RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1233-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

R.V. (deceased),

Defendant,

and

M.G.,

Defendant-Appellant.

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IN THE MATTER OF THE
GUARDIANSHIP OF H.G.,
a minor.

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Submitted November 28, 2022 – Decided December 20, 2022

Before Judges Mawla, Smith, and Marczyk.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Gloucester County, Docket No. FG-08-0029-21.

Joseph E. Krakora, Public Defender, attorney for appellant (Isabela Castellanos, Designated Counsel, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent (Sookie Bae, Assistant Attorney General, of counsel; Wesley Hanna, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Meredith Alexis Pollock, Deputy Public Defender, of counsel; Todd Wilson, Designated Counsel, on the brief).

PER CURIAM

Defendant M.G. appeals from the Family Part's December 6, 2021 judgment terminating his parental rights to his biological son Henry.[1] On appeal, M.G. argues the trial court erred in finding the Division of Child Protection and Permanency (the Division) had proven prongs two and four of the statutory best-interests-of-the-child test, N.J.S.A. 30:4C-15.1(a), by clear and convincing evidence, because the Division failed to present expert testimony. M.G. further asserts the trial court erred by failing to consider the

[1] We refer to the parties and the child involved in this case using either initials or pseudonyms to protect their privacy and the confidentiality of these proceedings. R. 1:38-3(d)(12).

change in New Jersey's child welfare public policy pursuant to the amendments to the Kinship Legal Guardianship Act (KLG), N.J.S.A. 3B:12A-1 to -7, and that the trial court's erroneous decision resulted from the ineffective assistance of trial counsel. The Division and Henry's law guardian contend the judgment is supported by substantial, credible evidence in the record and that Henry's ineffective-assistance argument is without merit. Having considered the arguments in light of the record and applicable legal standards, we affirm.

I.

Henry was born in November 2018 to M.G. and defendant R.V.[2] Henry had two maternal half-sisters, G.V. and L.L. G.V. was born with cerebral palsy, and L.L. had developmental delays. As discussed in more detail below, Henry was removed from M.G.'s home on April 26, 2019, when he was five months old due to extremely poor living conditions. He lived with his resource parents from that time up until the trial court's order terminating M.G.'s parental rights in December 2021.

On April 30, 2018, while pregnant with Henry, the Division investigated a referral alleging R.V. had several unattended animals in her home, causing the

[2] Henry's mother R.V. died on July 11, 2020, during the course of this litigation, and she was subsequently dismissed from the case.

conditions of the home to be unsanitary, and threatening the health of G.V. and L.L.[3] The investigation revealed eleven dogs,[4] several cats, four pregnant rats, six rabbits, and two ferrets in the home. The Division worker observed feces on the floor, overflowing garbage, and piles of dirty dishes. There was a strong smell of feces and ammonia. Additionally, there were stacks of empty pizza boxes blocking the walkways and feces-stained toilets. The local health department indicated the family could only keep four animals. Because the family subsequently complied with the recommendations, the Division closed its case.

On August 29, 2018, police alerted the Division regarding unsanitary conditions in R.V.'s residence where Animal Control was investigating allegations of animal neglect. Animal Control workers had observed two children, G.V. and L.L., sitting amongst forty bags of garbage in unclean clothes. This was R.V. and M.G.'s new residence, and they had already accumulated three dogs, five cats, a rabbit, and a ferret. R.V. and M.G. signed

[3] The Division first became involved with R.V. on July 15, 2016, when it was contacted by the local police regarding safety concerns due to R.V.'s housekeeping. The investigation did not result in any findings of abuse or neglect.

[4] R.V. reported only having seven dogs.

an agreement to keep the home clean and organized. A follow-up inspection revealed the property's condition had improved, and the Division closed its file on October 26, 2018.

While investigating allegations of abuse[5] between February and April 2019, the Division found R.V. and M.G.'s home was poorly kept and unsanitary, with a strong odor of animal urine in the home and dog feces on the floor. On April 11, 2019, the Division referred the family to Family Protective Services (FPS) to assist in obtaining public benefits, establishing a routine for cleaning the house, and improving parenting skills. FPS provided eight sessions, but the children remained unbathed, there was dog feces in the bedrooms, an overflowing litter box, children eating without utensils, and throwing their food

[5] Between February 11 and April 8, 2019, the Division received several referrals for G.V., then six years old. G.V. sustained a fractured arm, bruised fingers, bruised forehead, and red marks on her neck at different times. She allegedly told her bus driver that M.G. had physically harmed her and touched her sexually. G.V. was referred to NJ CARES for an evaluation, and a safety plan requiring R.V. to supervise M.G. was put into place. NJ CARES determined G.V. was not sexually abused. However, on March 15, 2020, the Gloucester County Prosecutor's Office charged both R.V. and M.G. with "endangerment and abuse/neglect of a child by a caretaker," and M.G. was additionally charged with aggravated assault in relation to G.V. Those charges were not resolved prior to the guardianship trial in this matter and were not considered by the trial court in rendering its decision. Despite the charges, M.G. was provided services and granted extensions to achieve reunification in April and August 2020.

on the ground. By April 24, 2019, FPS advised the Division the home's condition was unacceptable.

Division workers inspected the home on April 26, 2021, and found the home to be "deplorable" with many of the recurring issues discussed above. The workers saw feces on the floor in the basement and in a bedroom. The workers also observed a cat inside a kennel in the bathtub. Because the home environment had reached an unsafe level, and the extensive efforts to assist the family in remediating the conditions failed, the Division determined removal was necessary. Henry and the two girls were placed in three separate resource homes.

On April 30, 2019, the Division filed a complaint against M.G. and R.V. seeking custody, care, and supervision of Henry[6] and L.L. The court affirmed the Division's Dodd[7] removal that took place on April 26, 2019, and granted the Division's request for care, custody, and supervision. At the May 29, 2019

[6] The complaint also named J.B. and P.L. as defendants. J.B. and P.L. surrendered their parental rights, and the minor children G.V. and L.L. are not the subjects of this appeal.

[7] A "Dodd removal" refers to the emergency removal of a child from a home without a court order as authorized by the Dodd Act. N.J.S.A. 9:6-8.21 to -8.82.

return on the order to show cause, the court continued Henry's resource placement.

M.G. underwent a psychological exam with Dr. Perez-Rivera on July 31, 2019. He was found to be defensive and uncooperative. He further refused to answer questions about parenting because many of the questions were directed to the girls in the home and his wife did the parenting for them. He has never been in a parenting role except for Henry. He also denied the family home was dirty. Dr. Perez-Rivera determined significant risk factors existed that could interfere with M.G.'s safe and effective parenting. She recommended M.G. undergo an outpatient program, parenting classes, random drug tests, psychotherapy, a psychiatric evaluation, and supervised visitation. She recommended the Division assist him in finding employment and housing, and schedule a re-evaluation upon completion of services.

M.G. initially attended supervised visitation sessions with Henry on a fairly regular basis, but over time it was inconsistent. Henry was observed enjoying himself during many of the visits. However, M.G. stopped attending visits in mid-October 2021 for approximately six weeks prior to the guardianship trial.

M.G. did not successfully complete his parenting classes. The Division arranged for a parenting coach from the RENU program.[8] He only participated in one session, and RENU discharged M.G. from the program, stating he was "resistant to feedback" and uncooperative. M.G. was referred to another parenting service, but only attended one session and was terminated for non-compliance. A third attempt at parenting classes was cut short because the Division changed its goal to adoption.

On August 19, 2020, M.G. stipulated to a neglect finding pursuant to N.J.S.A. 9:6-8.21(c)(2) and (4) based on the Division's findings concerning Henry's home. The court found by a preponderance of the evidence M.G.'s admissions were "sufficient for a finding of abuse or neglect" and ordered his name be placed on the Child Abuse Registry. The same day, the court held a second permanency hearing, wherein a three-month extension was granted.

The Division explored several family members for possible placement. M.G.'s parents initially expressed an interest but were unresponsive to multiple attempts by the Division to inspect their home. The Division also learned at one point M.G. had moved back in with his parents, rendering the home

[8] Pursuant to the record, "RENU" stands for Revitalizing Environments through Nurturing Unity.

inappropriate for placement. Moreover, the family did not initially provide contact information for M.G.'s brother, C.G., who lived at the home. The Division needed to conduct a background check on C.G. and obtain his contact information. However, C.G. failed to respond to several attempts by the Division to speak with him. M.G.'s parents were eventually sent a rule-out letter and were advised of the process to be reconsidered. There is no record they ever attempted to avail themselves of that process. The Division also considered M.G.'s new girlfriend's mother, but she declined. R.V.'s relatives were not interested in taking Henry. The Division ruled out a maternal uncle who was unwilling to care for Henry. Additionally, Henry's maternal grandmother was ruled out due to dementia.

On January 21, 2021, the court held a compliance review. M.G. was ordered to attend a rescheduled psychiatric evaluation, submit to random drug screens, attend counseling, attend parenting classes, obtain stable housing, and comply with supervised visitation. The court further entered a fourth permanency order, granting the Division's request to change the goal to a termination of parental rights (TPR) for M.G. On February 25, 2021, the Division filed a complaint seeking termination of M.G.'s parental rights and guardianship of Henry.

M.G. never obtained stable housing or consistent employment during the litigation. M.G. did not complete individual counseling and parenting classes. M.G. also failed to attend court-ordered psychological and bonding evaluations. He also did not attend the evaluation with his own expert.

II.

The guardianship trial took place on December 6, 2021. The Division called an adoption worker Diana Blocker and Henry's resource father (Mr. M.) to testify at the trial. M.G. failed to attend the trial.[9]

Mr. M. testified Henry was doing well in the home, and the family treated him as if he were their biological child. He described Henry, who had just turned three years old, as "thriving very well." Mr. M. noted his family was also caring for his sister L.L. He stated Henry and his sister were bonding, and she was protective of Henry. He also noted they had arranged for Henry and L.L. to visit with their sister G.V. Mr. M. indicated he spoke with the caseworker on three or four occasions about KLG and received fact sheets concerning the KLG

[9] Because M.G. failed to appear for trial, Blocker was asked to testify regarding her efforts to notify M.G. of the trial date. Blocker offered bus tickets or to have M.G. driven to court, but he indicated, "sorry, I can't make it." Based on her testimony, the judge found M.G. had notice of the trial and that it would proceed without him.

process. He testified he preferred adoption because it provided stability, and he did not want "to have anything hanging over [him and Mrs. M]." He further stated he and Mrs. M. were planning on adopting L.L., and adoption would guarantee the children staying together. He also indicated he may consider maintaining Henry's contact with the rest of his family after adoption.

Blocker testified—essentially as set forth above—about the history of the case, referrals, communications the Division had with M.G., services provided and efforts to assess relatives as placement options. Blocker testified regarding the various services offered to M.G., prior to and subsequent to the removal of Henry. She indicated the efforts were "unsuccessful." Specifically, M.G. failed to complete three separate parenting skills programs. He also failed to attend a psychological evaluation for trial. She described his visitations with Henry as inconsistent. Furthermore, he often showed up late and had not showed up most recently for about seven weeks. Blocker stated she observed Henry in his resource home monthly and indicated he was doing well and was affectionate with the resource parents. She further noted she spoke to the resource parents about KLG several times, but they were only interested in adoption. She also discussed the efforts to place Henry with family members of M.G. and R.V.

Blocker further testified M.G. did not provide any evidence of stable housing or steady employment during this time.

In an oral opinion, discussed more fully below, the trial court found the Division's witnesses to be credible and ultimately determined the Division met its burden of proof as to all four prongs of N.J.S.A. 30:4C-15.1 by clear and convincing evidence. The court entered a judgment of guardianship.

This appeal followed.

III.

Our review of family court decisions is "strictly limited." N.J. Div. of Youth & Fam. Servs. v. I.H.C., 415 N.J. Super. 551, 577 (App. Div. 2010); see also N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007) (finding our review of a "trial [court's] decision to terminate parental rights" to be "limited"). "[W]e apply a deferential standard in reviewing the family court's findings of fact because of its superior position to judge the credibility of witnesses and weigh the evidence," New Jersey Division of Child Protection & Permanency v. J.R.-R., 248 N.J. 353, 368 (2021), and "because it possesses special expertise in matters related to the family[,]" New Jersey Division of Youth & Family Services v. F.M., 211 N.J. 420, 448 (2012). "Particular deference is afforded to decisions on issues of credibility." G.L., 191 N.J. at

605. Thus, we are bound to accept the trial court's factual findings as long as they are supported by sufficient, credible evidence. N.J. Div. of Child Prot. & Permanency v. A.D., 455 N.J. Super. 144, 155 (App. Div. 2018); see also G.L., 191 N.J. at 605 (holding a trial court's findings are entitled to deference "unless it is determined that they went so wide of the mark that the judge was clearly mistaken"). We review de novo, a judge's legal conclusions and statutory interpretations. In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020); N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 552 (2014).

When the State seeks to terminate parental rights, the Division must prove by clear and convincing evidence each of the following:

> (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.

[N.J.S.A. 30:4C-15.1(a).]

These fact-sensitive factors "overlap with one another to provide a comprehensive standard that identifies a child's best interests." G.L., 191 N.J. at 606-07 (quoting In re Guardianship of K.H.O., 161 N.J. 337, 348 (1999)).

A.

"The first two prongs[of] N.J.S.A. 30:4C-15.1(a) . . . are 'the two components of the harm requirement' and 'are related to one another.'" N.J. Div. of Child Prot. & Permanency v. T.D., 454 N.J. Super. 353, 380 (App. Div. 2018) (quoting In re Guardianship of DMH, 161 N.J. 365, 379 (1999)). "Therefore, 'evidence that supports one informs and may support the other as part of the comprehensive basis for determining the best interests of the child.'" Ibid. (quoting DMH, 161 N.J. at 379). Under the first prong, "the Division must prove harm that 'threatens the child's health and will likely have continuing deleterious effects on the child.'" N.J. Dep't of Child. & Fams. v. A.L., 213 N.J. 1, 25 (2013) (quoting K.H.O., 161 N.J. at 352). The Division need not "wait 'until a child is actually irreparably impaired by parental inattention or neglect.'" F.M., 211 N.J. at 449 (quoting DMH, 161 N.J. at 383).

Under prong two, "the inquiry centers on whether the parent is able to remove the danger facing the child." Id. at 451. Prong two may be proven by

"indications of parental dereliction and irresponsibility, such as the parent's continued or recurrent drug abuse, [and] the inability to provide a stable and protective home. . . ." K.H.O., 161 N.J. at 353; N.J. Div. of Youth & Fam. Servs. v. B.G.S., 291 N.J. Super. 582, 592 (App. Div. 1996) (finding the "inability or unwillingness to resolve the problems with respect to . . . mental health and substance abuse" satisfies the second prong).

As to the first prong, the trial court recounted the testimony of the serious environmental conditions in Henry's home. The court noted these issues arose from the family taking in stray animals, along with having various other pets, but failing to properly care for them. The court further noted animal feces and urine were observed in different rooms throughout the home, coupled with the children being permitted to crawl on the floor.[10] M.G. does not challenge the findings as to the first prong.

[10] The trial court noted that although there was reference during the trial to alleged physical and sexual abuse possibly involving M.G., no clear and convincing evidence was presented on this issue, and it did not consider the evidence in its ultimate decision. Moreover, despite a positive drug screen and evidence that M.G is an occasional user of THC products, the court did not determine this impacted M.G.'s ability to care for Henry, and the evidence was not utilized in the final decision. The court further noted it would not consider the pending criminal charges against M.G. because there had been no adjudication.

As to the second prong, the court further noted despite M.G. being aware of the plan for termination of parental rights, he was defensive and uncooperative with many of the service providers. He noted M.G. was clearly advised about the importance of addressing issues of housing,[11] employment stability and parenting skills, and that he would only have "so many" opportunities to address these concerns. Nevertheless, M.G. did not engage in most of the recommended therapies designed to put him in a position to effectively parent Henry.

The court noted as of the date of the trial, M.G.'s plan for Henry's care remained unknown. The court indicated M.G. has never provided a stable home environment for Henry, and his work history was "scattershot at best." The court further stated M.G. never "meaningfully participated" in therapeutic visitations, and the court discussed a number of missed appointments. It concluded M.G.

[11] As an example of M.G.'s lack of cooperation, the court noted that at one point his girlfriend was potentially obtaining housing where M.G. planned to also live, but M.G. declined to allow Blocker to speak with his girlfriend to conduct the necessary investigation.

did not make the visitations a "priority" that one would expect from a parent facing a TPR.[12]

The court stated the Division assessed family members on the maternal and paternal side as it was obligated to do, but they were all ruled out, and no evidence to the contrary was presented. The court concluded it is unclear whether M.G. was "unable" to eliminate the harms because he did not appear at trial to testify. However, the court stated, "given two and a half years have elapsed, I conclude by clear and convincing evidence that he is unwilling to eliminate the harms that are posed [to Henry]."

M.G. does not contest the court's findings on the first part of prong two. Rather, he challenges the second part of prong two because the Division did not present expert or bonding testimony regarding whether the "delay in permanent placement will add to the harm" faced by Henry. It is conceded M.G. failed to submit to a psychological and bonding evaluation. However, M.G. asserts the Division still could have presented an expert, who could have evaluated Henry and reviewed the Division's records and offered an opinion regarding the harm

[12] The court further noted M.G. had missed the last month and a half of visits. While M.G. claimed a lack of bus passes was the cause, the court commented M.G. knew how to request bus passes as he had done so in the past, and there was no evidence he ever contacted anyone from the Division for assistance during this time period.

from delayed permanency. We are unpersuaded that was necessary under the facts in this case.

M.G. relies on In re Guardianship Matter of J.C., 129 N.J. 1, 18-19 (1992), for the proposition that expert bonding testimony was required in this case. However, J.C. only holds expert testimony should be utilized when the termination of parental rights is based on "potential harm to the child based on separation from a foster parent with whom the child has bonded" as opposed to parental unfitness. Id. at 18. Under the facts of this case, we conclude expert testimony was not necessary and the evidence in the record supported the court's findings.

M.G. failed to attend a bonding evaluation, but claims there should have been a bonding analysis with the resource parents. However, the recent statutory amendments removed from consideration the bonding issue with the resource parent under the second prong.[13] Moreover, this case was not predicated on bonding, but rather on Henry's need for permanency and M.G.'s inability to provide a stable home and care for Henry in the reasonably foreseeable future. See N.J. Div. of Youth & Fam. Servs. v. F.H., 389 N.J. Super. 576 (App. Div.

[13] See discussion below regarding the Legislature's amendments to N.J.S.A. 30:4C-15.1(a)(2) on July 2, 2021.

2007) (affirming TPR even when there was inadequate bonding testimony concerning the resource parents and where the evidence otherwise supported a finding that permitted the child to reside with his parents would cause greater harm than allowing him to remain in the Division's custody). The trial court's decision in this regard was well supported by the record.

B.

The first part of the third prong requires the Division to make "reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home[.]" N.J.S.A. 30:4C-15.1(a)(3). That provision of the statute "contemplates efforts that focus on reunification of the parent with the child and assistance to the parent to correct and overcome those circumstances that necessitated the placement of the child[.]" K.H.O, 161 N.J. at 354.

As to first part of prong three, the court noted the Division "absolutely" provided a variety of services (therapeutic services, therapeutic visitation, and parenting classes) to assist M.G. in correcting the circumstances that caused Henry to be placed with a resource home. M.G. does not challenge this aspect of the court's finding. Rather, M.G. contends the trial court failed to consider the 2021 amendments to the KLG statute, which he argues favors KLG over

TPR. He argues the court "rushed to terminate" his parental rights without considering options other than adoption. We are unpersuaded and find the record evidence supports the court's finding as to the second part of prong three.

The second part of prong three requires the court to "consider[] alternatives to [TPR.]" N.J.S.A. 30:4C-15.1(a)(3). Those alternatives may include placement of the child with a relative caretaker, N.J.S.A. 30:4C-12.1(a), or the establishment of a KLG. N.J. Div. of Youth & Fam. Servs. v. L.L., 201 N.J. 210, 222 (2010).

The Legislature amended N.J.S.A. 30:4C-15.1(a)(2) on July 2, 2021. The Legislature deleted what had been the second sentence of N.J.S.A. 30:4C-15.1(a)(2), which read: "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[.]" L. 2021, c. 154, § 9. With that amendment, the Legislature confirmed the Division cannot prove the harm referenced in the second prong based on the effects of terminating the child's bond with a resource parent. See N.J. Div. of Youth & Fam. Servs. v. I.S., 202 N.J. 145, 169-70 (2010) (acknowledging "[i]t is well-established that the period of time a child has spent in foster care is not determinative of whether parental rights to that child should be terminated . . . .").

The Legislature also amended N.J.S.A 3B:12A-6(d)(3), which is part of the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-1 to -7. See L. 2021, c. 154, § 4. N.J.S.A. 3B:12A-6 is captioned "[a]ppointment of caregiver as kinship legal guardian." Paragraph (d) of that statute provides:

> d. The court shall appoint the caregiver as a kinship legal guardian if, based upon clear and convincing evidence, the court finds that:
>
> > (1) each parent's incapacity is of such a serious nature as to demonstrate that the parents are unable, unavailable or unwilling to perform the regular and expected functions of care and support of the child;
> >
> > (2) the parents' inability to perform those functions is unlikely to change in the foreseeable future;
> >
> > (3) in cases in which the [D]ivision is involved with the child as provided in [N.J.S.A. 30:4C-85(a)], the [D]ivision exercised reasonable efforts to reunify the child with the birth parents and these reunification efforts have proven unsuccessful or unnecessary; and
> >
> > (4) awarding kinship legal guardianship is in the child's best interests.

Before the July 2, 2021 amendment, N.J.S.A. 3B:12A-6(d)(3) included the phrase "and (b) adoption of the child is neither feasible nor likely[.]" N.J.S.A. 3B:12A-6(d)(3) (2006). Thus, the July 2, 2021 amendment removed

from KLG appointments the requirement that adoption be "neither feasible nor likely[,]" thereby permitting KLG appointments when adoption is also an option.

These statutory amendments did not change the guiding principle of child-guardianship cases – courts must decide cases based on the best interests of the child. See F.M., 211 N.J. at 447 (finding "[t]he focus of a termination-of-parental-rights hearing is the best interests of the child"). The Legislature did not delete (d)(4) of the KLG statute, which requires a court, before granting a KLG, to find that "awarding [KLG] is in the child's best interest." N.J.S.A. 3B:12A-6(d)(4). Although the appointment of a KLG no longer requires that "adoption of the child is neither feasible nor likely[,]" it still must be in the best interests of the child.

The trial court here found the Division had properly explored KLG arrangements with several relatives. It ultimately determined no alternatives to TPR existed and that adoption was in Henry's best interest. The court noted the Division assessed family members on the maternal and paternal side as it was obligated to do, but they were all ruled out, and no evidence to the contrary was presented. The court further noted the Division had multiple conversations with Mr. M. regarding the option of KLG as opposed to adoption. The court recognized the recent change in the KLG law noting the "increased focus" on

having discussions with resource families regarding the KLG option. He further found the KLG resource materials had been provided to the resource family. The court also noted Mr. M. began his involvement as a resource parent with the idea of ultimately adopting a child. The court observed Mr. M. preferred adoption for Henry because of the stability it will provide and that he did not want anything to "hang over" the family which would interfere with permanency, coupled with the fact that he intended to adopt Henry's sister, L.L.

KLG was not a viable option under the facts in this case. Mr. M. understood the KLG concept, but rejected the option and chose adoption. The Division cannot impose a KLG arrangement upon an unwilling resource parent. Moreover, the court found the Division investigated several family members and determined they were not qualified. We determine the court's decision to allow for adoption was more than adequately supported by sufficient credible evidence.

C.

The fourth prong of the statute requires the court to determine termination "will not do more harm than good." N.J.S.A. 30:4C-15.1(a)(4). It serves as a "'fail-safe' inquiry guarding against an inappropriate or premature termination of parental rights." F.M., 211 N.J. at 453 (quoting G.L., 191 N.J. at 609). "The

question ultimately is not whether a biological mother or father is a worthy parent, but whether a child's interest will best be served by completely terminating the child's relationship with th[e] parent." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 108 (2008). "The crux of the fourth statutory subpart is the child's need for a permanent and stable home, along with a defined parent-child relationship." N.J. Div. of Youth & Fam. Servs. v. H.R., 431 N.J. Super. 212, 226 (App. Div. 2013). "Overall, the court's focus should be on the child's need for permanency." Id. at 227.

"Keeping . . . child[ren] in limbo, hoping for some long[-]term unification plan, would be a misapplication of the law." N.J. Div. of Youth & Fam. Servs. v. A.G., 344 N.J. Super. 418, 438 (App. Div. 2001) (citing In re P.S., 315 N.J. Super. 91, 121 (App. Div. 1998)); see also N.J. Div. of Child Prot. & Permanency v. S.D., 453 N.J. Super. 511, 524 (App. Div. 2018) (finding "[p]arents do not have the right to extend litigation indefinitely until they are able to safely care for their children . . . ."). We have noted permanency is favored over protracted efforts for reunification. N.J. Div. of Youth & Fam. Servs. v. C.S., 367 N.J. Super. 76, 111 (App. Div. 2004).

As to prong four, the court concluded the termination of M.G.'s rights would do no more harm than good. The court observed the only home Henry

has known (as he was removed at five months of age) has been Mr. M.'s family. Moreover, he is living with his sister, and the resource parents "are going above and beyond to provide him with a stable home, a home where he can feel secure." The court did not dismiss the evidence that Henry enjoyed seeing his father when the visitations occurred, but the court noted "just because a [child] enjoys seeing a parent, does not equate to termination doing more harm than good." The court commented the ultimate goal is permanency, and Mr. M.'s family was providing Henry with the safety and security of a stable home, financial security, and parents who are exhibiting parenting skills well above the minimum level we require of parents—unlike M.G.

M.G. argues, as with prong two, expert bonding testimony was required for the Division to establish prong four. We reject this argument for the same reasons addressed above. Additionally we note, although prong four typically requires expert testimony based on a comparison of bonding evaluations, New Jersey Division of Youth & Family Services v. A.R., 405 N.J. Super. 418, 436-37 (App. Div. 2009), they are not required where termination "[is] not predicated upon bonding, but rather reflect[s] [the child's] need for permanency and [the parent's] inability to care for [the child] in the foreseeable future[,]" B.G.S., 291 N.J. Super. at 593. That is the case here. Again, M.G. did not submit to a

bonding evaluation. More importantly, the court's decision here was not grounded on bonding issues. Rather, it was based on Henry's need for a permanent and stable home and M.G.'s intractable refusal to meaningfully participate in the services provided by the Division. Bonding testimony was not needed for the court to determine whether under prong four the termination of parental rights would do more harm than good, as this case was not predicated on bonding issues. Here, the case was based on Henry's need for permanency and M.G.'s inability to care for him. We are satisfied the record amply supports the trial court's conclusion the Division satisfied prong four by clear and convincing evidence, and expert testimony was not required.

M.G. also contends the trial court did not properly consider M.G.'s visits with Henry and the bond developed during that time. We are not persuaded by this argument. As noted, the trial court recognized Henry was observed enjoying his supervised visits with M.G. However, that alone was insufficient to counter the overwhelming evidence regarding M.G.'s failures to take advantage of the various services provided to assist in correcting the circumstances which led to Henry being placed with a resource family. The limited evidence in favor of M.G. was not sufficient to refute the evidence that supported a finding that termination would not do more harm than good.

IV.

A defendant in a parental-rights-termination case has a constitutional right to effective counsel. N.J. Div. of Youth & Fam. Servs. v. B.R., 192 N.J. 301, 306 (2007). To establish an ineffective-assistance-of-counsel claim in a parental-rights-termination case, a defendant must meet the two-prong test established in Strickland v. Washington, 466 U.S. 668, 687 (1984), and adopted in State v. Fritz, 105 N.J. 42 (1987). The test requires the defendant show trial counsel's performance was deficient and that, but for the deficient performance, the result would have been different. B.R., 192 N.J. at 307-09. A court reviews the claim under "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance;" the defendant must overcome the presumption that the challenged action was part of a "sound trial strategy." Strickland, 466 U.S. at 689 (quoting Michel v. Louisiana, 350 U.S. 91, 101 (1955)); see also B.R., 192 N.J. at 307-08.

M.G. contends the trial court's erroneous decision resulted from the ineffective assistance of his trial counsel. More particularly, M.G. asserts his trial counsel failed to inform the court of the 2021 KLG amendments and changes to the TPR test. There is neither an indication the court was not aware

of the KLG amendments, nor is there any indication the court applied the incorrect prongs in making its findings.

M.G. further asserts his trial counsel failed to properly cross-examine the Division's witnesses and failed to advocate for KLG. Specifically, M.G. contends his trial counsel should have used the Division's own records to challenge prong one because Henry was always found to be healthy, and no animals or animal feces were found in his crib or playpen. "Under prong one of the best-interests test, [the Division] must show that the alleged harm 'threatens the child's health and will likely have continuing deleterious effects on the child.'" F.M., 211 N.J. at 449 (2012) (quoting K.H.O., 161 N.J. at 352); see N.J.S.A. 30:4C–15.1(a)(1). As we have noted, "[t]o satisfy this prong, [the Division] does not have to wait 'until a child is actually irreparably impaired by parental inattention or neglect.'" Ibid. (citing DMH, 161 N.J. at 383). Further, we are satisfied based on the trial court's decision that even if trial counsel had challenged prong one, it would not have impacted the outcome of this case. The record was replete with serious environmental conditions of Henry's home the court determined threatened the welfare of Henry and was likely to have continuing deleterious effects on him.

M.G. contends his trial counsel also failed to address the Division's failure to reassess his parents for placement. The trial court determined the Division properly assessed the maternal and paternal sides of the family. Regarding M.G.'s parents, the record reflects they were given the option to appeal when they were ruled out, but they never did so. They also failed to make M.G.'s brother, who lived with M.G.'s parents, available for the Division to interview as part of its investigation.

Finally, to the extent we have not otherwise addressed any of M.G.'s other arguments, we determine they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.