SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3672-16T1
A-3673-16T1

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

D.P. and T.J.,

Defendants-Appellants.

IN THE MATTER OF THE GUARDIANSHIP OF D.P. and K.P.,

Minors.

Submitted January 17, 2018 – Decided March 14, 2018

Before Judges Sumners and Moynihan.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FG-13-0033-17.

Joseph E. Krakora, Public Defender, attorney for appellant D.P. (Sarah L. Monaghan, Designated Counsel, on the briefs).

Joseph E. Krakora, Public Defender, attorney for appellant T.J. (Victor E. Ramos, Assistant Deputy Public Defender, of counsel and on the briefs).

Gurbir S. Grewal, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Joshua P. Bohn, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Nancy P. Fratz, Assistant Deputy Public Defender, on the brief).

PER CURIAM

In these matters, consolidated for the purpose of this opinion, defendants D.P. (Dave)[1] and T.J. (Terri) appeal from the Family Part order that terminated their parental rights to their special needs sons, two-year-old D.P. (Donny) and eight-month-old K.P. (Kenny). Our review of the trial judge's decision is limited. We defer to the expertise of Family Part judges, Cesare v. Cesare, 154 N.J. 394, 413 (1998), and we are bound to their factual findings when supported by sufficient credible evidence. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (citing In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)). After reviewing the record, we reject defendants' contentions that the Division of Child Protection and Permanency (Division) failed to meet its burden under the four prongs of the best interests test, N.J.S.A. 30:4C-15.1(a), by clear and

[1] We use pseudonyms for the children, parents, and resource parent to protect their privacy and for ease of reference.

convincing evidence. And although the trial judge should have more fully set forth the legal basis for his decision, we conclude that the credible evidence set forth in his oral decision sustains the statutory requirement that termination of defendants' parental rights was in the boys' best interests. Accordingly, we add the following comments.

As to prong one of the best interest test, the Division must prove that "[t]he child's safety, health, or development has been or will continue to be endangered by the parental relationship[.]" N.J.S.A. 30:4C-15.1(a)(1). "[T]he relevant inquiry focuses on the cumulative effect, over time, of harms arising from the home life provided by the parent." M.M., 189 N.J. at 289.

"Serious and lasting emotional or psychological harm to children as the result of the action or inaction of their biological parents can constitute injury sufficient to authorize the termination of parental rights." In re Guardianship of K.L.F., 129 N.J. 32, 44 (1992) (citing In re Guardianship of J.C., 129 N.J. 1, 18 (1992)). Thus, "courts must consider the potential psychological damage that may result from reunification[,] as the 'potential return of a child to a parent may be so injurious that it would bar such an alternative.'" N.J. Div. of Youth & Family Servs. v. L.J.D., 428 N.J. Super. 451, 480-81 (App. Div. 2012)

(quoting N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 605 (1986)).

The Division does not have to prove physical abuse or neglect to terminate parental rights. A.W., 103 N.J. at 605 (quoting In re Guardianship of R., 155 N.J. Super. 186, 194 (App. Div. 1977)). "A parent's withdrawal of . . . solicitude, nurture, and care for an extended period of time is in itself a harm that endangers the health and development of the child." In re Guardianship of DMH, 161 N.J. 365, 379 (1999). Moreover, "[c]ourts need not wait to act until a child is actually irreparably impaired by parental inattention or neglect." Id. at 383.

Contrary to Terri's contention that she did not harm her sons, the credible evidence shows that she did so through her inability to curtail her drug addiction. Both of them tested positive for drugs at birth and went through withdrawal. Considering that Donny entered the world with this affliction, it is even more disconcerting that Terri would thereafter inflict his younger brother with the same infirmity. Further, Terri essentially abandoned her sons after they were both removed from her at birth. During the six months prior to the termination hearing, she failed, without explanation, to visit them through the Division's arrangements. In fact, Donny has not seen his mother the last third of his life. Because of Terri's disinterest

in seeing her sons, the Division's expert evaluator, David Brandwein, Psy.D, could not conduct a bonding evaluation. Finding Brandwein's testimony credible, and without challenge from an expert presented by Terri, the judge understandably accepted his opinion that she was incapable of parenting.

As for Dave, the record supports the judge's finding that he inflicted harm on his sons by not parenting them when Terri could not, and showing no interest in doing so. When the Division instituted the guardianship proceeding, Dave missed four court appearances, appearing thereafter when he was incarcerated and brought to court through court order. Equally telling are his three unexcused missed appointments for paternity tests; paternity could only be confirmed when he was tested while incarcerated. And like Terri, he declined the Division's visitation arrangements and chose not to visit his sons. Moreover, Dave's repetitive pattern of incarceration kept him from being the father his sons needed.

With respect to the second prong of the best interests test, only Dave challenges the judge's findings. Under this prong, the Division must prove that he is "unwilling or unable to eliminate the harm facing the child[ren] or is unable or unwilling to provide a safe and stable home . . . and the delay of permanent placement will add to the harm." N.J.S.A. 30:4C-15.1(a)(2). That harm may

include evidence that separating the children from their resource parent "would cause serious and enduring emotional or psychological harm . . . ." Ibid. The Division can establish the second prong by proving that a "child will suffer substantially from a lack of stability and a permanent placement[,] and from the disruption of" a bond with the resource parents. In re Guardianship of K.H.O., 161 N.J. 337, 363 (1999). Because they are related, evidence supporting the first prong may also support the second prong "as part of the comprehensive basis for determining the best interests of the child." DMH, 161 N.J. at 379.

The judge's finding under the first prong that the Division established Dave's lack of interest in parenting his sons also satisfies the Division's burden under the second prong. Crediting Brandwein's uncontroverted opinion, the judge found that to remove the boys from the resource parent, who wants to adopt them, would disrupt the bond that is developing and the progress she has made in addressing the boys' needs. On the other hand, there is no bond between Dave and his sons. The fact that Dave is in prison until February 2021, and would need almost two years following his release to demonstrate he has the stability to parent, would unreasonably delay the permanent placement the boys need. In other words, Dave's history of incarceration and instability, and

his demonstrated lack of concern for his sons, are strong predictors that he will be unable to make lifestyle changes that will enable him to properly parent them.

Both parents contest the judge's third-prong findings. This prong requires the Division to make "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['s] consider[ation of] alternatives to termination of parental rights[.]" N.J.S.A. 30:4C-15.1(a)(3). It also "contemplates efforts that focus on reunification of the parent with the child and assistance to the parent to correct and overcome those circumstances that necessitated the placement of the child into foster care." K.H.O., 161 N.J. at 354.

The record shows that there was credible evidence supporting the judge's findings that the Division made reasonable efforts to provide services to both parents in order to enable them to properly parent their sons. Terri repeatedly spurned the Division's effort to help her eradicate her drug addiction to cocaine and opioids, the roadblock to her ability to parent her sons. Before Dave was incarcerated, his avoidance of paternity testing and court hearings thwarted the Division's effort to offer him services that would help him parent. And although his incarceration made it possible to establish paternity and resulted

in his court appearances, it impeded the Division's effort to provide him those services.

Additionally, the record shows there was credible evidence supporting the judge's findings that there were no viable alternatives to termination by placing the boys with any of the parent's family members. Terri's father showed little interest in his grandsons' welfare through his minimal visits, and was ruled out by the Division because he had no real plan as to how he would care for the toddlers during his three times a week dialysis treatment and within the confines of his one-bedroom apartment. His failure to appeal the ruling further showed his lack of sincere interest. As for Terri's aunt, who lived in the Midwest and did not come forward as a possible caretaker until a month before the guardianship hearing, the judge found her testimony that the Division did not reach out to her lacked credibility in the face of the agency's credible proofs that she did not respond to their correspondence soliciting her interest in taking care of her grand-nephews. See N.J. Div. of Youth & Family Servs. v. K.L.W., 419 N.J. Super. 568, 582 (App. Div. 2011) (noting that the Division is not obligated to wait to investigate relatives presented on the eve of trial). The fact that she was unaware of the boys' special needs was yet another reason she was not a viable placement option.

Dave, likewise, did not present a viable placement option. The judge determined that his mother, also an eleventh-hour alternative, was not a credible witness because she never sought to visit her grandsons and was unaware that they were under the Division's care. And her poor health due to a stroke, an aneurism, and stress caused by the deaths of family members, would prevent her from independently caring for two special needs toddlers.

Only Dave challenges the judge's ruling under prong four, which requires there must exist sufficient credible evidence to show that "[t]ermination of parental rights will not do more harm than good." N.J.S.A. 30:4C-15.1(a)(4). Relying on Brandwein's expert testimony, the court credited his opinion that the resource parent has been "effortlessly" meeting the boys' special needs and that should not be disrupted. Dave's contention that the Division did not conduct a bonding evaluation[2] between him and his sons is of little significance because it is clear he never established a relationship with them. Consequently, there is no harm to them in terminating Dave's parental rights.

Finally, Terri's argument that the Division's improper addition of Kenny to the guardianship petition after it was filed for Donny violated her due process rights is without merit.

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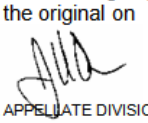
[2] The children were not medically cleared to visit Dave.

In accordance with N.J.S.A. 30:4C-15(c), the Division may seek termination of parental rights when "it appears that the best interest of any child under the care or custody of the [D]ivision require that he be placed under guardianship." The Court articulated in DMH, that efforts to terminate parental rights "need not wait to act until a child is actually irreparably impaired by parental inattention or neglect" where there is a risk of future harm. DMH, 161 N.J. at 383. Indeed, the Division should not delay guardianship efforts where the mistreatment of one child is a "dangerous harbinger" to siblings. Div. of Youth & Family Servs. v. Robert M., 347 N.J. Super. 44, 68 (App. Div. 2002).

Although Kenny's guardianship was added to the petition when he was about seven months old, the Division's concerns over Terri's inability to parent Donny were evident as Donny was in foster care for a year before Kenny's birth. Further, prior to Donny's birth, the Division obtained a court order awarding it care and supervision of Terri's first child due to her drug addiction. Moreover, since Kenny was removed at birth and Terri stopped visiting him, a bond never existed between them. These factors, coupled with the desired benefit of keeping the brothers together and the need to bring permanency to their lives, justified the Division's prompt and proactive effort to place Kenny in a stable and nurturing environment.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION