

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1594-16T1
A-1595-16T1

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

L.M. and P.T.,

Defendants-Appellants.

IN THE MATTER OF THE
GUARDIANSHIP OF S.M.,

A Minor.

Submitted January 29, 2018 – Decided March 28, 2018

Before Judges Sabatino and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Passaic
County, Docket No. FG-16-0089-15.

Joseph E. Krakora, Public Defender, attorney
for appellant L.M. (Carol A. Weil, Designated
Counsel, on the brief).

Joseph E. Krakora, Public Defender, attorney
for appellant P.T. (Dianne Glenn, Designated
Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Jason W. Rockwell, Assistant Attorney General, of counsel; Julie B. Colonna, Deputy Attorney General, on the brief).

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

PER CURIAM

In these consolidated appeals, defendant L.M. (Laura)¹ and defendant P.T. (Peter) challenge the Family Part's November 29, 2016 order terminating their parental rights to their daughter S.M. (Sally), who was born in August 2002. We affirm substantially for the reasons set forth in the comprehensive sixty-four-page written opinion issued by the Honorable Richard M. Freid, J.S.C., on November 29, 2016.

The evidence is fully detailed in Judge Freid's opinion and is briefly summarized here. The Division of Child Protection and Permanency (Division) has had a lengthy involvement with Laura. In addition to Sally, Laura's parental rights to two other children were terminated, and she voluntarily surrendered her parental rights to another. When Sally was born, Peter was serving a four-

¹ For ease of reference, and to protect the identities of the parties, all names used herein are pseudonyms.

year sentence for drug possession and has been incarcerated multiple times since.

Sally has special needs and has been diagnosed with multiple psychological disorders. The Division has placed and cared for her since November 2007. Over the years, she has resided in various residential treatment facilities, and lately, has been placed in temporary foster care.

On November 9, 2011, the Family Part terminated Peter's and Laura's parental rights to Sally. However, we reversed this determination on appeal, finding the Division failed to meet its burden on prong three as to Peter and prong four as to both parents. N.J. Div. of Youth & Family Servs. v. L.M., 430 N.J. Super. 428, 434 (App. Div. 2013). In particular, we noted the Division did not adequately demonstrate that there was viable long-term placement for Sally. Ibid.

At our direction, the Division reinstated Title Nine litigation. Despite many attempts, the Division was unable to locate Peter for several months. Once found, the Division transported Sally to Pennsylvania to visit with Peter, explored potential placement with him, and provided him with many services, including therapeutic visitation and counseling. However, these efforts were thwarted when Peter became incarcerated again for burglary in May 2014. While incarcerated, the Division arranged

in-person and telephonic visitation with Sally, but after his release in March 2015, Peter told the Division he would not be able to take custody of Sally because "he was getting his life together."

Following the remand, the Division learned Laura was unemployed and smoking marijuana regularly. The Division referred her to outpatient care, but she was soon administratively discharged due to poor attendance and positive drug screens. Laura visited Sally sporadically, despite the Division offering her transportation services. Moreover, her whereabouts were often unknown as she would seemingly disappear for stretches of time, and she continued to lack employment and residential stability.

Based on his evaluation of the trial evidence, including psychological and bonding evaluations, Judge Freid concluded that the Division had satisfied the four prongs of the best interests test, N.J.S.A. 30:4C-15.1(a). The judge specifically found the Division made reasonable efforts to provide Peter services, but it's "efforts were severely thwarted by [Peter] being either incarcerated . . . or missing to the Division for extended periods of time." Regarding prong four, he found both parents lacked residential and employment stability, did not consistently visit Sally, and based on the psychologists' reports, lacked a meaningful bond with Sally. Lastly, the judge noted that by terminating

parental rights, Sally's chances of adoption would greatly increase because the Division would be able to broadcast her profile nationally and many prospective parents desire a child that is legally free to adopt.

In this appeal, Peter raises the following points of argument:

THE NOVEMBER 29, 2016 JUDGMENT OF GUARDIANSHIP MUST AGAIN BE VACATED BECAUSE THE DIVISION FAILED TO IMPLEMENT THE REASONABLE EFFORTS REQUIRED BY THIS COURT IN ITS FEBRUARY 13, 2013 DECISION AND THE ISSUE REGARDING THE ADOPTABILITY OF SALLY HAS ONLY GOTTEN WORSE AS THERE IS NO POSSIBILITY OF HER BEING ADOPTED AND THEREFORE TERMINATION OF PARENTAL RIGHTS WITHOUT PERMANENCY WILL CAUSE MORE HARM THAN GOOD.

Prong Three. The Division failed to comply with the appellant panel's directives: The Division did not provide reasonable efforts to cultivate a relationship between Peter and Sally, and did not foster the development of a bond between Peter and Sally; therefore, the trial court erred in its determination that the Division met its burden N.J.S.A. 30:4C-15.1(a)(3), by clear and convincing evidence.

Prong Four. Sally has no prospect of being adopted due to her race, age, psychiatric disabilities, and extreme behavioral disorders and long-term specialized care is the appropriate permanency plan; therefore, the trial court erred in its determination that the Division met its burden by clear and convincing evidence as termination

of parental rights without the likelihood of adoption will cause more harm than good.

Laura raises the following issues on appeal:

THE TRIAL COURT ERRED BY TERMINATING THE MOTHER'S PARENTAL RIGHTS BECAUSE ALTERNATIVES TO TERMINATION, INCLUDING LONG TERM SPECIALIZED CARE OF A SEVERELY AND PSYCHIATRICALY DISABLED TEENAGER, WERE NOT FULLY OR PROPERLY CONSIDERED.


TERMINATING THE MOTHER'S PARENTAL RIGHTS WAS ERROR BECAUSE THE COURT WRONGLY FOUND THAT THE DIVISION HAD MET ITS BURDEN OF PROOF AS TO THE FOURTH PRONG OF THE BEST INTERESTS TEST.

Based on our review of the record, we conclude that Judge Freid's factual findings are supported by substantial credible evidence, and his legal conclusions are unassailable in light of those findings. See N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014). In particular, we agree with the trial judge's conclusion that termination of parental rights with select home adoption increases Sally's prospects for adoption and will not do more harm than good. The amplified record on remand eliminates the concerns that caused our original remand.

Defendants' other arguments are unavailing and not supported by credible evidence in the record. As such, their contentions are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION