations and on his interview with Gail, she was the individual whom Tina viewed as her primary attachment figure and psychological parent.

Kirschner did not believe Tina would suffer a great deal of harm if her relationship with defendant was severed through termination of his parental rights, because although she had some bond with him, there was no attachment relationship that she relied on for safety and trust. In contrast, Kirschner concluded Tina would suffer "significant" and "enduring" harm from the loss of her relationship with Gail, including anxiety, sadness, and delay in her emotional development. Kirschner explained that defendant would not be able to mitigate that harm because his failure to make Tina a priority in his life, along with his history of instability, suggested he would not be able to meet the needs of a child under ordinary circumstances, let alone one in emotional turmoil. Kirschner was confident that Gail could ameliorate any

harm Tina might suffer from termination, given the quality of their relationship. In all, Kirschner recommended termination of defendant's parental rights followed by adoption by Gail, noting the added benefit of Gail having already adopted Tina's half-sister, with whom Tina had also developed a relationship.

Judge Cavanaugh reviewed the evidence presented at the trial, made meticulous factual findings as to each prong of N.J.S.A. 30:4C-15.1(a), and thereafter concluded the Division met by clear and convincing evidence all of the legal requirements for a judgment of guardianship as to both defendants. The judge's opinion tracks the statutory requirements of N.J.S.A. 30:4C-15.1(a), accords with N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420 (2012), N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88 (2008), In re Guardianship of K.H.O., 161 N.J. 337 (1999), In re Guardianship of D.M.H., 161 N.J. 365 (1999), and N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591 (1986), and is more than amply supported by the record. F.M., 211 N.J. at 448-49.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION