

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
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-5524-16T2

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

A.B.,

Defendant-Appellant,

and

S.A.,

Defendant.

IN THE MATTER OF THE GUARDIANSHIP
OF C.A.,

a Minor.

Submitted April 19, 2018 – Decided May 31, 2018

Before Judges Simonelli and Gooden Brown.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Gloucester
County, Docket No. FG-08-0026-17.

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

Gurbir S. Grewal, Attorney General, attorney for respondent (Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Juliana L. Stiles, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Noel C. Devlin, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant A.B.¹ appeals from the August 2, 2017 judgment of guardianship that terminated her parental rights to her son, C.A., born in September 2003.² Defendant contends that plaintiff New Jersey Division of Child Protection and Permanency (Division) failed to prove each prong of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence. The Law Guardian supported termination before the trial court and, on appeal, joins the Division in urging us to affirm. Having considered the parties' arguments in light of the record and applicable legal standards, we affirm.

¹ Pursuant to Rule 1:38-3(d), we use initials to protect the confidentiality of the participants in these proceedings.

² C.A.'s father, S.A., gave a voluntary identified surrender of his parental rights to C.A.'s current caregivers and did not participate in this appeal.

N.J.S.A. 30:4C-15.1(a)(1) to -15.1(a)(4) requires the Division to petition for termination of parental rights on the grounds of the "best interests of the child" if the following standards are met:

(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 harm³⁾
. . . ;

(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.

On October 5, 2016, the Division filed a verified complaint to terminate defendant's parental rights and award the Division guardianship of C.A. Judge Timothy W. Chell conducted a guardianship trial on July 31, 2017. At the trial, Division caseworker Laura Geortler testified about the Division's

³ "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." N.J.S.A. 30:4C-15.1(a)(2).

involvement with defendant, and Division expert James L. Loving, Psy.D., testified about the bonding evaluation he conducted at the Division's request. Defendant also testified as a Division witness but strongly objected to the termination of her parental rights. In addition, numerous documentary exhibits were admitted into evidence.

We will not recite in detail the circumstances that led to the filing of the guardianship complaint, which began with the emergency removal of C.A. in April 2015, when C.A. and his maternal grandmother discovered defendant unconscious on the bathroom floor due to a heroin overdose.⁴ As a result, the Division was granted care, custody, and supervision of C.A. pursuant to N.J.S.A. 9:6-8.21 and 30:4C-12, and initially placed C.A. with his maternal grandmother. However, when she tested positive for alcohol while caring for C.A. and failed to undergo substance abuse treatment, the Division removed C.A. and placed him with his current caregivers, with whom the family had a prior relationship. C.A. has remained in their care ever since.

We incorporate by reference the factual findings and legal conclusions in Judge Chell's August 2, 2017 written opinion and only recite Judge Chell's key findings in support of the

⁴ Defendant testified that she almost overdosed on heroin and Xanax "three [different] times."

termination of defendant's parental rights. Preliminarily, Judge Chell gave "great weight" to Dr. Loving's testimony, finding him to be "forthright, reasonable, and balanced." Likewise, the judge found Geortler "to be a credible witness," and found her testimony "clear and direct," as well as "reasoned and consistent with the facts and exhibits in the case." On the other hand, Judge Chell found that defendant "lacked credibility" and described much of her testimony as "scattered and disjointed," and "completely nonsensical" at times.

Next, the judge carefully reviewed the proofs presented at the trial, including evidence of defendant's heroin overdose, extensive history of failed substance abuse treatment, mental health issues, unstable housing, and non-compliance with services, as well as her past and impending incarceration. The judge also considered C.A.'s secure bond and attachment to his current caregivers who wanted to adopt him. After the trial, Judge Chell determined the Division had proven, by clear and convincing evidence, all four prongs of the "best interests" test codified at N.J.S.A. 30:4C-15.1(a). In concluding that there was "more than ample evidence" to "support a finding that [defendant's] parental rights should be terminated," the judge acknowledged that the four prongs "are not discrete and separate," but "relate to

and overlap with one another to provide a comprehensive standard that identifies a child's best interests."

As to prong one, the judge concluded that C.A.'s "safety, health, and development have been and will continue to be endangered by the parental relationship" based on defendant's inability "to provide safe and effective parenting, now, or in the foreseeable future." According to Judge Chell, defendant posed "a significant risk" to C.A. "in terms of drug abuse, incarceration, and unstable housing." See N.J. Div. of Youth & Family Servs. v. L.M., 430 N.J. Super. 428, 444 (App. Div. 2013) (holding that "continued drug use, lack of appropriate housing, and failure to attend treatment, clearly pose[s] a risk to . . . children" sufficient to establish the first prong of the best interest standard).

Judge Chell explained:

The most significant concern for this [c]ourt is the very high risk for substance abuse for [defendant]. The [c]ourt finds [defendant's] substance abuse history is extensive and lengthy. The [c]ourt finds that her substance abuse started [at] an early age and has not been resolved. Although she self-reports to currently using no substances, she was positive for oxycodone and Xanax as recently as March 2017. [Defendant's] substance abuse has been almost continuous since her teens.^[5] She abused heroin for over two years.

⁵ Defendant was born in 1984.

. . . The [c]ourt finds that [defendant] has not adequately addressed her substance abuse issues. . . . She failed to complete her substance abuse treatment.

The judge also found

That [defendant] lacks suitable housing and has a very poor prognosis for overcoming this barrier in the foreseeable future. [Defendant] currently is staying with a friend and has been in this living situation for less than a week. The [c]ourt finds that she has known that she would need to secure stable housing in order to take custody of her son. The [c]ourt finds that she not only has not done so, but further, she has made no progress or presented any concrete plan to secure such housing. [Defendant] has not been on a lease in over eleven years. The [c]ourt finds that she has shown no ability to secure appropriate housing for [C.A.] and that there is no reasonable prospect she can do so in the foreseeable future. . . . The [c]ourt finds that further delay in permanent placement will further harm [C.A.]. [C.A.] wants permanency and desperately wants to be adopted. The [c]ourt finds that [d]efendant has been unable to become actively engaged with her son due to her behaviors. The [c]ourt finds that these concerns alone satisfy [p]rong [o]ne by clear and convincing evidence.

Additionally, Judge Chell found

That [d]efendant is at high risk for incarceration. The [c]ourt finds that [defendant] has been incarcerated at least two times over the last several months. She has two active restraining orders against her. One by her father and one by [C.A.'s] father. She allegedly recently violated those restraining orders and awaits a [c]ourt date for the violation charge. The [c]ourt finds that [defendant] poses a high risk of re-

arrest and re-incarceration. The extensive and repetitive history have been noted. The concern remains that as life stressors increase[,] the risk for [d]efendant using increases.

Turning to prong two, Judge Chell determined that defendant was "unwilling and unable to eliminate the harm that has endangered [C.A.'s] safety, health, and development" despite the "numerous and varied services offered to her [by the Division] to help her address the substance abuse and inadequate housing." Further, the judge found that "a delay in permanent placement will further harm [C.A.]." The judge explained:

[C.A.] is at very high risk for suffering serious and enduring emotional harm if separated from his caregivers. [C.A.] has been with [his current caregivers] for over a [year-and-a-half] and has spent significant time with them throughout his life. Requiring [C.A.] to leave his current caregivers would place him at very high risk for suffering serious and enduring harm as opined by Dr. Loving. The [c]ourt finds that . . . such an outcome would represent a major loss for [C.A.]. Dr. Loving opined that it would be best for [C.A.] to be in a permanent situation as soon as possible. He opined that he would benefit from experiencing as much stability, continuity, and safety as possible, including living in a home where his custodial plan is finalized as soon as possible. The [c]ourt agrees with [th]is opinion of Dr. Loving and adopts same as [the] finding of this [c]ourt.

Turning to prong three, Judge Chell determined that "the Division undertook reasonable efforts to reunite the family."

Recounting Geortler's and Dr. Loving's testimony, the judge noted that "[d]efendant enjoyed significant visitation,"⁶ and that the Division had offered her "multiple and varied substance abuse services," "[p]sychological and [p]sychiatric [e]valuations and treatment," "random urine screens," and "parenting classes." In addition, "[t]he Division put in place safety protection plans." Although the judge acknowledged that "defendant was compliant with some services," she failed to correct the circumstances that led to C.A.'s placement. In considering alternatives to termination of parental rights, Judge Chell rejected defendant's request for Kinship Legal Guardianship (KLG) based on "the caregivers' unwavering position that they want[ed] to adopt [C.A.]," the caregivers' ability to "provide for all of [C.A.'s] needs" and address "any behavioral challenges," and C.A.'s fervent desire "to be adopted by his caregivers." Finding that adoption was both "feasible and likely," the judge concluded that KLG was "not appropriate."

⁶ Notably, Geortler testified that "[v]isitation ha[d] been inconsistent" partly due to defendant's erratic behavior during visits, which alarmed C.A. The last incident occurred in December 2016, when defendant essentially threatened "to kidnap [C.A.]," and C.A., then thirteen years old, declined further visits. The judge correctly ordered the Division to provide C.A. with individual therapy so that visitation could be reassessed with input from his therapist.

Turning to the fourth and final prong, Judge Chell determined that "termination of [defendant's] parental rights will not cause more harm than good." Rather, "only harm will come from a continued relationship between . . . [d]efendant and [C.A.]." Relying on Dr. Loving's bonding evaluation, the judge explained:

Dr. Loving concluded that "[b]ased on a reasonable degree of psychological certainty . . . [C.A.] experiences strong and healthy attachments to [his caregivers]." Dr. Loving opined that [C.A.] had an unwavering desire for adoption. [C.A.] has remained under the full[-]time care of his current caregivers for well over a year, so that they have become his most central and important attachment figures. The [c]ourt finds that [C.A.] views [his caregivers] as his most reliable and stable caregivers. The [c]ourt finds that removing [C.A.] from the care of his caregivers would place him at high risk for suffering serious and enduring harm. [His caregivers] have been constants for [C.A.] throughout his life. The [c]ourt finds that [defendant] would not be able to mitigate [C.A.'s] risk of harm.

The [c]ourt finds that [d]efendant failed to attend an evaluation with Dr. Loving despite his and the Division's reasonable efforts to schedule same. She had four appointments scheduled with Dr. Loving and did not attend one.

The [c]ourt has considered the range of outcomes and finds that termination of parental rights followed by adoption by the [caregivers] is the lowest risk situation for [C.A.].

The [c]ourt finds that it must also balance the risks of reunification to the

health of [C.A.]. As found above, the risks to [C.A.] if he were removed from his caregivers and reunified with . . . [d]efendant are very high. The [c]ourt finds that if he were reunified with his mother[,] there is a very high risk that the reunification would be very short term and unsuccessful. Defendant does not have the ability to safely parent [C.A.].

The judge entered a memorializing order, and this appeal followed.

Our scope of review on appeals from orders terminating parental rights is limited. In such cases, we will generally uphold the trial court's findings, so long as they are supported by "adequate, substantial, and credible evidence." N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014). Such a decision should only be reversed or altered on appeal if the trial court's findings were "so wholly unsupportable as to result in a denial of justice." N.J. Div. of Youth & Family Servs. v. P.P., 180 N.J. 494, 511 (2004) (quoting In re Guardianship of J.N.H., 172 N.J. 440, 472 (2002)). We must give substantial deference to the family court judge's special expertise and opportunity to have observed the witnesses firsthand and evaluate their credibility. R.G., 217 N.J. at 552-53. Even where the appellants allege "error in the trial judge's evaluation of the underlying facts and the implications to be drawn therefrom," deference must be afforded unless the judge "went so wide of the mark that a mistake must have been made." N.J. Div. of Youth & Family Servs. v. M.M., 189


N.J. 261, 279 (2007) (first quoting In re Guardianship of J.T., 269 N.J. Super. 172, 189 (App. Div. 1993), then quoting C.B. Snyder Realty Inc. v. BMW of N. Am. Inc., 233 N.J. Super. 65, 69 (App. Div. 1989)).

Guided by these standards, we conclude that Judge Chell's factual findings are amply supported by the credible evidence in the record, and his legal conclusions are unassailable. "It is not our place to second-guess or substitute our judgment for that of the family court, provided that the record contains substantial and credible evidence to support the decision to terminate parental rights." N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012). The judge reviewed the evidence presented at trial, made detailed findings as to each prong of N.J.S.A. 30:4C-15.1(a), and concluded that the Division met by clear and convincing evidence all of the legal requirements for a judgment of guardianship. The judge's opinion tracks the statutory requirements of N.J.S.A. 30:4C-15.1(a) and accords with applicable case law. See, e.g., F.M., 211 N.J. at 447-54; N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 103-07 (2008); In re Guardianship of K.H.O., 161 N.J. 337, 347-63 (1999); In re Guardianship of D.M.H., 161 N.J. 365, 375-93 (1999); N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 604-11 (1986). We

thus affirm substantially for the reasons Judge Chell expressed
in his comprehensive and well-reasoned written opinion.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION