SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4515-16T4

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

L.M.S.,

Defendant-Appellant,

and

B.M.,

Defendant.

IN THE MATTER OF THE GUARDIANSHIP
OF R.S.-M.,

a Minor.

Submitted May 8, 2018 – Decided May 12, 2018

Before Judges Fisher and Fasciale.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FG-07-0156-17.

Joseph E. Krakora, Public Defender, attorney for appellant (John A. Albright, Designated Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Jason W. Rockwell, Assistant Attorney General, of counsel; Diane L. Scott, 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 L.M.S. (defendant) gave birth to a son, R.S.-M. (Richard), on October 18, 2015. The attending physician made a referral to the Division of Child Protection and Permanency (the Division), which, on an emergent basis, removed Richard from defendant's care and custody on October 23, 2015. After presiding over a four-day trial in May and June 2017, Judge James R. Paganelli terminated defendant's parental rights, and she now appeals, arguing[1]:

> I. PRONG ONE WAS NOT SATISFIED BY CLEAR AND CONVINCING EVIDENCE AS THE COURT CONCEDED THAT [DEFENDANT] NEVER HARMED [RICHARD] BUT ERRONEOUSLY CONCLUDED THAT AN UNIDENTIFIED "NEUROCOGNITIVE CONDITION" PLACED THE CHILD IN DANGER WHEN ALL OF THE EXPERTS AGREED THAT [DEFENDANT] DOES NOT HAVE SCHIZOPHRENIA AND COULD PARENT WITH ASSISTANCE.

[1] We have renumbered defendant's arguments.

II. THE TRIAL COURT ERRED IN HOLDING THAT [THE DIVISION] PROVED THE SECOND PRONG OF THE "BEST INTERESTS" TERMINATION TEST BY CLEAR AND CONVINCING EVIDENCE.

III. THE TRIAL COURT ERRED IN HOLDING THAT [THE DIVISION] PROVED THE THIRD PRONG OF THE "BEST INTERESTS" TERMINATION TEST AGAINST [DEFENDANT] BY CLEAR AND CONVINCING EVIDENCE BECAUSE THE DIVISION'S REMOVAL OF [RICHARD] BEFORE PROVIDING ANY SERVICES TO [DEFENDANT] AND THEN ITS FAILURE TO PROVIDE ANY SERVICES UNTIL [RICHARD] WAS OVER A YEAR OLD WERE STUNNINGLY UNREASONABLE.

IV. THE TRIAL JUDGE ERRED IN HOLDING THAT [THE DIVISION] PROVED THE FOURTH PRONG OF THE "BEST INTERESTS" TERMINATION TEST, THAT TERMINATION WILL NOT DO MORE HARM THAN GOOD BY CLEAR AND CONVINCING EVIDENCE.

We find insufficient merit in defendant's arguments to warrant discussion in a written opinion, R. 2:11-3(e)(1)(E), and affirm. We add only the following few comments.

Parents have a constitutionally-protected right to the care, custody and control of their children. Santosky v. Kramer, 455 U.S. 745, 753 (1982); In re Guardianship of K.H.O., 161 N.J. 337, 346 (1999). "The rights to conceive and to raise one's children have been deemed 'essential,' 'basic civil rights . . .,' [that are] 'far more precious . . . than property rights.'" Stanley v. Illinois, 405 U.S. 645, 651 (1972) (citations omitted). "[T]he preservation and strengthening of family life is a matter of public

concern as being in the interests of the general welfare." N.J.S.A. 30:4C-1(a); see also K.H.O., 161 N.J. at 347.

The constitutional right to the parental relationship, however, is not absolute. N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 553 (2014); N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 599 (1986). At times, a parent's interest must yield to the State's obligation to protect children from harm. N.J. Div. of Youth & Family Servs. v. G.M., 198 N.J. 382, 397 (2009); In re Guardianship of J.C., 129 N.J. 1, 10 (1992). To effectuate these concerns, the Legislature created a test for determining when a parent's rights must be terminated in a child's best interests. In order to obtain parental termination, N.J.S.A. 30:4C-15.1(a) requires that the Division prove by clear and convincing evidence the following four prongs:

> (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 . . .;
>
> (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.

See also A.W., 103 N.J. at 604-11.

The questions posed by these four statutory prongs are fact-sensitive and our ability to intercede is limited by the applicable standard of review, which requires deference to family judges' factual findings. Cesare v. Cesare, 154 N.J. 394, 413 (1998). Here, Judge Paganelli — as explained in his thorough seventy-five page opinion — found the Division demonstrated, by clear and convincing evidence, that all four prongs supported termination of defendant's parental rights. These findings were supported by evidence the judge was entitled to find credible and are deserving of our deference. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012).

While it is true, as to the first statutory prong, that the child was removed from her care shortly after birth — a fact that defendant urges in arguing she never harmed the child — there is ample evidential support for the judge's finding that the child's "health and development" would be "endangered in the future" by defendant's cognitive deficits. This finding was based on expert testimony, which the judge credited, that defendant's diagnosis of "significant neurocognitive disorder . . . creates a foundation in which she is vulnerable to making significant mistakes as a

parent and the normal stress of life given her deficits." The judge also credited testimony that defendant is not fit to parent and that no services could rectify her difficulties. The judge's approach to the circumstances was well-grounded on the principle that a court "does not have to wait" to act "'until a child is actually irreparably impaired by parental inattention or neglect.'" F.M., 211 N.J. at 449 (quoting In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999)). The first prong of the statutory test is satisfied when a child is endangered, not just when the child has been actually harmed.

We also find it necessary to respond to defendant's contention in Point III that the Division was slow to provide services and did not, as defendant argues, "provide any services until [Richard] was over a year old." It may be true that defendant did not begin parenting classes until the child was thirteen months old, but the record reveals that defendant was offered other services and missed appointments months earlier. The Division was also actively engaged from the time of the emergency removal shortly after the child's birth. Family team meetings began in November 2015, when Richard was a month old, and defendant was then provided with a psychological evaluation to ascertain what services were needed.

We need not add to the trial judge's thorough opinion in demonstrating that his findings on those prongs, as well as prongs two and four, were well-supported and entitled to deference.

Affirmed.