SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1619-16T4

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

K.J.L.,

Defendant-Appellant.

IN THE MATTER OF THE
GUARDIANSHIP OF R.A.L., a minor.

Argued December 7, 2017 – Decided January 8, 2018

Before Judges Simonelli, Haas and Rothstadt.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Morris County, Docket No. FG-14-0038-16.

Ruth Harrigan, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Ruth Harrigan, on the briefs).

Benjamin R. Zakarin, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Jason

W. Rockwell, Assistant Attorney General, of counsel; Benjamin R. Zakarin, on the brief).

Maria Emilia Borges, Assistant Deputy Public Defender, argued the cause for minor (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Maria Emilia Borges, on the brief).

PER CURIAM

Defendant K.J.L.[1] appeals from the Family Part's December 9, 2016 guardianship judgment entered at the conclusion of a three-day trial in October 2016 that terminated her parental rights to her adopted son R.A.L. (Ricky), who was born in May 2002. Defendant argues plaintiff, the Division of Child Protection and Permanency (Division), failed to prove the four prongs of N.J.S.A. 30:4C-15.1(a). We find no merit in these arguments and affirm.

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) (citations omitted). "[T]he preservation and strengthening of family life is a matter of public

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

concern as being in the interests of the general welfare." N.J.S.A. 30:4C-1(a); see also 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); N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 599 (1986). 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;
>
> (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 . . .;
>
> (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

> (4) Termination of parental rights will not do more harm than good.

See also A.W., 103 N.J. at 604-10.

By way of a thorough written decision, Judge Michael E. Hubner 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 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); Cesare v. Cesare, 154 N.J. 394, 413 (1998).

The pertinent findings of fact were set forth in detail in Judge Hubner's thirty-six-page written decision and need not be repeated here in detail. They are summarized as follows. Defendant adopted Ricky at birth. Ricky is a special needs child as he is autistic and developmentally delayed. Ricky has always lived with defendant and C.M. (Cheryl), defendant's friend and roommate. The Division began to receive referrals about defendant's inability to care for Ricky in 2008. The referrals ultimately led to Ricky's removal from defendant's care in 2013. After the removal, defendant moved out of the home and the Division placed Ricky in Cheryl's care with defendant having only supervised visitation. Ricky is now a fifteen-year-old high school student.

Cheryl is willing to adopt Ricky and is open to allowing defendant to maintain supervised contact with her son.

Ricky was removed from defendant's care because of her substance abuse and mental health issues that prevented her from caring for Ricky. After the initial removal, defendant attempted to address her problems with the Division's assistance, which led to a reunification in 2014 that allowed defendant to move back into the home she shared with Cheryl and Ricky. A second removal was required in 2015 because, despite defendant's attempts and the Division's continuing efforts to address defendant's addiction and mental health issues, she failed to successfully complete any programs, repeatedly relapsed and overdosed, and was hospitalized on numerous occasions. Throughout her efforts to address her addiction and relapses, defendant has been unable to care for Ricky.

Psychological evaluations performed at the Division's request diagnosed defendant with depression that was not "clinically significant so as to impair her daily functioning." One psychiatrist also diagnosed defendant with suffering from bipolar disorder. The evaluations all concluded that defendant was not capable of safely parenting Ricky.

Bonding evaluations were also conducted. They concluded that Ricky had a safe and secure attachment to defendant and Cheryl,

and that he would suffer harm if his contact with either of them was terminated. Despite his bond with defendant, the psychologists explained at trial that reunifying Ricky with defendant would cause him "serious and enduring emotional harm" because defendant minimized her addiction and its impact on her ability to safely parent Ricky in the foreseeable future. Moreover, if Ricky was removed from Cheryl's care, defendant would be incapable of mitigating the harm to Ricky, while Cheryl would be capable of addressing any harm caused by Ricky's removal from his mother's care.

Defendant's experts and treatment providers testified to her progress in treatment at the time and her continuing mental health issues. One of the treatment providers testified that defendant was now taking "ownership" and consistently attending the program, as opposed to her inconsistent participation in 2015. A defense psychiatrist diagnosed defendant with "major depressive disorder, recurrent, in possible remission," opiate use disorder in partial remission, and a seizure disorder. The defense psychologist testified to defendant's mental health conditions and confirmed that defendant was in compliance with her program's requirements since May 2016. However, he still did not recommend reunification with Ricky as defendant would need at least "twelve consecutive months" of sobriety before reunification could even be considered.

All of the mental health professionals who evaluated defendant and Ricky agreed that Ricky could not wait for defendant to succeed in her recovery as his special needs demanded stability and permanency in his life now.

After considering the parties' proofs, Judge Hubner found the Division had proven by clear and convincing evidence that it was in the best interests of Ricky to terminate defendant's parental rights. Addressing prong one, Judge Hubner found defendant's substance abuse and mental health issues harmed Ricky's health and development, and exposed him to a continuing risk of substantial harm. The judge described Ricky as a "very vulnerable child," who required permanency in a safe and stable home that defendant could not provide to him now or in the foreseeable future.

As to the second prong, Judge Hubner found that defendant was unable and unwilling to correct the harm that led to Ricky's removal from defendant twice, as demonstrated by her failure to complete services and her repeated relapses and overdoses on prescription drugs. Addressing the third prong, Judge Hubner explained that the Division provided numerous services to address defendant's issues and helped prepare her for reunification, but defendant failed to demonstrate that she benefitted from the services in a timely manner to meet Ricky's needs. He rejected defendant's argument that Cheryl showed a lack of commitment to

adopt Ricky, and found that such an argument "fails in the assessment of [Ricky's] best interests."

Finally, Judge Hubner found the Division satisfied the fourth prong. He relied upon the bonding evaluations that concluded Ricky had meaningful ties to both defendant and Cheryl, and on the experts' testimony that determined Ricky would suffer more harm under defendant's care as defendant would not be able to mitigate that harm if he was removed from Cheryl's care. The judge concluded that defendant did not demonstrate the ability to care for Ricky, and that termination of her parental rights would not do more harm than good.

On appeal, defendant argues:

> POINT I
>
> THE LOWER COURT ERRED IN ITS CONCLUSION THAT TERMINATION OF PARENTAL RIGHTS WAS IN THE BEST INTEREST OF THE CHILD BECAUSE THE FOUR PRONGS OF THE BEST INTERESTS TEST WERE NOT PROVEN BY CLEAR AND CONVINCING EVIDENCE.
>
> A. REVERSAL IS WARRANTED BECAUSE THE EVIDENCE PRESENTED DID NOT SUPPORT THE LOWER COURT'S CONCLUSION THAT RICKY'S SAFETY, HEALTH OR DEVELOPMENT WAS OR WILL CONTINUE TO BE ENDANGERED BY THE PARENTAL RELATIONSHIP.
>
> B. THE COURT'S CONCLUSION THAT [DEFENDANT] WAS UNABLE OR UNWILLING TO ELIMINATE THE HARM FACING HER CHILD AND UNWILLING OR

UNABLE TO PROVIDE A SAFE AND STABLE HOME ENVIRONMENT WERE ERRONEOUS.

C. THE TRIAL JUDGE ERRED IN HIS DETERMINATION THAT DCPP SATISFIED THE REASONABLE EFFORTS STANDARD BECAUSE IT FAILED TO PROVIDE SERVICES THAT WERE REASONABLE UNDER ALL THE CIRCUMSTANCES AND THE COURT DID NOT EXPLORE ALTERNATIVES TO TERMINATION.

1. THE TRIAL JUDGE ERRED IN HIS DETERMINATION THAT DCPP'S UNREASONABLE COOKIE CUTTER APPROACH, RATHER THAN TAILORED SERVICES, SATISFIED THE THIRD PRONG OF THE TEST.

2. THE TRIAL JUDGE ERRED IN HIS DETERMINATION THAT DCPP SATISFIED THE THIRD PRONG OF THE BEST INTEREST TEST BECAUSE IT PROVIDED SERVICES THAT WERE NOT APPROPRIATE UNDER THE CIRCUMSTANCES AND THAT VIOLATED THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT (42 U.S.C. §12101 ET SEQ.) (NOT RAISED BELOW).

3. THE TRIAL JUDGE FAILED TO MAKE A DETERMINATION THAT DCPP CONSIDERED ALTERNATIVES TO TERMINATION.

D. REVERSAL IS WARRANTED BECAUSE THE EVIDENCE PRESENTED DID NOT SUPPORT THE LOWER COURT'S CONCLUSION THAT TERMINATION OF PARENTAL RIGHTS WOULD NOT DO MORE HARM THAN GOOD.

Applying our limited and deferential standard of review in these matters, see F.M., 211 N.J. at 448-49, we conclude defendant's arguments[2] are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons expressed by Judge Hubner in his comprehensive written decision. We add only the following brief comments.

A child should not have to wait for a parent to complete good faith efforts to be capable of parenting. The law recognizes as a central factor a child's need for "expeditious permanent placement." N.J. Div. of Youth and Family Servs. v. C.S., 367 N.J. Super. 76, 116 (App. Div. 2004); see also 42 U.S.C. 301, 671(16), 675(5)(A)(ii); N.J.S.A. 30:4C-15. Despite defendant's progress, Ricky has waited far beyond a reasonable period for his mother to succeed. See N.J. Div. of Youth & Family Servs. v. F.M., 375 N.J. Super. 235, 258 (App. Div. 2005). Although we

[2] Defendant's argument relating to the Americans with Disabilities Act was not raised before the trial judge. We will decline consideration of an issue not properly raised before the trial judge, unless the jurisdiction of the court is implicated or the matter concerns an issue of great public importance. Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). Neither situation exists here, therefore, we need not consider defendant's contention on this point. Nevertheless, we have reviewed defendant's argument and conclude that it too is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

commend defendant on her recent progress in treatment, her current success does not support delaying the stability and permanency that Ricky requires for his well-being.

Affirmed.