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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3446-16T3

NEW JERSEY DIVISION OF CHILD  
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

S.M.,

Defendant-Appellant,

and

J.A. and W.M.,

Defendants.

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IN THE MATTER OF THE GUARDIANSHIP  
OF J.A., Ju.A., P.L.A.M., J.A.M.,  
So.M., and Sa.M., Minors.

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Submitted May 15, 2018 – Decided June 4, 2018

Before Judges Yannotti, Carroll and DeAlmeida.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Hudson County,  
Docket No. FG-09-0261-15.

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

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Danielle Ruiz, Designated Counsel, on the brief).

PER CURIAM

Defendant S.M. appeals from the March 31, 2017 judgment of guardianship terminating her parental rights to her children, J.A., born in July 2005, Ju.A., born in December 2011, twins P.L.A.M. and J.A.M., born in July 2014, and twins So.M. and Sa.M., born in May 2016.<sup>1</sup> Defendant contends the New Jersey Division of Child Protection and Permanency (Division) failed to prove two of the four prongs of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence. The Law Guardian supports the termination of parental rights. We affirm, substantially for the reasons stated by Judge Bernadette N. DeCastro in her thorough written opinion issued with the judgment.

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<sup>1</sup> The judgment also terminated the parental rights of the children's biological fathers, who are not involved in this appeal.

I.

The evidence presented at the three-day trial is outlined in detail in the judge's opinion. We summarize the evidence most pertinent to the issues raised by defendant on appeal.

Defendant's involvement with the Division is quite extensive, and dates back to 2002.<sup>2</sup> According to testimony and documentary evidence presented by the Division's adoption caseworker, defendant's history with the Division has been punctuated by her continued drug use and lack of compliance with treatment programs and other services offered by the Division over several years.

The Division's expert psychologist, Karen D. Wells, Psy.D., testified regarding her psychological evaluations of defendant, and bonding evaluations she conducted between defendant and the children and between the children and their resource parents. Dr. Wells explained that defendant's continued use of PCP resulted in unpredictable behaviors that may be displayed in terms of belligerence and hostility. The drug also creates "distortions" that impair defendant's judgment and jeopardize her ability to respond to emergencies in an appropriate manner, to tolerate

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<sup>2</sup> Defendant is also the biological mother of two other children not at issue in this appeal: N.M., born in November 1999, and Jos.A., born in April 2003. Defendant's parental rights to Jos.A. were terminated on October 15, 2015, and N.M. was in the Kinship Legal Guardianship program with a relative at the time of trial in this matter.

regular child developmental concerns, and to focus on multiple children simultaneously. In addition, PCP use can mask underlying mental health issues, and mental health treatment cannot be provided while defendant is actively engaged in PCP use.

Dr. Wells concluded defendant was incapable of providing adequate care to the children and that she presented a grave risk of danger to them. Moreover, defendant could not provide a safe and stable home for herself, let alone for her children.

Dr. Wells found no secure and stable parent-child bonds between defendant and the children. She found that Ju.A., P.L.A.M., and J.A.M. would not suffer any harm if removed from defendant's care permanently. She opined that J.A., the oldest, might suffer distress upon termination of defendant's parental rights. However, he would not suffer enduring or irreparable harm, and any distress would be mitigated by his strong relationship with A.A., his paternal grandmother who he lived with and who wished to adopt him.

Dr. Wells elaborated upon the bonding evaluations she conducted between the children and their resource parents. She found an intact, secure parental bond between A.A. and J.A., Ju.A., and J.A.M., and concluded that the children would be "emotionally, psychologically devastated" if removed from A.A.'s care. Dr. Wells also found an intact and secure parental bond between

P.L.A.M. and her paternal aunt, L.B., who wished to adopt her. Dr. Wells concluded that, if separated from L.B.'s care, P.L.A.M. would suffer acute harm that could become enduring due to her confusion and young age.

Dr. Wells also explained that she performed no bonding evaluations as to Sa.M. and So.M. because they had been with their resource family since shortly after birth, and had no relationship with defendant. Nonetheless, Dr. Wells opined that all of the children would suffer harm if separated from their resource families and returned to defendant's care. Dr. Wells found permanency and stability to be necessary for the children's development and well-being. She concluded it would not be in the children's best interests to further delay permanency to allow defendant more time to receive services, given the length of the litigation, the family's history, and prior failed interventions.

After carefully reviewing the evidence, Judge DeCastro found that, "[d]uring this protracted litigation, the Division offered [defendant] . . . a plentitude of services." These included several substance abuse programs, parenting classes, anger management, supervised visitation, and bus passes. The judge noted defendant's lack of compliance with these services. Specifically, the judge found defendant "has failed to enroll in any substance abuse program since October 2015. [She] still has

to complete a residential substance abuse program, individual counseling, anger management, and parenting skills. In addition, she needs housing and employment."

Judge DeCastro also accepted Dr. Wells' opinion that defendant "is on a downward spiral," "is unable to provide a safe and stable environment for the children," and that defendant's unpredictable behavior poses a risk to the children that was unlikely to change in the foreseeable future. The judge further noted Dr. Wells' conclusion that, if the children are returned to defendant, they would suffer "unimaginable harm."

Based on these findings, Judge DeCastro determined the Division proved by clear and convincing evidence the four prongs of the best interests test, codified in N.J.S.A. 30:4C-15.1(a). Consequently, the judge terminated defendant's parental rights to the children, and found adoption by the resource parents appropriate and in the children's best interests. This appeal followed.

## II.

We begin our analysis by recognizing the fundamental proposition that 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 . . .,' 'far more precious . . . than property rights.'" Stanley v. Illinois, 405 U.S. 645, 651 (1972) (citations omitted). "The 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.

The constitutional right to the parental relationship, however, is not absolute. N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 599 (1986). At times, the parent's interest must yield to the State's obligation to protect children from harm. In re Guardianship of J.C., 129 N.J. 1, 10 (1992). To effectuate these concerns, the Legislature created a four-prong test for determining whether a parent's rights must be terminated in the child's best interests. This statutory test requires that the Division prove by clear and convincing evidence that:

(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).]

These "four prongs are not 'discrete and separate,' but 'relate to and overlap with one another to provide a comprehensive standard that identifies a child's best interests.'" N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012) (citations omitted).

The Division need not demonstrate actual harm in order to satisfy prong one. N.J. Div. of Youth & Family Servs. v. A.G., 344 N.J. Super. 418, 440 (App. Div. 2001). The test is whether the child's safety, health or development will be endangered in the future and whether the parent is or will be able to eliminate the harm. Ibid. Prong one can be satisfied where a parent refuses to treat his or her mental illness and the mental illness poses a real threat to a child. F.M., 211 N.J. at 450-51; see also In re Guardianship of R.G. and F., 155 N.J. Super. 186, 194 (App. Div. 1977) (holding that the parents' mental illnesses created an environment in which they were unable to adequately care for and raise their children, thus causing them harm, despite the absence



of physical abuse or neglect); A.G., 344 N.J. Super. at 438-39 (holding that the fact that parents may be morally blameless is not sufficient when psychological incapacity makes it impossible for them to adequately care for a child).

In addition, a parent's failure to provide a "permanent, safe, and stable home" engenders significant harm to the child. In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999). Likewise, a parent's failure to provide "solicitude, nurture, and care for an extended period of time is in itself a harm that endangers the health and development of the child." Id. at 379. Compounding the harm is the parent's "persistent failure to perform any parenting functions and to provide . . . support for [the child]." Id. at 380. Such inaction "constitutes a parental harm to that child arising out of the parental relationship [that is] cognizable under N.J.S.A. 30:4C-15.1(a)(1) and (2)." Id. at 380-81.

"The second prong, in many ways, addresses considerations touched on in prong one." F.M., 211 N.J. at 451. The focus is on parental unfitness. K.H.O., 161 N.J. at 352; D.M.H., 161 N.J. at 378-79. In considering this prong, the court should determine whether it is reasonably foreseeable that the parent can cease to inflict harm upon the child. A.W., 103 N.J. at 607. The second prong may be satisfied

by indications of parental dereliction and irresponsibility, such as the parent's continued or recurrent drug abuse, the inability to provide a stable and protective home, the withholding of parental attention and care, and the diversion of family resources in order to support a drug habit, with the resultant neglect and lack of nurture for the child.

[K.H.O., 161 N.J. at 353.]

"Prong two may also be satisfied if 'the child will suffer substantially from a lack of . . . a permanent placement and from the disruption of [the] bond with foster parents.'" F.M., 211 N.J. at 451 (quoting K.H.O., 161 N.J. at 363).

"The third prong requires an evaluation of whether [the Division] 'made reasonable efforts to provide services to help the parent' remedy the circumstances that led to removal of the children from the home." Id. at 452 (quoting N.J.S.A. 30:4C-15.1(a)(3)). The emphasis on the third prong

is on the steps taken by [the Division] toward the goal of reunification. "The diligence of [the Division's] efforts on behalf of a parent is not measured by" whether those efforts were successful. "'Reasonable efforts' may include consultation with the parent, developing a plan for reunification, providing services essential to the realization of the reunification plan, informing the family of the child's progress, and facilitating visitation." Experience tells us that even [the Division's] best efforts may not be sufficient to salvage a parental relationship.

[Ibid. (citations omitted).]

As part of the inquiry, "the court must consider the alternatives to termination of parental rights and whether the Division acted reasonably." A.G., 344 N.J. Super. at 434-35. "The reasonableness of the Division's efforts depends on the facts in each case." Id. at 435.

The fourth prong seeks to determine whether "[t]ermination of parental rights will not do more harm than good." N.J.S.A. 30:4C-15.1(a)(4). The fourth prong serves as a "'fail-safe' inquiry guarding against an inappropriate or premature termination of parental rights." F.M., 211 N.J. at 453. "The question ultimately is not whether a biological mother or father is a worthy parent, but whether a child's interest will best be served by completely terminating the child's relationship with the parent." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 108 (2008). The court must determine "whether . . . the child will suffer a greater harm from the termination of ties with [his or] her natural parents than from the permanent disruption of [his or] her relationship with [his or] her foster parents." K.H.O., 161 N.J. at 355.

Because harm to the child stemming from termination of parental rights is inevitable, "the fourth prong of the best interests standard cannot require a showing that no harm will befall the child as a result of the severing of biological ties."

Ibid. Rather, the court's inquiry is one of comparative harm, for which the court must consider expert evaluations of the strength of the child's relationship to the biological parents and the foster parents. Ibid. Thus, "[t]o satisfy the fourth prong, the [Division] should offer testimony of a well qualified expert who has had full opportunity to make a comprehensive, objective, and informed evaluation of the child's relationship with both the natural parents and the foster parents." F.M., 211 N.J. at 453 (quoting N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 281 (2007)). "Under this prong, an important consideration is '[a] child's need for permanency.' Ultimately, a child has a right to live in a stable, nurturing environment and to have the psychological security that his most deeply formed attachments will not be shattered." Ibid. (citations omitted).

### III.

In the present case, with regard to the first prong, Judge DeCastro found that:

[Defendant] has been unable to provide a safe and stable home for any of her children since December 2011. Five of these six children were born testing positive for PCP. She has not addressed the significant and long-standing serious drug addiction since 2011. Not only has her PCP use continued but her mental health has deteriorated. She has acted out toward[] her children and exhibited erratic and disturbing behavior at visits, which led to Dr. Gutierrez's recommendation

in July 2015 that her visits be suspended until she enrolled in drug treatment.

Dr. Wells described [defendant's] functioning as a "downward spiral" since her children were initially removed from her custody. This, the expert stated, is not likely to change in the foreseeable future.

. . . .

Clearly, these children have been harmed by their mother's inability to remain drug free. As a result, the children have spent most of their lives in foster-care.

In considering the second prong, Judge DeCastro concluded defendant is "unwilling or unable to correct the harm that led to the children's removal. [She] is in the same position at this juncture of the case as she was in 2011." The judge accepted Dr. Wells' testimony that

[defendant] continues to abuse drugs, is essentially homeless, [and] has been engaged in illicit activities including prostitution. According to the expert, "it is unequivocally clinically contraindicated that [defendant] be given any additional time to demonstrate psychological and emotional readiness to assume parental care and responsibility" for her children.

Moreover, her mental status and PCP abuse [have] precipitated unpredictable and impulsive behaviors placing herself at risk. Any child, according to Dr. Wells, placed in her care would be at high risk of injury, danger, and harm during these period[s] as [defendant] would likely engage in random acts of impulsivity, exercise poor judgment, and evince spontaneous irrational behaviors with

an absence of immediate regard for the consequences. . . .

Thus, Dr. Wells opined that [defendant's] prognosis is very poor. She has not completed a drug program since her relapse. She continues testing positive for PCP and her behavior during her visits with her children has been reported to be of concern. In the expert's opinion, [defendant] is unable to provide a safe and stable environment for her son. Moreover, that is unlikely to change in the foreseeable future.

Judge DeCastro also reviewed the results of the bonding evaluations conducted by Dr. Wells, and noted her expert conclusion that defendant is not the psychological parent for any of her children. Ultimately, "[b]ased upon the uncontroverted expert testimony of Dr. Wells," the judge determined "the Division has proven by clear and convincing evidence that [defendant is] unable or unwilling to eliminate the harm and delaying permanent placement will add to the harm."

As to prong three, Judge DeCastro found "[t]he Division has exerted reasonable efforts as to [defendant] since 2011." Defendant was enrolled in several substance abuse programs, and while she completed a twenty-eight day detoxification program, she failed to enter any recommended inpatient treatment program. The judge noted defendant "was also referred to parenting classes, which she never completed." The Division also arranged for defendant to have supervised visitation, but it was briefly

suspended in March 2014, and then again in 2015, due to safety concerns for the children. Moreover, during the period that visits were restored, they were "sporadic and of concern." The judge also found there were no viable alternatives to termination, and that "[t]he Division explored relative placements and the children are placed with a paternal grandmother and a paternal aunt who both wish to adopt."

Finally, Judge DeCastro concluded the Division met its burden of proving by clear and convincing evidence that termination of defendant's parental rights will not do more harm than good, and that it was in the children's best interests to do so. The judge elaborated:

No expert testified that termination of parental rights would do more harm than good. In fact, Dr. Wells testified that if removed from their present caregivers, the [harm to the] three boys who are in the care of the paternal grandmother . . . would be "psychologically devastating." If [P.L.A.M.] were removed from the paternal aunt, the expert opined that the child will suffer acute harm that could be enduring if she exhibits developmental difficulties as a result of being exposed to PCP in utero. The expert summed up her conclusion by stating that it is not in the children's best interest to delay permanency to give [defendant] any more time, given the history of this case.

#### IV.

On appeal, defendant does not challenge the trial court's findings as to the first and third prongs. She only challenges the court's findings under the second and fourth prongs that she is unable or unwilling to eliminate the harm facing the children, that delaying permanency will harm the children, and that termination will not cause more harm than good.

Our scope of review on appeals from orders terminating parental rights is limited. In such cases, the trial court's findings generally should be upheld so long as they are supported by "adequate, substantial, and credible evidence." N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014). A decision in this context should only be reversed or altered on appeal if the trial court's findings are "so wholly unsupportable as to result in a denial of justice." N.J. Div. of Youth & Family Servs. v. P.P., 180 N.J. 494, 511 (2004) (quoting In re Guardianship of J.N.H., 172 N.J. 440, 472 (2002)). We must give substantial deference to the trial judge's opportunity to have observed the witnesses first hand and to evaluate their credibility. R.G., 217 N.J. at 552. Even where the appellant "allege[s] error in the trial judge's evaluation of the underlying facts and the implications to be drawn therefrom," deference must be afforded unless the court "went so wide of the mark that a



mistake must have been made." M.M., 189 N.J. at 279 (citations omitted).

Our review of this record convinces us that no mistake was made, and that Judge DeCastro's decision is supported by clear and convincing evidence and carefully tracks the statutory requirements of N.J.S.A. 30:4C-15.1(a). Defendant's contentions to the contrary lack merit and do not provide grounds for intervention. Accordingly, we affirm the termination of defendant's parental rights substantially for the reasons set forth in Judge DeCastro's comprehensive and thoughtful written opinion.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION