

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4351-16T3

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

G.M.H.,

Defendant-Appellant.

IN THE MATTER OF THE
GUARDIANSHIP OF J.E.H., a minor.

Submitted March 6, 2018 – Decided March 26, 2018

Before Judges Reisner and Hoffman.

On appeal from the Superior Court of New
Jersey, Chancery Division, Family Part, Essex
County, Docket No. FG-07-0193-16.

Joseph E. Krakora, Public Defender, attorney
for appellant (Andrew R. Burroughs, Designated
Counsel, on the brief).

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Lisa M. Black, Designated Counsel, on the brief).

PER CURIAM

Defendant G.M.H. (Gina or defendant) appeals from a May 26, 2017 order terminating her parental rights to her son, J.E.H. (Josh).¹ We affirm, substantially for the reasons stated by Judge Linda Lordi Cavanaugh in her comprehensive written opinion. We add these comments.

I

The evidence was discussed in detail in Judge Cavanaugh's opinion. We summarize the most significant facts here. In addition to Josh, Gina has four older children, none of whom live with her because of her inability to care for them. Three of the children were adopted by their paternal grandmother. Josh, Gina's fifth child, was born in June 2014. At that time, Gina was living in a homeless shelter, because Josh's father, D.H., with whom she had been living, had kicked her out of the house.² The Division

¹ We use initials and pseudonyms to protect the family's privacy.

² Gina had four children with D.H. Her relationship with D.H. was marked by domestic violence on his part, and both of them used illegal drugs. She no longer lives with D.H., who voluntarily surrendered his parental rights to Josh before the guardianship trial took place.

took custody of Josh at the hospital, and he has lived in a resource home ever since.

The Division provided Gina with drug treatment, counseling, referrals for housing, assistance finding employment, parenting training, and other services. By August 2016, she had completed counseling, drug treatment, and parenting classes, and had achieved sobriety. However, by the time the trial started on February 24, 2017, she still did not have stable employment, having a pattern of obtaining jobs but quickly losing them. She was living with L.M., and was due to give birth to their child in March 2017. L.M. was married to someone else, and already had three children by three different women. He was not caring for any of those children, and he had no relationship with Josh. Gina, who had never before been able to care for any of her children, had no plan for how she would take care of a newborn baby and care for Josh if he were to live with her.

Josh has bonded with the resource parent, who is prepared to adopt him. According to the resource parent, who testified at the trial, Josh has a close relationship with her extended family. She and the paternal grandmother, who also testified, make sure that Josh visits with his siblings who live with the grandmother. Both women also arrange for Gina to participate in family events so that her children can spend time with her.

In their trial testimony, both the Division's expert and defendant's expert agreed that Josh has a strong parent-child bond with the resource parent, which is stronger than his bond with Gina. They both agreed that Josh would suffer severe and enduring harm if he were removed from the resource parent, but the same type of harm would not befall Josh if defendant's parental rights were terminated.

The Division's expert, Dr. Kirschner, had evaluated Gina on three different occasions over several years, and was familiar with her history. Dr. Kirschner testified that Gina lacked empathy and tended to view a child as existing to satisfy her needs rather than the other way around. He testified that although Gina had attended parenting classes multiple times, she apparently had not benefitted from them. He stated that Gina would be unable to mitigate the harm that would befall Josh if he were separated from his resource parent.

Gina's expert, Dr. Reynolds, disagreed that she lacked empathy and parenting skills, although he acknowledged that her parenting skills or abilities might be somewhat compromised. He agreed that Josh had a closer attachment to his resource parent than to Gina. Dr. Reynolds did not make a recommendation one way or the other as to whether Josh should be reunited with Gina. He initially opined that, if the court decided to order reunification,

"over time" Gina could mitigate the "severe and enduring" harm that would occur if Josh were separated from the resource parent. However, on cross-examination he admitted that Gina tended to make snap decisions without thinking through the consequences. He also admitted that she might have difficulty helping Josh through the inevitable difficulties with reunification. He could not specify how long it would take Gina to mitigate the harm to Josh or how long a gradual reunification process should last.

In a detailed, eighty-four page written opinion issued on May 26, 2017, Judge Cavanaugh found that the Division satisfied all four prongs of the best interests test, N.J.S.A. 30:4C-15.1(a). She found Dr. Kirschner's testimony credible, and did not credit Dr. Reynolds' testimony where it conflicted with that of Dr. Kirschner. She found that Josh was strongly bonded to his resource parent, and that he would suffer severe and enduring harm if he were separated from her. She credited Dr. Kirschner's testimony that Gina would be unable to mitigate the severe emotional harm Josh would suffer if he were separated from his resource parent. The judge also found a significant risk that Gina would not be able to provide Josh with a safe and stable home, noting her history of unstable housing and employment and the uncertainties in her current relationship with L.M.

The judge found that Josh's need for permanency was paramount and immediate. She rejected Dr. Reynolds's opinion that Gina might eventually be able to mitigate the harm that would befall Josh if he were separated from the resource parent. The judge concluded that "[Josh] needs permanency now." She found that he could not wait for an extended and gradual reunification process fraught with uncertainties.

The judge also rejected Gina's argument that her relationship with Josh was "inhibited by the limited opportunity for visitation that the Division provided." The judge noted the legitimate reasons why unsupervised or overnight visits would not have been appropriate.

[Gina] only completed the substance abuse counseling, parenting skills and individual counseling after [Josh] had been with the resource parent for approximately two years. The incident of December, 2015 . . . when [Gina] substituted [someone else's] urine [for a drug test] was indicative of the bad choices she has made and the questionable judgment she has shown. For this reason, additional substance abuse counseling was ordered by this court. For a year, she and [L.M.] were living in a rooming house with other tenants which would have made any visitation at that location unacceptable. Furthermore, as of [the] date of trial . . . [L.M.], the proposed co-parent, had yet to come to visitation with [Gina] to allow for him and [Josh] to spend time together. [Gina] had ample opportunity to make timely and significant progress in this matter and she did not.

II

On this appeal, defendant contends that the Division failed to prove all four prongs of the best interests test. She also repeats the argument, raised in the trial court, that the Division would not allow her to have extended visitation with Josh, and that the limits on visitation kept her from forming a bond with the child. For the first time on appeal, she also contends that limiting her visits with the child to two hours per week violated her due process rights. She presents the following points of argument:

POINT I

THE DIVISION FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT G.M.H.'S PARENTAL RIGHTS TO J.E.H. SHOULD BE TERMINATED

(1) THE DIVISION FAILED TO PROVE THAT G.M.H.'S PARENTAL RELATIONSHIP WITH J.E.H. PRESENTED A RISK OF HARM

(2) THE DIVISION FAILED TO PROVE THAT G.M.H. WAS UNABLE TO MITIGATE THE HARM THAT MIGHT RESULT FROM REUNIFICATION

(3) THE DIVISION UNDERMINED G.M.H.'S EFFORTS TO FORGE A MATERNAL BOND WITH HER SON

(4) THE DIVISION FAILED TO PROVE THAT J.E.H. WOULD BE HARMED THROUGH GRADUAL REUNIFICATION WITH HIS BIOLOGICAL MOTHER

POINT II

THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT TERMINATED G.M.H.'S PARENTAL RIGHTS TO J.E.H.

(1) THE TRIAL COURT ERRED WHEN IT FOUND THAT THE DIVISION SATISFIED ITS BURDEN UNDER PRONG ONE

(2) AS THE TRIAL COURT FAILED TO CONSIDER MITIGATING FACTS, IT ERRED IN FINDING THAT THE DIVISION SATISFIED PRONG TWO

(3) THE TRIAL COURT ERRED IN FINDING THAT THE DIVISION SATISFIED PRONG THREE

(4) AS THE TRIAL COURT FAILED TO SERIOUSLY CONSIDER WHETHER GRADUAL REUNIFICATION WAS FEASIBLE, IT ERRED IN FINDING PRONG FOUR WAS SATISFIED

POINT III

THE PROCEEDINGS IN THIS CASE VIOLATED THE DUE PROCESS CLAUSES OF THE U.S. [CONSTITUTION] AND THE NEW JERSEY CONSTITUTION. (NOT RAISED BELOW)

Our review of Judge Cavanaugh's decision is limited. We will not disturb a trial judge's factual findings so long as they are supported by substantial credible evidence. N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014). We defer to the judge's evaluation of witness credibility, and to her expertise in family court matters. Id. at 552-53; Cesare v. Cesare, 154 N.J. 394, 411-13 (1998).

After reviewing the record with those standards in mind, we find no merit in any of defendant's arguments concerning the four prongs of the best interests test. We are satisfied that Judge Cavanaugh's factual findings as to each prong are supported by substantial credible evidence in the record, and her thorough opinion amply addressed the issues. See R.G., 217 N.J. at 552.


We decline to address defendant's constitutional argument, because it was not presented to the trial court and because defendant did not create an adequate record for appellate review of the issue. See N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 339 (2010); State v. Robinson, 200 N.J. 1, 18-20 (2009). Much of defendant's argument about visitation, in this point and those that precede it, is based on one brief transcript reference from a hearing that took place a month before the guardianship trial began. At that hearing, defendant's counsel asked the judge to order "extended visits," without describing more specifically what he was asking for. Neither the Division's attorney nor the law guardian commented on that request, before the judge denied it.

The record presented to us contains no previous motions or applications for additional visitation. During the trial, the paternal grandmother explained her factual observations of defendant, which led her to believe that defendant should have

"mostly" supervised visits with the three children in the grandmother's care. Judge Cavanaugh found the grandmother credible. Judge Cavanaugh's discussion of the issue also explained why unsupervised or overnight visits with Josh were not appropriate. Defendant's argument on this point does not warrant further discussion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION