SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4390-16T2

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

T.A.C.,

Defendant-Appellant.

IN THE MATTER OF THE GUARDIANSHIP OF T.A.C., JR. and C.C., Minors.

Submitted January 17, 2018 – Decided March 14, 2018

Before Judges Fisher and Moynihan.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FG-12-0098-16.

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

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Danielle Ruiz, Designated Counsel, on the brief).

PER CURIAM

Defendant, Trevor, appeals from a guardianship judgment terminating parental rights to his sons, Thomas and Corey, born on January 9, 2015 and May 18, 2016, respectively.[1] Defendant argues the trial court erred in finding the New Jersey Division of Child Protection and Permanency presented clear and convincing evidence under the applicable law sufficient to warrant termination of his parental rights. We disagree and affirm substantially for the reasons set forth by Judge Bruce J. Kaplan in his comprehensive eighty-four-page written decision rendered after a five-day trial at which he heard testimony from three witnesses called by the Division.

Judge Kaplan's thorough review of the applicable law manifested his understanding of the import of a trial judge's decision to terminate defendant's fundamental and highly protected parental rights. Santosky v. Kramer, 455 U.S. 745, 753-54 (1982); In re Guardianship of K.H.O., 161 N.J. 337, 346-47 (1999). His

[1] The pseudonyms for defendant and his sons, utilized in defendant's brief, are repeated here to protect their privacy.

fact-sensitive analysis of each of the four factors[2] the State was required to prove by clear and convincing evidence in order to terminate parental rights followed the Court's guidance that "[t]he balance between parental rights and the State's interest

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[2] The Division must prove the following four factors by clear and convincing evidence before parental rights may be terminated:

> (1) The child's safety, health, or development has been or will continue to be endangered by the parental relationship;
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> (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 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.
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> [N.J.S.A. 30:4C-15.1(a); see also N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 604-11 (1986).]

in the welfare of children is achieved through the best interests of the child standard." K.H.O., 161 N.J. at 347.

The judge recognized that "incarceration alone — without particularized evidence of how a parent's incarceration affects each prong of the best-interests-of-the-child standard — is an insufficient basis for terminating parental rights," N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 556 (2014), but specifically found defendant "harmed these children by his unwillingness to parent by repeatedly violating the law and being incarcerated." He noted

> following [Thomas's] birth in January 2015, [defendant] was not released from incarceration until August 2015. [Defendant] resided at [a halfway house] from August 2015 to November 2015. [He] was then re-incarcerated in February 2016. He was not released until June 2016. He shortly thereafter stopped contacting the Division. Then, he was re-incarcerated from October 2016 through November 28, 2016 [reportedly because of parole violations]. . . . [Defendant] has been incarcerated for approximately half of [Thomas's] life. Further, [he], even when released from incarceration, has been required to reside in a halfway house. Based on [his] Megan's Law status,[3] he is by law a threat to these children, and by the terms of his [p]arole, he is unable to reside with them.

[3] The record reveals defendant was convicted of aggravated sexual assault of a twelve-year-old victim and was sentenced to comply with the Community Registration and Notification Laws (Megan's Law), N.J.S.A. 2C:7-1 to -23; he was also sentenced to community supervision for life, N.J.S.A. 2C:43-6.4.

Judge Kaplan concluded defendant did not provide a permanent plan for the children, and was not "available or able to parent"; his physical and emotional absence harmed the children. The judge also found defendant did not "remain substance free for [a] sustained and prolonged period[] of time," nor did he maintain a job or stable housing.

Defendant's present arguments that the court erred because defendant wanted to participate in his children's lives; "made his best efforts to engage his children, assuring them repeatedly that he loves them and look[ed] forward to being with them"; "possessed the cognitive ability to acquire, understand, and apply all concepts and skills necessary to be [an] effective parent[;] presented with no child abuse potential nor problematic parenting attitudes[;] had his own residence[;] and reported an employment opportunity," (footnote omitted), are without sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(1)(E). Contrary to defendant's contention, the ample proofs recited by Judge Kaplan belie each of defendant's contentions. He chose to flout the law instead of preparing to parent his children or establishing a relationship with them. Further, the State's proofs show he hasn't the ability to parent, even when he wasn't incarcerated. He failed these boys at every step in their lives.

The judge's conclusions relevant to the first prong dovetailed with his findings supporting the second prong, a common occurrence resulting from the overlap of these two factors. N.J. Div. of Youth & Family Servs. v. R.L., 388 N.J. Super. 81, 88 (App. Div. 2006). The judge found defendant's failure to attend anger management and substance abuse treatment; failure to address the Megan's Law restrictions prohibiting his cohabitation with minors; failure to plan for the children; and continued violations of his parole supported Dr. Kinya Swanson's[4] opinion that "the overall implication is that [defendant] may continue to rely on maladaptive approaches to life that sabotage his success, ability to remain free from incarceration, ability to remain sober from illicit drugs, and ability to provide a safe and stable existence for a child in his care." Judge Kaplan noted Dr. Swanson "explicitly and credibly testified that [defendant's] repeated incarcerations indicate that he is unable to learn from his experiences and rectify his unlawful behavior and the effect his incarceration has had on the children in the nature of the lack

[4] Dr. Swanson was called by the Division, and was qualified by the judge as "an expert in the field of psychology in particular the area of parenting and bonding." The doctor conducted psychological and bonding evaluations of defendant and the children, as well as the resource parents with whom the children were residing. She had previously conducted the same evaluations on defendant, and his two older daughters.

of a bond." The judge's conclusion that defendant was "either unwilling or unable to alter" his behavior is well-supported by the record. Defendant's contentions that his visits with Thomas "clearly exhibited that he was embracing his role as a father"; the Division did not produce his parole records to prove his substance abuse; and he showed progress in providing a house and obtaining employment are either refuted by the record or unproved.

Judge Kaplan, in considering evidence relevant to the third prong, noted the Division was relieved of its obligation to make reasonable efforts to provide services on September 7, 2016, after defendant's parental rights as to his other children were terminated in a separate action. That decision is not challenged here.

Although defendant acknowledges the Division offered services, including anger management, parenting skills and substance abuse programs, he argues the "record is devoid of any attempts made by the Division to investigate what services were available to [him] while incarcerated, to take affirmative action to get him into identified services, or to explore any alternative housing arrangements such as a transfer to a facility which would be more conducive" to providing services. The judge found the Division facilitated defendant's visits while incarcerated. Further, the judge noted Ougeri Baptiste, the Division's adoption

worker, visited defendant three times in the Essex County jail and provided him with written instructions for services. He also attempted to arrange visitation with Thomas, but the jail would not allow same.[5] After defendant's release from jail in June 2016, Baptiste referred defendant to specific programs for substance abuse, parenting skills and anger management. He did not attend any of the appointments, stopped returning the Division's calls, and stopped visiting Thomas in July. When Baptiste visited the shelter, which was defendant's last-known address, he was advised defendant left without providing a forwarding address. Not until defendant was arrested for another violation did Baptiste learn, "around October 2016," that he was in the Essex County jail. Defendant was released to another halfway house on November 29, 2016. Considering the sporadic periods defendant was incarcerated; the difficulty of providing services to a parent in custody, see R.G., 217 N.J. at 557-58, 562-64; the services offered by Baptiste while defendant was jailed, and those futilely offered while defendant was free and in contact with the Division, we find

[5] The judge observed defendant was not permitted visits with Corey because the infant — who suffered from neonatal abstinence syndrome — had not been medically cleared, and because of defendant's Megan's Law status.

defendant's arguments regarding the third prong meritless.[6] His argument regarding the Division's failure to seek his transfer to another jail does not even merit discussion. R. 2:11-3(e)(1)(E).

Defendant reiterates previously proffered proofs in arguing the Division did not meet its burden regarding the fourth prong: visitation reports indicated he "displayed genuine concern and affection for all his children" and Dr. Swanson acknowledged defendant "showed genuine affection for his children[,] possessed significant[7] parenting tools," and had "the cognitive ability to . . . be an effective parent." Judge Kaplan extensively reviewed defendant's behavior that caused Dr. Swanson concern, including his extensive criminal history of parole restrictions, parole violations and multiple incarcerations; his self-reported use of marijuana while incarcerated; his noncompliance with Division services; and, most importantly, the impact his behavior had on his relationship with Thomas and Corey. The judge also considered Dr. Swanson's observations that defendant was affectionate toward his children who "seemed to warm to [him] toward the end of the

[6] Defendant does not argue that the Division failed to consider viable alternatives to termination.

[7] Dr. Swanson said defendant "evidenced genuine affection for both children, although such affection was not initiated or reciprocated by either child. [He] evidenced a flexible, yet assertive parenting style throughout the observation."

[bonding] evaluation" she conducted; and that defendant "had made some potential progress."

The judge found defendant's "claim that he has demonstrated a 'progression in his parenting ability and capacity'" was belied by the record, and determined that defendant's progress "was not significant enough to prepare him for parental responsibility," echoing Dr. Swanson's opinion that defendant "had demonstrated some signs of progress in that he reported having an employment prospect and stable housing, [but] she did not believe that there had been enough positive change to demonstrate that [his] ability to parent had strengthened."

The judge's careful reflections of the bonds between defendant and the children, and those between the children and the resource parents; the status of those bonds; the impact of termination of those bonds on the children; the children's ability to recover from termination; and the role defendant and the resource parents would play in mitigating termination's impact supported his conclusion that termination of defendant's rights would not do more harm than good.

We will not consider defendant's argument that "the court never provided a single opportunity for [him] to establish a bond with" Corey in this written opinion. R. 2:11-3(e)(1)(E). As we previously noted, Corey's neonatal abstinence syndrome —

engendered by his mother's use of cocaine and methadone — and defendant's restrictions under Megan's Law, prevented visitation.[8]

Half measures and good intentions do not a parent make. Defendant's persistent failure to fulfill a parental role at any time after the boys were born resulted in large part from conscious choices he made. The thoughtful findings Judge Kaplan made as to each of the four prongs, as they related to Thomas and Corey, were supported by credible, clear and convincing evidence, and are entitled to our deference. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012); Cesare v. Cesare, 154 N.J. 394, 413 (1998).

Affirmed.

[8] During the case management conference on June 22, 2016, the judge said he was "going to be" suspending defendant's parenting time with Corey; not until August 5, 2016 was the suspension reflected in an order, after the judge ruled, pursuant to N.J.S.A. 9:2-4.1(a), defendant — in light of his conviction for sexual assault — had to prove visitation was in Corey's best interests.