RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4941-15T3

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

L.M.[1]

Defendant-Appellant.

IN THE MATTER OF THE GUARDIANSHIP OF E.M.,

Minor.

Argued November 15, 2017 – Decided January 5, 2018

Before Judges Fuentes, Koblitz and Manahan.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Passaic County, Docket No. FG-16-0063-16.

Howard B. Tat, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Howard B. Tat, on the brief).

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[1] Pursuant to Rule 1:38-3(d)(12) and Rule 5:12-1, we identify the parties by initials to protect their confidentiality.

Melissa Medoway, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Andrea M. Silkowitz, Assistant Attorney General, of counsel; Melissa Medoway, on the brief).

Melissa Vance, Assistant Deputy Public Defender, argued the cause for minor (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Danielle Ruiz, Designated Counsel, on the brief).

PER CURIAM

Defendants L.M. (father) and J.L. (mother) are the biological parents of E.M., a three-year-old boy. On September 24, 2015, the Division of Child Protection and Permanency (Division) filed a guardianship complaint against defendants seeking the termination of their parental rights to their son. Judge Richard M. Freid presided over the two-day bench trial that was held in the Family Part on May 31 and June 1, 2016. Judge Freid found that pursuant to the standard established in N.J.S.A. 30:4C-15.1(a), the Division presented clear and convincing evidence that it was in E.M.'s best interest to terminate defendants' parental rights. On June 28, 2016, Judge Freid entered a judgement of guardianship terminating defendants' parental rights. He explained the legal basis for his decision in a comprehensive, well-reasoned memorandum of opinion.

Defendant L.M. appeals[2] from the judgment of the Family Part, arguing the Division did not provide him with the services necessary to enable him to maintain a parental relationship with his son. L.M. also claims the Division did not prove, by clear and convincing evidence, that he presented a risk of harm to his son. Even if such a risk existed, defendant argues the Division did not prove defendant was unable or unwilling to eliminate this risk. Specifically, defendant argues the trial judge erred when he found the Division proved he was unable to provide his son with a safe and stable home because the Division did not "give him a meaningful opportunity to treat his mental disorder."

The Division argues it presented sufficient competent evidence to satisfy each of the four statutory prongs for termination of parental rights as it pertains to defendant. The Division maintains the trial judge properly found, by clear and convincing evidence, that defendant was unable or unwilling to eliminate the risk of harm he posed to his young son. The Division maintains it made reasonable efforts to provide defendant with services to enable him to find a stable home for his son. It argues the judge correctly found that despite these efforts,

[2] J.L. did not appeal the judgement of guardianship terminating her parental rights.

defendant remains unable or unwilling to properly care for his son.

On behalf of E.M., the Law Guardian urges us to affirm Judge Freid's decision. The Law Guardian argues the record developed before the trial court is replete with competent evidence showing the Division satisfied the four-prong criteria in N.J.S.A. 30:4C-15.1(a), warranting the termination of defendant's parental rights.

After reviewing the evidence presented at trial and mindful of our standard of review, we affirm substantially for the reasons expressed by Judge Freid in his memorandum of opinion dated June 28, 2016. We add only the following brief comments.

The Division's involvement with E.M.'s biological mother J.L. began long before his birth. The Family Part has involuntarily terminated J.L.'s parental rights to her six older children. In this matter, the Division's involvement began in December 2014, when a caseworker responded to a referral from St. Joseph's Hospital reporting that J.L. had given birth to E.M. Six days later, the Division assumed temporary physical and legal custody of E.M. when it executed an emergency "Dodd"[3] removal against J.L. and L.M.

[3] See N.J. Div. of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 609 n.2 (App. Div. 2010).

The Family Part granted the Division custody of E.M. on the same day, finding that both biological parents' "substance abuse, failure to obtain stable housing and necessities for [E.M.] and erratic behavior" would be contrary to the infant's welfare. The Division placed E.M. in a pre-approved resource home for two months. In February 2015, the Division relocated E.M. and placed him in the home of his current caregiver. Although not directly germane to the issues raised in this appeal, we note that the Family Part relieved the Division from the requirement of providing reasonable efforts to reunify E.M. with J.L. due to the involuntary termination of her parental rights of her six older children.

On February 17, 2015, the court held a compliance review and permanency hearing. Both L.M. and J.L. were present and represented by counsel. The court ordered L.M. to attend inpatient substance abuse treatment. The court also approved the Division's plan for a short-term extension of E.M.'s placement, followed by reunification with the child provided L.M. continued to engage in court-ordered services. At a compliance review hearing held on May 7, 2015, the court ordered L.M. to undergo psychiatric and substance abuse evaluations and to attend treatment. At a permanency hearing held on August 4, 2015, the court approved the Division's permanency plan to terminate parental rights followed by adoption.

Due to L.M.'s failure to participate in court-ordered services provided by the Division, the court held an emergent hearing on August 28, 2015, and temporarily suspended L.M.'s contacts with the child until he could "demonstrate at least one month of compliance with court[-]ordered services prior to his visitation being reinstated." The record shows defendant failed to take advantage of these services. On September 24, 2015, the Division filed a complaint for guardianship.

We are satisfied that the Division proved, by clear and convincing evidence, that L.M. suffers from a serious and untreated psychiatric disorder. The dysfunction and instability associated with these mental health issues are also exacerbated by L.M.'s substance abuse. The following evidence illustrates the problem.

On March 3, 2015, Dr. Elizabeth E. Groisser conducted a psychological evaluation of L.M, who presented himself unkempt, poorly groomed, and malodorous. L.M. told Dr. Groisser that he hears evil voices that tell him to do bad things; he claimed that sometimes he feels people on the television are speaking to him directly and can see him through the television. He also told Dr. Groisser that while E.M. was in utero, he heard the baby talking to him. L.M. admitted that he was diagnosed with schizophrenia, paranoid type, and that he was not taking the medication that was prescribed by a physician to treat this psychiatric disorder.

L.M. also revealed to Dr. Groisser that he used marijuana to relieve stress. When asked about his positive drug screen for PCP, L.M. responded that an unknown person laced his marijuana with PCP without his knowledge. However, he admitted that he had used PCP approximately seven times; he last used it two months before this psychological evaluation. L.M. is also an alcoholic. He admitted to drinking one pint of alcohol per day, usually Brandy. At the time of this evaluation, L.M. reported that he was unemployed and did not have a valid driver's license. He wanted to regain his license to work as a driver. He received $750 a month in social security payments and his rent was subsidized by the Section 8 program.

Dr. Groisser concluded that L.M.'s "psychotic symptoms are extremely problematic relative to any consideration to place a child in his care. [L.M.] cannot take care of himself let alone a baby." In Dr. Groisser's opinion, "[L.M.] has profound deficits around his knowledge of parenting skills and is likely to neglect and potentially abuse a child in his care. . . . He has markedly poor judgment and impulsivity and used drugs. He lacks insight and is at risk of harming a child." She recommended that L.M. attend treatment for his substance abuse and psychiatric problems and parenting classes. However, Dr. Groisser noted, "even with the classes it is not felt that [L.M.] can parent [E.M.]."

L.M. has failed to attend court-ordered psychiatric evaluations for substance abuse and treatment and participate in Mentally Ill Chemical Abusers (MICA) programs that were referred by the Division. At the guardianship trial, Judge Freid admitted Dr. Robert Kanen as an expert in psychology, parenting capacity and bonding/attachment. On January 28, 2016, Dr. Kanen conducted a psychosexual evaluation of L.M. to "assess defendant's level of psychological functioning, capacity to parent a child, and to assess any sexual deviations." Dr. Kanen found L.M. had "very poor hygiene" and his clothes were "very dirty." He stated, "At times [L.M.] presented with illogical thought processes. He didn't seem to be in particularly good contact with reality at times, his thoughts kind of sometimes did not follow logical sequences."

Dr. Kanen testified that L.M. was not taking medication for his mental health issues. His failure to take these medications had profound implications on L.M.'s ability to parent this child. L.M. suffers from psychiatric disorders that impair his ability to use sound reasoning and judgment. He is unable to safely supervise a child. Dr. Kanen opined that defendant's paranoia could be projected onto a child and any erratic behavior could affect the handling of the child. Dr. Kanen testified that L.M. admitted to having thoughts of hurting women. This was very

troubling to Dr. Kanen, because untreated mental illness results in less impulse control.

After comprehensively reviewing the evidence presented at trial, applying the statutory standards in N.J.S.A. 30:4C-15.1(a) and mindful of the Supreme Court's admonition that "[t]hese elements are not discrete and separate; they overlap to offer a full picture of the child's best interests[,]" N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 554 (2014), Judge Freid reached the following conclusion:

> The unrefuted expert evidence in the case is that neither of the biological parents can safely parent E.M. and provide him with a safe, secure, and permanent home now or in the foreseeable future. Also, E.M. has never lived with either of them and has lived with the current caretaker since he was two months old; he is now 18 months of age.[4] Expert testimony is, there is no attachment between E.M. and either biological parents as he has never lived with either of them. They have never cared for him and he does not see either of them as a parent and he would suffer no harm if their parental rights were terminated. Conversely, there is a secure attachment between E.M. and [the pre-adoptive] current caregiver. She has served, in all respects, as the only "parent" E.M. has ever known and he would suffer serious and enduring harm if removed from her care, and if for any reason, he was removed from her care and placed with either or both of the biological parents they would be unable to ameliorate [the] serious and [enduring] harm he would suffer.

[4] The child is now three years old.

Our standard of review of a Family Part Judge's factual findings in these extremely difficult cases is well-settled. Cesare v. Cesare, 154 N.J. 394, 413 (1998). We need not restate it here. Judge Freid's findings and ultimate conclusions are supported by the competent evidence in the record. We discern no legal basis to disturb them in any way. We thus affirm substantially for the reasons expressed by Judge Freid in his June 28, 2016 memorandum of opinion.

Affirmed.