SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3320-16T4

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

D.E.H.,

Defendant-Appellant,

and

T.J., J.P., and R.G.,

Defendants.

IN THE MATTER OF THE GUARDIANSHIP OF J.C.H., J.D.H., W.M.H., A.J.H., and C.M.H.,

Minors.

Submitted March 12, 2018 – Decided April 3, 2018

Before Judges Sabatino and Rose.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Mercer County, Docket No. FG-11-0043-16.

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

Gurbir S. Grewal, Attorney General, attorney for respondent (Jason W. Rockwell, Assistant Attorney General, of counsel; Joann M. Corsetto, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Noel C. Devlin, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant, D.E.H.,[1] appeals from the Family Part's March 24, 2017 judgment of guardianship[2] terminating her parental rights to her five biological children: C.M.H., born in November 2005; J.C.H., born in April 2010; J.D.H., born in June 2011; W.M.H., born in October 2012; and A.J.H., born in January 2014. Defendant contends the Division of Child Protection and Permanency failed to prove all four prongs of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence. The Law Guardian supports the termination on appeal as it did before the trial court.

Based on our review of the record and prevailing legal standards, we are satisfied the evidence in favor of the

[1] We use initials to protect the privacy of the parties. See R. 1:38-3(d)(12).

[2] The judgment of guardianship was also entered against J.P., the biological father of J.C.H. and J.D.H.; and T.J., the biological father of W.M.H. and A.J.H. Neither J.P. nor T.J. join this appeal. R.G., the biological father of C.M.H. voluntarily surrendered his parental rights on August 12, 2016.

guardianship petition overwhelmingly supports the decision to terminate defendant's parental rights. Accordingly, we affirm substantially for the reasons stated by Judge Audrey Peyton Blackburn in her comprehensive and well-reasoned oral opinion rendered on March 24, 2017.

We will not recite in detail the complete history of the Division's involvement with defendant. Instead, we incorporate by reference Judge Blackburn's thorough factual findings and legal conclusions, and highlight the most pertinent facts.

Defendant suffers from significant cognitive and intellectual functioning deficiencies, and chronic mental health issues, including anxiety disorder and depression. She has admitted self-medicating by smoking marijuana to manage her stress, and has done so in the presence of her children. Although afforded an array of services targeted to her needs, over the course of nearly four years, defendant could not identify the reasons for removal of the children. Judge Blackburn credited the unrefuted testimony of Dr. Alan Lee, the Division's expert psychologist, that due to defendant's mental illness and limited insight, she was unable to act as her child's parent at the time of the trial or "in the foreseeable future." Because her low intellect prevents her from identifying the concerns with her parenting, "[s]he cannot

recognize what needs to change to be able to provide a safe and stable home for her children."

The Division initially became involved with defendant's family in November 2012, following a referral of deplorable conditions in the home. At that time, defendant had four children, ranging in age from two weeks to six years old. The home was infested with flies; the bedrooms were cluttered, the baby's crib was dirty; the children's immunizations were not current; and defendant used profanity in the presence of the children. Defendant appeared to be overwhelmed, and the family was in need of services, but the Division did not initiate litigation at that time. Two of the children were referred for speech and occupational therapy evaluations. Defendant was referred to a weekly three-month parenting skills training program, including an in-home training aspect. Although defendant participated in the sessions, she refused to make changes or implement new parenting skills. The home remained unclean, and defendant constantly strapped the children to high chairs.

Over the course of the following year, three additional referrals were received by the Division, citing similar concerns. Each time, the Division continued to provide services. Litigation was not commenced until five months after the birth of defendant's fifth child, when the Division filed a complaint for care and

supervision. Defendant retained custody of her children, but the Division continued to provide services, including visitation, parenting classes, and psychiatric counseling. However, the same issues prevailed. In January 2015, more than two years after the first referral, the court granted the Division's request for custody. The Division continued to offer services.

Nevertheless, defendant's low cognitive functioning and limitations precluded her ability to appropriately care for her children, including addressing their special needs. In April 2016, the Division filed a verified complaint seeking termination of defendant's parental rights over her five children.

The court conducted the guardianship trial over eight days between January 23, 2017 and March 24, 2017. At trial, the Division presented testimony from three caseworkers and Dr. Lee. The Law Guardian presented the testimony of expert psychologist, Dr. Janet W. Eig. Dr. Eig testified about the special needs of J.C.H. as a result of his language disorder, autism spectrum disorder, attention deficit hyperactivity, and motor disorder. Defendant did not testify or present any witnesses.

It is well-settled that parents have a fundamental right to raise their children, and that right is constitutionally protected. N.J. Div. of Youth and Family Servs. v. G.L., 191 N.J. 596, 605 (2007). "[T]erminations should be granted sparingly and

with great caution because they irretrievably impair imperative constitutionally-protected liberty interests and scores of centuries of societal family constructs." N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 553 (2014). However, a parent's rights are not absolute. Ibid. "Because of its parens patriae responsibility, the State may terminate parental rights if the child is at risk of serious physical or emotional harm or when necessary to protect the child's best interests." Id. at 553-54 (citing N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 599 (1986)).

In order for the court to terminate parental rights, the Division must satisfy the following four prongs of the "best interests of the child" test by clear and convincing evidence:

> (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. Such harm may include evidence that separating the child from his resource family parents would cause serious and enduring emotional or psychological harm to the child;
>
> (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.
>
> [N.J.S.A. 30:4C-15.1(a)(1)-(4).]

These four prongs are not independent of one another. Rather, they "are interrelated and overlapping[,] . . . designed to identify and assess what may be necessary to promote and protect the best interests of the child." N.J. Div. of Youth & Family Servs. v. R.L., 388 N.J. Super. 81, 88 (App. Div. 2006). Parental fitness is the crucial issue. In re Guardianship of K.H.O., 161 N.J. 337, 348 (1999). Determinations of parental fitness are very fact sensitive and require specific evidence. Ibid. Ultimately, "the purpose of termination is always to effectuate the best interests of the child, not the punishment of the parent." Id. at 350 (citation omitted).

On this appeal, our review of Judge Blackburn's decision is limited. R.G., 217 N.J. at 552. We are bound to accept her factual findings, as long as they are "supported by adequate, substantial, and credible evidence." Ibid. (citing N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008)). Additionally, we accord her decision particular deference "[b]ecause of the family courts' special jurisdiction and

expertise in family matters," and because the judge was uniquely in a position to evaluate the credibility of the witnesses. Cesare v. Cesare, 154 N.J. 394, 412-14 (1998). However, we review the trial court's legal interpretations de novo. R.G., 217 N.J. at 552-53.

Having reviewed the record in light of those legal standards, we conclude Judge Blackburn's factual findings are supported by substantial credible evidence in the record, and based on those findings her legal conclusions are unassailable. Id. at 552. Further, her opinion tracks the statutory requirements of N.J.S.A. 30:4C-15.1(a), and accords with 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 New Jersey Division of Youth & Family Services v. F.M., 211 N.J. 420 (2012). Defendant's appellate arguments are not supported by the record and are without sufficient merit to warrant discussion beyond the following comments. R. 2:11-3(e)(1)(E).

Due to her intellectual deficiencies and mental illness, defendant "struggles to function" and "struggles to maintain herself[,]" much less care for her five children. Sadly, she does not know her children's correct birthdates. Defendant "concedes that she has challenges but those challenges do not render her an unfit, abusive or neglectful parent." Rather, she primarily

contends on appeal she was making significant progress at the time of trial, but the Division failed to provide her with "remedial training" to enable her to understand and comply with the services offered. Because she was not provided that individualized training, defendant claims she was unable to complete the services she was offered by the time of trial. Her claims, however, are belied by the record, which is replete with services offered from the time of the initial referral in November 2012, until trial in January 2017. The services offered by the Division targeted her inability to safely parent her children, including in-home training.

Specifically, Judge Blackburn found clear and convincing evidence that the Division provided a plethora of services to assist reunification of defendant with her children:

> The first goal for these children was reunification with [defendant]. In fact, services were put in place to prevent their removal. The voluminous credible testimony in this trial outlines the numerous services which were put in place to first prevent the removal of these children and then to facilitate their return to [defendant]. Even in this instance when she completed the services, [defendant] could not comprehend the lessons that were being taught. . . . [S]he still did not understand why they [were] removed. She still brought inappropriate food to visits. She still used inappropriate language and discussed inappropriate topics.

> She [and T.J.] used electronic devices excessively during visits.

The Division's evidence supports the court's findings. One Division caseworker testified that the Division informed the referral agencies of their concerns as to defendant's cognitive capacity "so they would be able to present that information in the manner that would be appropriate for her." Another worker explained that the Division initiated in-home support to accommodate defendant's limitations. Moreover, Dr. Lee opined that defendant lacks the ability to identify prior areas of concern with her parenting, which raises doubt as to her ability to remediate those concerns. See N.J. Div. of Youth & Family Servs. v. A.G., 344 N.J. Super. 418, 442 (App. Div. 2001) (noting that although the Division's efforts should "take into consideration the abilities and mental conditions of the parent," the success of those efforts is not the measure of whether the services were reasonable).

We next consider defendant's claim that none of the children displayed "acute distress or aversion" to her, and the two oldest children should be placed with her because they are not in adoptive homes. Dr. Blackburn credited the uncontroverted testimony of Dr. Lee, who conducted the bonding evaluations and found all five

children had an ambivalent and insecure relationship with their mother.

With respect to the three youngest children, W.M.H., J.D.H., and A.J.H., Dr. Lee opined they had formed secure bonds with their respective resource parents, and lacked significant and positive bonds with defendant. Indeed, by the time of Dr. Lee's evaluation, the two youngest children had been out of defendant's care longer than they had been in it.

Although defendant's two oldest children, J.C.H. and C.M.H. were not placed in adoptive homes by the time of trial, both children have special needs: J.C.H., having been diagnosed with autism; and C.M.H., having a history of emotional and behavioral issues. According to Dr. Lee, defendant's own limitations prevent her from meeting their special needs, evidenced by her failure to keep their therapy appointments. Both children have been progressing since their removal from defendant. Because Dr. Lee found these two children were not bonded to their mother, defendant's reliance on New Jersey Division of Youth & Family Services v. E.P., 196 N.J. 88, 102 (2008) (reversing a guardianship judgment where there was no permanent placement in sight for a thirteen-year-old girl because her mother's "love and emotional

support" was the "one sustaining force" in her young life), is misplaced.

Further, Judge Blackburn found credible the testimony of the Division adoption supervisor, who "painstakingly explained the process available to children post[-]parental termination even if they are not in an adoptive placement at the time of termination." Citing New Jersey Division of Youth & Family Services v. A.W., 103 N.J. 591, 610, the judge found the worker's testimony clearly illustrates "the path to permanency" recognized by the Court as an "important part of the nurture."

In sum, defendant clearly is "[in]capable of providing a safe and secure home for [her five] . . . children." Accordingly, we discern no basis to disturb Judge Blackburn's conclusion that the Division presented sufficient competent evidence to satisfy the four statutory prongs set forth in N.J.S.A. 30:4C-15.1(a), and termination of defendant's parental rights was in the children's best interests.

Affirmed.