

**RECORD IMPOUNDED**

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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4378-16T1

NEW JERSEY DIVISION OF CHILD  
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

J.W.,

Defendant-Appellant,

and

K.E.S.,

Defendant.

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IN THE MATTER OF THE GUARDIANSHIP  
OF Z.U.S. and K.C.S., minors.

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Submitted April 23, 2018 – Decided June 1, 2018

Before Judges Sabatino and Ostrer.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Essex County,  
Docket No. FG-07-0249-16.

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

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Melissa R. Vance, Assistant Deputy Public Defender, on the brief).

PER CURIAM

Defendant J.W. appeals from a May 31, 2017 judgment terminating her parental rights to her daughters, Z.U.S. and K.C.S., born, respectively, in 2015 and 2016.<sup>1</sup> With brief exceptions in Z.U.S.'s case, the girls have lived their entire lives with their maternal aunt, who wants to adopt them. Defendant contends the Division of Child Protection and Permanency failed to establish any of the four prongs of the best interests test. See N.J.S.A. 30:4C-15.1(a). The Law Guardian joins the Division in supporting the judgment. We affirm.

At the guardianship trial, the Division relied on a voluminous documentary record, testimony of the adoption caseworker, and expert testimony of psychiatrist Samiris Sostre, M.D., and psychologist, Sean P. Hiscox, Ph.D. The court found all the Division's witnesses to be credible. Defendant testified on her

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<sup>1</sup> The children's father, K.E.S., does not appeal from the termination of his rights. Therefore, we use "defendant" to refer only to J.W.

own behalf. Although the court did not find that defendant intended to mislead, the court was unable to credit defendant's testimony largely because of her poor insight and her misperception of past events.

The trial court reviewed the evidence at length in its opinion. Suffice it to say here that defendant's persistent mental illness is at the heart of this case. Defendant is diagnosed with paranoid schizophrenia. She has been hospitalized on multiple occasions in the past, resided in a group home for psychiatric patients for a period of time, and had been living in a homeless shelter for a year at the time of trial. Defendant denied her mental illness and stated she cooperated with treatment – which she did inconsistently – only in order to attempt to regain custody of her daughters.

Despite five months of medication compliance, she was unable to work, or maintain suitable housing. According to Dr. Sostre, defendant continued to experience symptoms, including auditory hallucinations. Dr. Sostre opined that defendant's prognosis was poor. Because of the severity of her symptoms, defendant would be unable to be in tune with her children emotionally, to meet their needs, and to interact with others, such as nurses, teachers and caretakers.

Dr. Hiscox testified that defendant's denial of her mental illness was a significant impediment to her ability to function as a parent in the future. He opined that she was "unable or unwilling to provide a stable and safe living situation and lifestyle for her daughters." Indeed, she was barely able to manage herself and the current demands on her.

In bonding evaluations, defendant related appropriately with her daughters, who viewed her as one would an extended family member and not a primary attachment figure. By contrast, the children were firmly bonded to their maternal aunt, whom they viewed as their psychological parent and central attachment figure.

Dr. Hiscox opined that termination of parental rights would not cause more harm than good, and the aunt would be able to mitigate any harm. On the other hand, if the girls were removed from their aunt, they would suffer significant harm, which defendant would be unable to mitigate. Notably, the aunt reportedly professed an interest in allowing the girls to maintain a relationship with defendant.

After reviewing the evidence and the well-established principles of law governing termination of parental rights, Judge Linda L. Cavanaugh concluded that the Division satisfied by clear and convincing evidence all four prongs of the best interest test:

(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).]

Defendant challenges each of these findings. Yet, our scope of review of the trial court's judgment is limited. In re Guardianship of J.N.H., 172 N.J. 440, 472 (2002). We defer to the trial judge's factual findings that are rooted in her familiarity with the case, her opportunity to make credibility judgments based on live testimony, and her expertise in family matters. Cesare v. Cesare, 154 N.J. 394, 412-13 (1998). Although we are not bound by the trial court's legal conclusions, N.J. Div. of Youth and Family Servs. v. I.S., 202 N.J. 145, 183 (2010), we will affirm the Family Part's decision to terminate parental rights when

substantial, credible evidence in the record supports the court's findings, N.J. Div. of Youth and Family Servs. v. E.P., 196 N.J. 88, 104 (2008). Applying that deferential standard of review, we affirm substantially for the reasons set forth in Judge Cavanaugh's cogent and comprehensive written opinion.

We add the following additional comments. Defendant contends the trial court erred because the Division presented no evidence of actual harm. She contends the court terminated her parental rights simply because she suffers from a mental illness. We disagree.

"Mental illness, alone, does not disqualify a parent from raising a child. But it is a different matter if a parent refuses to treat his [or her] mental illness" and "the mental illness poses a real threat to [the] child . . . ." N.J. Div. of Youth and Family Servs. v. F.M., 211 N.J. 420, 450-51 (2012). A mentally ill parent "may be morally blameless," but that "is not sufficient to tip the scales in [his or her] favor" if the illness impairs the ability to parent. N.J. Div. of Youth and Family Servs. v. A.G., 344 N.J. Super. 418, 438 (App. Div. 2001).

Regarding prongs one and two, it is well-settled that the Division is not required to demonstrate actual harm to satisfy the best interest test. Id. at 440. The trial court recognized defendant's genuine love and attachment to her daughters. Yet,

defendant's mental illness, especially the near certainty that it will be untreated in the future, poses a risk of "[s]erious and lasting emotional or psychological harm," which satisfies prong one. See In re Guardianship of K.L.F., 129 N.J. 32, 44 (1992).

Given defendant's denial of her mental illness, she also is "unable or unwilling to prevent harm" to her daughters, which satisfies prong two. N.J. Div. of Youth and Family Servs. v. M.M., 189 N.J. 261, 289 (2007). The record evidence supported the trial court's finding that "separating the child[ren] from [their] resource family parent[] would cause serious and enduring emotional or psychological harm to the child[ren]." N.J.S.A. 30:4C-15.1(a)(2).

Further, defendant had no realistic plan or ability to care for the children on her own. Defendant's plan for raising the children involved moving in with her sister, who was already serving as the girls' psychological parent.

As for prong three, defendant does not dispute that the Division offered her an array of services, including parenting classes and mental health treatment. She principally faults the Division and the court for failing to allow her to exercise unsupervised visitation, which she contends would have enabled her to demonstrate her ability to parent her daughters. However, the Division is only required to provide reasonable services. The

Division's efforts are "assessed against the standard of adequacy in light of all the circumstances of a given case." In re Guardianship of D.M.H., 161 N.J. 365, 393 (1999). Given her circumstances, it was not unreasonable for the Division and court to deny defendant's request for unsupervised visitation.

Finally, the expert testimony provided sufficient credible evidence to support the court's prong four finding that termination would not cause more harm than good. Defendant contends that the parental relationship could have been preserved without harm to the children "because the children were already being cared for by their maternal aunt, [defendant] had liberal visitation with the children at their aunt's home, and [defendant] stated that she would allow the children to continue to reside with their aunt if her parental rights were not terminated." However, there was no evidence that the aunt, who specifically rejected kinship legal guardianship, would have been willing to play such a supportive role indefinitely; nor was there any assurance that defendant would be permitted to reside at her sister's home at all. "A child's need for permanency is an important consideration under the fourth prong." M.M., 189 N.J. at 281. We shall not disturb the trial court's determination that such permanency would be achieved by terminating defendant's parental rights.



Affirmed.

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



CLERK OF THE APPELLATE DIVISION