SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4072-16T3
A-4073-16T3

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

M.W. and I.Y.,

Defendants-Appellants.

IN THE MATTER OF THE GUARDIANSHIP OF Z.Y., a minor.

Submitted March 20, 2018 – Decided April 13, 2018

Before Judges Hoffman, Gilson, and Mayer.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FG-13-0074-16.

Joseph E. Krakora, Public Defender, attorney for appellant M.W. (Marina Ginzburg, Designated Counsel, on the brief).

Joseph E. Krakora, Public Defender, attorney for appellant I.Y. (Adrienne Kalosieh, Designated Counsel, on the brief).

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

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

PER CURIAM

The parents of a child appeal from a May 11, 2017 judgment terminating their parental rights and granting guardianship of the child to the Division of Child Protection and Permanency (Division). Following a trial, the Family judge issued an oral decision finding that the Division had proven by clear and convincing evidence each of the four prongs of the best interests test, N.J.S.A. 30:4C-15.1(a). The judge also found that it would be in the child's best interests to terminate defendants' parental rights so the child could be adopted. We affirm the judgment in these consolidated appeals.

I.

M.W. (Mary), the mother, and I.Y. (Ian), the father, are the parents of Z.Y. (Zoe), born in July 2014.[1] The Division has been involved with the family since just after Zoe's birth. Initially,

[1] To protect privacy interests and for ease of reading, we use initials and fictitious names for the parents and child. See R. 1:38-3(d)(12).

the Division had concerns regarding Mary's mental health. The hospital where Zoe was born reported concerns to the Division regarding Mary's depression, anxiety, and suicidal thoughts. After learning of Mary's history of mental health issues, the Division determined that Mary's contact with Zoe required supervision.

Mary and Ian offered multiple family members as potential supervisors, but none of those relatives were approved because either they refused to cooperate with the Division or their housing conditions were unstable. Given the lack of adequate supervision and housing for Zoe, on July 15, 2014, the Division conducted an emergent removal of the child from the hospital. Since then, Zoe has been in the care of a resource family who wants to adopt her.

In December 2014, Mary and Ian waived their right to a fact-finding hearing and stipulated that they needed services. They both acknowledged that they lacked appropriate housing to care for Zoe. Mary also acknowledged that she needed services.

Beginning in 2014 and continuing into 2016, the Division provided the parents with various services, including psychological evaluations, mental health counseling, parenting classes, visitation with the child, and help in obtaining housing assistance. The parents periodically missed scheduled visitation with Zoe. Their attendance at evaluations and counseling were

inconsistent, and they did not complete or cooperate with many of the services arranged by the Division.

In that regard, Mary repeatedly missed psychiatric appointments, and in January 2015, was discharged from a counseling program for non-compliance. She was discharged from a different counseling program in April 2016, again for non-compliance. Mary never completed a psychiatric program.

Mary and Ian were not able to obtain suitable housing for Zoe. The parents were ineligible for family housing assistance through Social Services without physical custody of the child. The Division, however, offered other assistance that did not require the parents to have physical custody of the child, including information about low income housing developments in the area and a rental assistance program. The Division also told Ian that it would look into assisting him with a security deposit and first month's rental payment, if he provided the Division with pay stubs as proof of his employment and ability to make future rental payments. Without explanation, Ian failed to provide pay stubs for two years.

A psychological evaluation of Mary disclosed that she suffered from persistent depressive disorder, and that she had a history of depression, including hospitalizations for psychiatric reasons. The assessment also revealed that Mary did not understand

the chronic nature of her depression, which prevented her from being able to independently parent Zoe.

Ian also completed a psychological evaluation. While Ian did not have a personality disorder, testing revealed that he had difficulty accepting responsibility and had an inflated sense of self. Those traits, coupled with his personal instability, inhibited his ability to parent independently.

A guardianship trial was conducted between June 2016 and May 2017. The majority of the testimony was completed by October 2016; however, the court rendered its oral decision on May 11, 2017.[2] The Division presented testimony from two of its workers, two police officers, and two experts —— Dr. Karen Wells and Dr. David Brandwein. Both parents attended trial and were represented by counsel. Mary testified at trial, and Dr. Jesse Whitehead presented expert testimony on her behalf. Ian testified only with regard to visitation with Zoe.

Based on the evidence at trial, the Family judge found that the Division had presented clear and convincing evidence of the four prongs necessary to terminate both Mary's and Ian's parental

[2] We emphasize the importance for "prompt disposition" of actions to terminate parental rights, due to the sensitive nature of such proceedings and the child's interest in obtaining permanency. R. 5:12-4(a); B.F. v. N.J. Div. of Youth & Family Servs., 296 N.J. Super. 372, 381-82 (App. Div. 1997).

rights. N.J.S.A. 30:4C-15.1(a). In her oral opinion, the judge made findings regarding the parents' actions that presented a risk of harm to Zoe's safety and development. She found that Mary and Ian were unwilling or unable to eliminate the harm facing Zoe despite the Division providing them with a number of services designed to help them achieve reunification. The judge also found that the Division made reasonable efforts to reunify Mary and Ian with Zoe, and that the Division had extensively explored, but properly ruled out, placement of Zoe with other family members. Finally, the judge found that Zoe would suffer harm if she was removed from her resource parents, and it would not do more harm than good to terminate both Mary's and Ian's parental rights.[3]

II.

Mary and Ian each appeal from the May 11, 2017 judgment. Mary argues that the Division failed to present clear and convincing evidence necessary for terminating parental rights. Ian also challenges the weight of the evidence as to each of the prongs, with the exception of the services provided by the Division.

[3] We note that some of the judge's findings could have been more detailed and supported with specific references to the facts on which the court was relying. Clear statements of factual findings and delineation of the applicable law help the parties and assist a reviewing court. See R. 1:7-4(a).

The scope of our review of an appeal from an order terminating parental rights is limited. N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014). We uphold a trial judge's factual findings if they are "supported by adequate, substantial, and credible evidence." Ibid. "We accord deference to fact findings of the [F]amily court because it has the superior ability to gauge the credibility of the witnesses who testify before it and because it possesses special expertise in matters related to the family." N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012). We will not overturn a Family court's factual findings unless they "went so wide of the mark that the judge was clearly mistaken." N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007). We do not, however, give "special deference" to the court's interpretation of the law. D.W. v. R.W., 212 N.J. 232, 245 (2012).

When considering termination of parental rights, the court focuses on the "best interests" of the child. In re Guardianship of K.H.O., 161 N.J. 337, 347 (1999). In striking a balance between a parent's constitutional rights and the child's fundamental needs, courts employ a four-prong test, which requires 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 [or her] resource family parents would cause serious and enduring emotional or psychological harm to the child;
>
> (3) The division 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 criteria "are neither discrete nor separate, but are interrelated and overlap." N.J. Div. of Youth & Family Servs. v. L.J.D., 428 N.J. Super. 451, 479 (App. Div. 2012). Together they "provide a comprehensive standard that identifies a child's best interests." K.H.O., 161 N.J. at 348.

The arguments presented by both Mary and Ian contest the sufficiency of the evidence supporting termination of their parental rights. Having reviewed the arguments presented in light of the record and law, we affirm. We will briefly discuss the judge's findings under each prong.

The judge's findings under prongs one and two overlap. See In re Guardianship of D.M.H., 161 N.J. 365, 379 (1999) (holding that prongs one and two are related and "evidence that supports one informs and may support the other as part of the comprehensive basis for determining the best interests of the child"). The judge found that Mary's and Ian's failure to provide suitable housing for Zoe created a risk of harm to her safety and development. With regard to Mary, the judge also found that her mental health issues remained a concern. These findings were supported by expert testimony that the parents were unable to independently care for the child without additional services.

Specifically, Dr. Wells and Dr. Brandwein found that Mary's and Ian's lack of personal stability hindered their ability to provide stability for Zoe. When Dr. Wells asked Ian how he planned to provide for Zoe, Ian became "stressed" and left the evaluation before it concluded. This concerned Dr. Wells, because parenting presents stressful situations that Ian would be required to handle. Additionally, Dr. Brandwein and Dr. Whitehead observed that Mary lacked insight into her mental health issues, as she did not understand why Zoe was removed from her care. Dr. Brandwein also noted that Mary had been inattentive at times during visitation and failed to check Zoe's diaper during a sixty-minute visit.

The judge also found that Mary and Ian had not made progress in eliminating the potential harm to Zoe. The parents had over two years to obtain housing, but, even with the assistance of the Division, failed to do so. Specifically, Ian did not produce pay stubs to the Division for two years. Moreover, neither parent demonstrated that they were taking the steps necessary to provide a permanent and stable environment for their child. See K.H.O., 161 N.J. at 363 (holding that a parent's "continuing inability . . . to provide a safe and stable home for [the] child meets the standards of parental unfitness" under prong two of the best interests test).

The judge found that Mary was unwilling or unable to address her mental health issues. While Mary's mental health issues were not as severe as initially reported to the Division, her depression remained a concern. Dr. Wells found that Mary had suppressed trauma from her childhood that caused her to lack the coping skills necessary to be "fully functioning as a parent." She further opined that Mary needed to address those issues through counseling. Mary, however, did not complete any of the recommended services. Indeed, she was discharged from two programs for non-compliance. These findings are supported by substantial credible evidence in the record.

Mary challenges the judge's findings under prong three of the best interests test. As previously summarized, the Division provided Mary with multiple services aimed at reunification with Zoe, many of which she did not use or attend. The Family judge also found that the Division's failure to offer Mary a Mommy and Me program, as recommended by an expert, was not dispositive in evaluating whether the services provided were reasonable. In that regard, the judge stated that "the Division is [not] tethered or bound to or by an expert's verbiage[.]" The judge concluded that the Division had provided ample services to allow Mary to address the circumstances that led to Zoe's removal. See D.M.H., 161 N.J. at 393 (holding that the reasonableness of the Division's efforts is "not measured by their success"). Accordingly, the Family court's finding that the Division satisfied the third prong is supported by substantial credible evidence in the record.

Finally, we discern no basis to disturb the judge's finding that termination of parental rights will not do more harm than good. A bonding evaluation between the child and the resource parents revealed that Zoe viewed her resource parents as her primary parental attachment and that it would cause Zoe harm if that bond was severed. By contrast, the experts found that no parent-child bond existed between Zoe and either parent, and there was no indication that Zoe would suffer harm if the parental

relationship was terminated. See K.H.O., 161 N.J. at 355 (requiring a finding under the fourth prong that termination of the child's relationship with his or her biological parents will not cause greater harm than termination of the child's relationship with his or her resource family).

This matter has been ongoing since 2014 and, for her entire life, the child has been placed with her resource parents who want to adopt her. Termination of parental rights will afford this child the opportunity for the permanency she deserves.

Affirmed.