SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4591-16T2

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

I.F.A.,

Defendant-Appellant.

IN THE MATTER OF THE GUARDIANSHIP OF R.J.A., a minor.

Submitted April 17, 2018 – Decided May 3, 2018

Before Judges Reisner, Hoffman, and Mayer.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Atlantic County, Docket No. FG-01-0072-16.

Joseph E. Krakora, Public Defender, attorney for appellant (Phuong Dao, Designated Counsel, on the briefs).

Gurbir S. Grewal, Attorney General, attorney for respondent (Melissa Dutton-Schaffer,

Assistant Attorney General, of counsel; Juliana Stiles, Deputy Attorney General, on the brief).

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

PER CURIAM

Defendant I.F.A.[1] appeals from a June 14, 2017 judgment of guardianship terminating her parental rights regarding her son, R.J.A. (Robert). The Division of Child Protection and Permanency (Division) and Robert's Law Guardian support the judgment.

Defendant raises the following arguments:

POINT I

BECAUSE THE DIVISION FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT [DEFENDANT'S] PARENTAL RIGHTS TO [ROBERT] SHOULD BE TERMINATED, THE TRIAL COURT'S ORDER TERMINATING [DEFENDANT'S] PARENTAL RIGHTS MUST BE VACATED.

(1) The trial court erred when it found that the Division proved that [defendant's] parental relationship with [Robert] presented a risk of harm.

(2) The trial court was wrong when it found that [defendant] was unable to mitigate the harm that might result from reunification.

(3) The trial court erred in finding that the Division satisfied prong three.

[1] We use initials and pseudonyms to protect the parties' privacy interests. R. 1:38-3(e).

> (4) The trial court erred when it found that [Robert] would be harmed through gradual reunification with or from continued contact with his biological mother.

Based on our review of the record, we affirm for the reasons expressed by Judge W. Todd Miller in his forty-nine page written decision, dated June 14, 2017, finding that the Division proved all four prongs of the best interests test, N.J.S.A. 30:4C-15.1(a). We find that the judge's factual findings are supported by substantial credible evidence. See N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014).

Judge Miller's comprehensive written opinion details the facts and lengthy history of the Division's involvement leading to the termination of defendant's parental rights. We briefly summarize the relevant facts.

Defendant gave birth to Robert on October 30, 2008. The identity of Robert's biological father is unknown. Robert was born with severe disabilities and significant cognitive impairments. The Division became involved with Robert the day after his birth, based on the hospital's concern that defendant lacked the ability to meet her son's extensive medical needs. Shortly after his birth, Robert was transferred to another hospital for specialized treatment. That hospital advised the Division that defendant was not capable of caring for her son and

recommended Robert be transferred to a long-term care pediatric facility that would meet Robert's intensive medical needs.[2] In December 2008, the Division filed a verified complaint for care and supervision of Robert.

Robert remained in a New Jersey long-term care pediatric facility from 2009 to 2012. During that time, defendant was living in Maryland and searching for stable housing and employment. Robert and defendant were reunified in September 2012.

Thereafter, Maryland Child Protective Services (CPS) received several referrals regarding defendant's inability to properly care for Robert and the lack of suitable housing for the family. In October 2012, Robert was hospitalized in Maryland for a "failure to thrive" workup.

In November 2012, the family moved to Mexico, and then to Florida in April 2013. Between 2013 and 2015, Robert was hospitalized several times, and Florida CPS received numerous referrals regarding defendant's inability to parent and care for Robert.

Defendant and Robert returned to New Jersey in June 2015. Defendant was without permanent housing or a job. Based on a

[2] During the pendency of the guardianship trial, Robert resided at an approved medical group home because of his significant medical and developmental issues.

medical issue, defendant sought treatment at a New Jersey hospital and brought Robert with her. The hospital reported to the Division that Robert had severe disabilities and defendant lacked the necessary medical equipment to care for her son. Robert was admitted to the hospital and the Division sought and obtained an emergency removal for Robert. Throughout 2015, the Division retained custody of Robert, who was transferred to several different hospitals and care facilities. Defendant returned to Florida and failed to cooperate with the Division and Robert's caregivers.

In March 2016, the Division filed a complaint for guardianship of Robert. The family court conducted a contested trial on four separate dates in May and June 2017. The judge heard testimony from several experts regarding defendant's ability to parent and care for Robert. In addition, the judge reviewed the experts' written evaluations assessing defendant's psychological and emotional functioning and her bond with Robert.

The Division presented expert testimony from Dr. Alan J. Lee, a psychologist. Dr. Lee performed a psychological evaluation of defendant and bonding evaluation of defendant and Robert. As part of his psychological evaluation, Dr. Lee found defendant likely suffers from serious mental illness, including psychotic condition, possible schizophrenic condition, and delusional-

bizarre and paranoid-persecutory belief systems. Dr. Lee concluded that defendant's judgment, decision-making, and sense of reality were seriously impaired. According to Dr. Lee, defendant would not "be able to function as a minimally adequate parent to [Robert]" at this time or "within the foreseeable future." Consequently, he supported "other permanency planning for [Robert] besides reunification to [defendant]." As part of his bonding evaluation, Dr. Lee opined that Robert's attachment to his mother was "insecure" and "limited," and there would be a low risk of harm to Robert if his relationship with defendant was permanently severed.

Dr. Jo Anne Gonzalez, a psychologist, testified for the Law Guardian. She opined that defendant suffers from delusional disorder and was unable to process her son's physical, behavioral, and developmental disabilities and needs. According to Dr. Gonzalez, defendant's delusions, particularly regarding the severity of her son's conditions, interfered with defendant's ability to parent Robert. Dr. Gonzalez "recommend[ed] that termination of parental rights [would] be an appropriate goal based on [defendant's] abilities to provide the kind of care that [Robert] will need." Dr. Gonzalez further testified that defendant would be unable to parent Robert "even if he was not having the

issues that he has," as defendant is "not able to provide [appropriate] care for any child."

Dr. Aida Ismael-Lennon, a psychologist, testified for defendant. She also performed a mental health evaluation of defendant and bonding evaluation of defendant and Robert. Significantly, Dr. Lennon was unaware of the history related to defendant's caring for Robert, particularly the lengthy gaps in time when he received care from the hospitals or the pediatric facility rather than defendant. Dr. Lennon agreed with the other testifying experts that defendant could not care for Robert as of the time of trial. It was Dr. Lennon's hope that, upon receipt of proper services, including full-time medical assistance, defendant would be able to parent her son appropriately. On the issue of bonding with Robert, Dr. Lennon testified there was a "secure" bond between the two. She opined it would be harmful to Robert's well-being if defendant's parental rights were terminated, as defendant was "the only person who's been a caregiver in his life since he was born." However, Dr. Lennon was not informed that defendant was mostly absent during the early years of Robert's life, which, according to Lennon, are "the most crucial years" for developing a bond. Dr. Lennon also opined that Robert and defendant shared a bond based on her observation of certain physical behaviors. However, Dr. Lennon was unaware that

Robert displays those same physical behaviors with his caregivers at the long-term care pediatric facility.

In his written opinion, Judge Miller concluded that the Division satisfied the four prongs of the best interests test by clear and convincing evidence. In general, the judge found the testimony of Drs. Gonzalez and Lee to be more convincing than the testimony of defendant's expert. The judge found Dr. Lennon credible, but discounted her testimony, as her assessment focused only on defendant's recent interactions with Robert and the doctor's limited observation. Dr. Lennon lacked information regarding the significant time period when defendant had little or no contact with Robert, particularly during the critical years of birth to age four.

Regarding prong one, Judge Miller found Robert's "safety, health, and development have been, and will continue to be endangered by the child's parental relationship with [defendant]." The judge noted defendant's mental health deficits, homelessness, and financial issues "all put [Robert] at risk."

As to prong two, the judge found that the Division proved that defendant was unwilling or unable to eliminate harm to Robert or provide a safe and stable home. The judge noted defendant's paranoia, poor judgment, failure to engage in the services offered by the Division, failure to maintain stable employment, failure

to obtain suitable housing, and transient lifestyle without providing proper supplies and medical equipment for Robert's extraordinary medical needs, all evidence her inability or unwillingness to eliminate the harm to Robert.

Regarding prong three, the judge found the Division made more than reasonable efforts to provide services to defendant since 2008. The judge noted that the Division sought to provide services to defendant for eight years and the "Division went overboard in terms of its patience [and] services, . . . and that is all encompassing under the reasonable efforts."

As to prong four, the judge relied upon the findings and conclusions of Drs. Lee and Gonzalez that termination of defendant's parental rights will not do more harm than good. The judge rejected defendant's argument that Robert's severe disabilities would impair his ability to be adopted and that the judge should consider that factor in deciding whether to terminate her parental rights. Considering defendant's history of denying medical treatment for Robert, interfering with or declining to consent to treatment when Robert was hospitalized, and abandoning Robert for lengthy periods of time, the judge found defendant was going to undermine and impede Robert's care if defendant's parental rights were not terminated. The judge also found that the Division has a "select home adoption process" whereby Robert could be

adopted by a family willing to take care of a child with severe disabilities. The Division provided testimony describing in detail the disabled children who had previously been adopted through this process. The Division also explained that termination of parental rights is a prerequisite for a child to be eligible for the select home adoption process.

In assessing the fourth prong, the judge asked rhetorically whether it was better to terminate defendant's parental rights or permit her to

> stay in [Robert's] life and have her interfere with his medical treatment, undermine . . . him every time he needs some help, intermittently show up and see him, leave him for long periods of time, put chicken soup in his feeding tube, put . . . diluted formula in his feed[ing] tube, [and] take his colostomy bag off when she's not supposed to.

The judge concluded that it was in Robert's "best interest and it will do no more harm if the Division goes further into the select home [adoption] process and tries to find a loving and caring home for [Robert] notwithstanding his medical and other disabilities."

Our review of a decision terminating parental rights is limited. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 278 (2007). The factual findings that support such a judgment "should not be disturbed unless 'they are so wholly insupportable as to result in a denial of justice,' and should be upheld whenever

they are 'supported by adequate, substantial and credible evidence.'" In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993) (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 483-84 (1974)).

We reject defendant's arguments based on Judge W. Todd Miller's comprehensive and well-reasoned written decision applying the testimony and evidence to each of the four prongs for termination. Defendant's appellate contentions are without sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E). We add only the following comment.

Although the Division was unable to identify a family who sought to adopt Robert, the testimony from the Division established that despite Robert's serious medical and developmental issues, adoption remained a realistic goal. The judge was presented with detailed testimony describing children who had severe special needs and were adopted within the past two years by families capable of providing a loving and safe home environment for a child with deficits similar to those suffered by Robert. Our Supreme Court has recognized that "there will be circumstances when the termination of parental rights must precede the permanency plan. A multiply-handicapped child or a young adolescent might not be adoptable at the time of the termination proceedings." N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 611 (1986).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION