

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3706-16T2

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

K.M.,

Defendant-Appellant.

IN THE MATTER OF THE GUARDIANSHIP
OF V.M., A Minor.

Submitted March 15, 2018 – Decided April 19, 2018

Before Judges Simonelli and Rothstadt.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Hudson County,
Docket No. FG-09-0124-16.

Joseph E. Krakora, Public Defender, attorney
for appellant (Steven Edward Miklosey, of
Counsel and on the brief).

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

Joseph E. Krakora, Public Defender, Law Guardian, for minor (Joseph Hector Ruiz, on the brief).

PER CURIAM

Defendant K.M.,¹ the biological father of V.M. (Vincent), born in 2012, appeals from the February 14, 2107 judgment of guardianship, which terminated his parental rights to the child. Vincent's biological mother, M.G.M. (Mary), is deceased. On appeal, defendant contends the trial judge erred in finding respondent New Jersey Division of Child Protection and Permanency (Division) proved prongs all four prongs of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence. We disagree and affirm.

We will not recite in detail the history of the Division's involvement with defendant. Instead, we incorporate by reference the factual findings set forth in Judge Bernadette N. DeCastro's February 14, 2017 written opinion. However, we add the following comments.

Defendant has a history of heroin addiction, domestic violence, and lack of employment and housing. He became involved with the Division on August 18, 2014, as the result of an act of

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

domestic violence with Mary, which led to her death. Defendant was under the influence of drugs at the time of the domestic violence incident and also used drugs on other occasions when Vincent was in his care. Defendant's involvement with the Division prior to his arrest for Mary's death was marked by his non-compliance with substance abuse treatment.

On the day of the domestic violence incident, the police found drugs and drug paraphernalia in the home and saw the home was in total disarray. The police arrested defendant and charged him with drug-related offenses. Because defendant was incarcerated and Mary was deceased, the Division executed a Dodd² removal of Vincent, who was present during the domestic violence incident and allegedly witnessed his mother's death. The Division placed Vincent with his maternal uncle, where he remains. The maternal uncle wants to adopt him.

Defendant was released on bail on August 22, 2014. He was later arrested, charged with Mary's murder, and incarcerated until March 2015. Approximately six months after his release on bail,

² "A 'Dodd removal' refers to the emergency removal of a child children from the home without a court order, pursuant to the Dodd Act, which, as amended, is found at N.J.S.A. 9:6-8.21 to -8.82. The Act was authored by former Senate President Frank J. 'Pat' Dodd in 1974." N.J. Div. of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 609 n.2 (App. Div. 2010).

he relapsed, was arrested, charged with robbery, and his bail was revoked. He remains incarcerated and his murder and robbery charges are pending. He is in maximum security, where only grief counselling services were available.

While defendant reported having abstained from drug use while incarcerated, the Division's expert psychologist, who Judge DeCastro found more persuasive than defendant's expert psychologist, opined defendant did so in a controlled setting and had to demonstrate sustained abstinence in a community setting outside prison for at least one year; however, his prognosis was poor. Defendant offered no plan for parenting Vincent should he be released from incarceration, and lacked the psychological and emotional functioning to resume parental care for the child. Because defendant remained incarcerated with uncertainty as to the outcome of his criminal charges, his capacity to provide care for Vincent within the foreseeable future was unknown. Even if defendant was acquitted of the charges and released, he would lack the immediate means to provide stability and permanency for Vincent, who needs and deserves permanency.

The Division's expert also opined that Vincent's uncle is his psychological parent and Vincent has an emotional attachment to

him.³ There is an intact and secure bond between Vincent and his uncle, and Vincent has thrived in his care. If removed from his uncle, Vincent would suffer emotional and psychological harm. The Division's expert further opined that Vincent and defendant had an insecure bond, defendant was not the child's psychological parent, and Vincent's uncle could mitigate any harm posed by separation from defendant.

A court should terminate parental rights when the Division shows 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.

³ Defendant's expert did not conduct a bonding evaluation between Vincent and his uncle.

[N.J.S.A. 30:4C-15.1(a).]

Judge De Castro reviewed the evidence presented at the trial, made detailed factual findings as to each prong of N.J.S.A. 30:4C-15.1(a), and thereafter concluded the Division met by clear and convincing evidence all of the legal requirements for a judgment of guardianship. As to prong one, the judge found that due to his incarceration, unresolved substance abuse and domestic violence issues, and instability, defendant has been unable to provide a safe and stable home for Vincent now or in the foreseeable future.

As to prong two, the judge found defendant had not corrected the circumstances that led to Vincent's removal and was unable to offer a viable plan for Vincent's care due to his uncertain future. The judge concluded that Vincent requires permanency in a safe and stable home, further delay in permanency would add to the harm Vincent will experience, and separation from his uncle would cause him serious and enduring emotional or psychological harm.

As to prong three, Judge DeCastro found the Division provided services to defendant, including substance abuse, psychological, and bonding evaluation, substance abuse treatment, parenting skills, counseling, and visitation. The judge considered, but found no viable alternatives to termination, including the paternal grandmother and paternal aunt. As to prong four, the judge found Vincent will not suffer a greater harm from the

termination of ties with defendant than from the permanent disruption of his relationship with his uncle. The judge concluded it was not in Vincent's best interest to hold him hostage to the uncertain outcome of defendant's criminal proceedings and the need for permanency was paramount.

Judge DeCastro's opinion tracks the statutory requirements of N.J.S.A. 30:4C-15.1(a), accords with N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420 (2012), N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88 (2008), 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 N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591 (1986), and is more than amply supported by the record. F.M., 211 N.J. at 448-49. We affirm substantially for the reasons the judge expressed in her comprehensive and cogent February 14, 2017 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