SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3212-16T3

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

M.C.-Y.,

Defendant,

and

R.S.T.,

Defendant-Appellant.

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

Minor.

Submitted March 20, 2018 – Decided March 29, 2018

Before Judges Fisher and Fasciale.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Burlington County, Docket No. FG-03-0036-15.

Joseph E. Krakora, Public Defender, attorney for appellant (Patricia Nichols, Assistant

Deputy Public Defender, of counsel and on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Melissa H. Raksa, of counsel; Amy Melissa Young, Deputy Attorney General, on the brief).

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

PER CURIAM

Defendants M.C.-Y. (Melanie) and R.S.T. (Ronald) are the natural parents of R.O.T. (Roger), who was born in 2012 in California.[1] The record reveals this family was somewhat transient; they lived for a short time in California and then moved to Tennessee to live with Ronald's mother and stepfather. When, in 2013, Melanie left Tennessee for New York, claiming to be in fear of Ronald, she stopped in New Jersey as she ran low on funds. Concerned about Melanie's deteriorating mental status and Roger's safety and well-being referral, a Mt. Holly hospital at that time referred the matter to the Division of Child Protection and Permanency. This referral culminated in a fact-finding hearing in a Title Nine action and the commencement of a guardianship action during which Melanie surrendered her parental rights. The proceedings regarding Ronald, however, were protracted because he

[1] We use fictitious names.

was homeless in California causing at times a lack of contact between he and the Division.

A one-day trial finally occurred on February 8, 2017. The Division called its caseworker as well as an expert to testify; the Division also moved its voluminous file into evidence. Ronald testified on his own behalf, but he called no other witnesses. For reasons set forth in a March 16, 2017 oral decision, the judge terminated Ronald's parental rights.

Ronald appeals, arguing:

> I. THE TRIAL COURT ERRED WHEN IT FAILED TO ADHERE TO PROVISIONS OF THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT AND THE PARENTAL KIDNAPPING PREVENTION ACT, BECAUSE BOTH CLEARLY ESTABLISHED TENNEESSEE AS R[OGER]'S HOME STATE, TENNESSEE DID NOT DEFER JURISDICTION TO NEW JERSEY, AND NEW JERSEY WAS NOT THE MOST CONVENIENT FORUM FOR REASONABLE EFFORTS TOWARD ACHIEVING REUNIFICATION OF R[OGER] WITH R[ONALD]; THUS THE TRIAL COURT'S JURISDICTION WAS LIMITED TO NOTHING MORE THAN IMMEDIATE SAFEUARDING OF R[OGER] PENDING RETURN OF R[OGER] TO TENNESSEE AUTHORITIES (Not Raised Below).
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> II. THE TRIAL COURT'S OPINION FAILED TO SATISFY R. 1:7-4 AS IT DID NOT CONTAIN FINDINGS OF FACT OR CONCLUSIONS OF LAW CONSISTENT WITH EITHER THE TRIAL EVIDENCE OR THE RELEVANT STATUTORY AND CASE LAW IN ORDER TO JUSTIFY AN AWARD OF GUARDIANSHIP TO PLAINTIFF (Not Raised Below).
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> III. BECAUSE R[ONALD] WAS DENIED COUNSEL FOR CRITICAL PROCEEDINGS AND HIS ASSIGNED COUNSEL FAILED TO FULFILL THEIR OBLIGATIONS TO PROVIDE FAITHFUL AND ROBUST REPRESENTATION OF R[ONALD]

> AND INSTEAD RENDERED AID AND SUPPORT TO PLAINTIFF BY ABANDONING ANY NOTION OF PARTISAN REPRESENTATION, R[ONALD] WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED TO HIM, THUS THE JUDGMENT OF GUARDIANSHIP MUST BE REVERSED (Not Raised Below).

We reject the first two points and offer no view on the third, leaving these ineffectiveness issues to be posed by Ronald, by way of an appropriate motion, in the first instance in the trial court.

In his first point, Ronald argues the trial court lacked jurisdiction over the parties and the child by failing to "adhere" to either the Uniform Child Custody Jurisdiction and Enforcement Act, N.J.S.A. 2A:34-53 to -95, or the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, or both. Although Ronald never made such an argument in the trial court, jurisdictional defects may be considered on appeal notwithstanding. State v. Robinson, 200 N.J. 1, 20 (2009). Having carefully reviewed the record in light of these arguments and our standard of review, we find no merit in Ronald's late claim that the court lacked jurisdiction.

The Parental Kidnapping Prevention Act does not support his position; indeed, he has not explained how it might. We reject defendant's argument because this act is clearly limited to barring a forum state from taking action inconsistent with another state's custody or visitation determination. The record is clear that no other state has made a predicate determination here.

And, because it was intended "to avoid jurisdictional competition and conflict" between jurisdictions in favor of "cooperation with courts of other states as necessary to ensure that custody determinations are made in the state that can best decide the case," Griffith v. Tressel, 394 N.J. Super. 128, 138 (App. Div. 2007); see also Sajjad v. Cheema, 428 N.J. Super. 160, (App, Div. 2012), defendant's reliance on the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is equally misplaced. The record reveals that the child was born in California, resided briefly with his parents and Ronald's mother and stepfather in Tennessee, and then came to New Jersey — while en route to New York, where Melanie had family and friends — when Melanie fled Tennessee out of an alleged fear of Ronald. To be sure, some other state may have qualified as the child's home state, but that factor alone does not preclude a New Jersey court's exercise of jurisdiction. As we observed in Griffith, 394 N.J. Super. at 140, while the child's home state may be preferred in making an initial custody determination, it is "not the exclusive basis."

Although the record was not developed for this purpose because defendant never raised a jurisdictional issue, the evidence reveals — and without dispute — that the child was brought here by his mother from what might arguably have been his home state of Tennessee. When arriving in New Jersey, the child was clearly

in need of care due to his mother's deteriorating condition. In such circumstances, our courts are entitled to exercise temporary emergency jurisdiction pursuant to the UCCJEA. See N.J.S.A. 2A:34-68. Although the UCCJEA does not presuppose a lengthy exercise of emergency jurisdiction, the court may nevertheless maintain jurisdiction until such time as an action is commenced in a court of another state with a greater interest. The record before us, despite the considerable passage of time since the child arrived in New Jersey in May 2013 and the court's disposition of this guardianship action — and even as of now — reveals that no action in any other state has been commenced. Under those circumstances, our courts were permitted to proceed to this stage, and we reject defendant's tardy attempt to suggest otherwise.

Defendant's second argument, judging from its point heading, would suggest a problem, by its emphasis on Rule 1:7-4, with the manner in which the judge pronounced her determination rather than its content. Upon closer examination, it appears defendant may also be questioning the sufficiency of the evidence upon which the judge based her findings. In either respect, we reject defendant's arguments. We turn first to the applicable, general principles.

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 . . .,' [that are] '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 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.

But the constitutional right to the parental relationship 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. N.J. Div. of Youth & Family Servs. v. G.M., 198 N.J. 382, 397 (2009); 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 a 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 604-11.

The trial judge found the Division demonstrated, by clear and convincing evidence, that all four prongs supported termination of defendant's parental rights. These findings were supported by evidence the judge found credible and are deserving of our deference. 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).

After close examination, we conclude that defendant's criticism of the judge's findings and conclusions is mostly superficial. For example, defendant complains the judge failed to provide full citations for the many cases cited in support of her ruling. That is true, but that is often true — and understandable — when judges render oral decisions. More importantly, there could be no problem in defense counsel's identification of the cases cited; indeed, many have already been cited in this opinion and

are decisions commonly relied upon by the bench and bar in these matters.[2]

Defendant also argues that the judge's decision was rendered five weeks after the trial's conclusion and took "thirty-nine minutes" to deliver. The point of this argument eludes us. It is not uncommon for judges to take the time to consider evidence presented before taking the drastic step of terminating parental rights. Indeed, we might find it more troublesome in such a case had the judge begun reading her decision into the record immediately at the conclusion of the testimony. And whether it took the judge thirty-nine minutes to deliver the oral decision — which, in our view, would not suggest the decision was cursory or superficial — seems inconsequential. The judge thoroughly and yet cogently addressed the relevant facts and applied them to the four statutory prongs in reaching the ultimate decision to terminate Ronald's parental rights. Indeed, the facts were not so extensive, complicated or convoluted as to require any greater exposition than was provided here.

In looking beyond defendant's superficial criticism of the judge's decision, we need not hesitate in rejecting the more

[2] The trial judge also mentioned at the outset of her opinion that she would only provide shorthand citations for her legal underpinnings. No one then objected or expressed any confusion as to the cases upon which the judge relied.

relevant arguments by concluding that the judge properly found clear and convincing evidence on all four prongs. This is best revealed by Ronald's own testimony in which he offered nothing to suggest that, after the many years the child has been in foster care, he was ready to provide Roger with a suitable home. Ronald argues the Division's "canna-bigotry"[3] improperly permeated the judge's decision. We disagree. The judge's decision was predominantly and rightly influenced by Ronald's homelessness and his failure to offer even then a suitable plan should the child be returned to his care. This was demonstrated by Ronald's own testimony, which revealed Ronald was then living on the streets of San Francisco. He asserted only that, if the child was returned to him, he could make one phone call to his mother in Missouri[4] and a place for him and the child to live would be provided. When asked what steps he had taken to secure housing while the child was in foster care, Ronald acknowledged he had "not [done] as much as [he] should [have]" and that he was "still homeless." When asked about employment, Ronald testified he had in the past applied to agencies that seek temporary employees, but he had not done so for "about two years." When asked what he had done to prepare for

[3] I.e., "cannabis" and "bigotry."

[4] Ronald's mother had moved to Missouri from Tennessee in the interim.

assuming the role of parent, Ronald asserted he had in the past participated in a parenting program but attended only a class only "once." And when asked how he has been able to provide for himself in the interim, Ronald testified he had received public assistance, "recycl[ed] aluminum," "walk[ed] friends' dogs," and otherwise sustained himself through "bumming."

We need not further expound on the evidence relied upon by the judge. We find insufficient merit in Ronald's second point to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

In turning to the third point – Ronald's claim he was denied the effective assistance of counsel – we note only that because he did not seek relief on this ground in the trial court or otherwise support his claim in the manner delineated by Rule 2:10-6, the record does not contain sufficient information from which we might opine on the effectiveness argument. For that reason, we reject Ronald's argument but we do not foreclose his further pursuit, by way of an appropriate and timely motion, of relief from the judgment based on these allegations.

Affirmed.