RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0330-22

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

M.T.,

Defendant,

and

J.Z.-T.,

Defendant-Appellant.

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IN THE MATTER OF THE
GUARDIANSHIP OF J.Z.-T.,
a minor.

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Submitted September 13, 2023 – Decided October 5, 2023

Before Judges Firko and Susswein.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Burlington County, Docket No. FG-03-0023-22.

Joseph E. Krakora, Public Defender, attorney for appellant (Robert W. Ratish, Designated Counsel, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Donna Arons, 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; Cory H. Cassar, Designated Counsel, on the brief).

PER CURIAM

Defendant J.Z-T[1] (James) appeals from the September 9, 2022 Family Part order terminating his parental rights to his daughter, Jill, who was born in January 2021.[2] James contends the trial court misapplied the best interests of the child factors and that the Division of Child Protection and Permanency (Division) failed to prove by clear and convincing evidence any of the four

[1] We use initials and pseudonyms to protect the identity of the family members. R. 1:38-3(d)(12).

[2] Jill's mother, codefendant M.T. (Michelle), does not appeal from the order terminating her parental rights.

prongs of the statutory test under N.J.S.A. 30:4C-15.1(a). The Law Guardian asks us to affirm the trial court's order. After carefully reviewing the record in light of the arguments of the parties and governing principles of law, we conclude the trial court's factual findings and legal determinations are supported by substantial credible evidence. Accordingly, we affirm the order terminating James' parental rights.

I.

We discern the following facts from the trial record. Jill was born suffering from drug withdrawal. Michelle, Jill's mother, admitted using Xanax and up to fifty bags of heroin per day during her pregnancy. James planned to take Jill home once she was released from the neonatal intensive care unit. The Division, which had been contacted by the hospital, was concerned because James lived with Michelle, who was actively abusing drugs; their home lacked heat; and the couple had not prepared for a newborn except for obtaining a bare crib. In February 2021, pursuant to N.J.S.A. 9:6-8.29 and 9:6-8.30[3], the Division placed Jill in a resource home with Ms. V.

[3] A Dodd removal allows a police officer or designated employee to remove a child from the place where the child is residing without an order if there is an imminent danger to the child's life, safety, or health, and there is insufficient time to apply for court order. N.J.S.A. 9:6-8.29.

The trial court awarded the Division custody of Jill, finding James' home unsuitable for the infant because it did not have heat and because James admitted he allowed Michelle to use drugs in the home. The Division thereafter provided Michelle and James with an intensive supervised visitation program that offered parenting support, family team meetings, and transportation.

James and Michelle were inconsistent with scheduled visits and repeatedly cancelled them. Their compliance with visits improved in November 2021 after Jill's maternal grandmother agreed to supervise visitation and the Division transported the child to and from her home.

The Division arranged for intensive supervision for Michelle and James. However, they were discharged by the program after it tried to contact them and neither responded.

Dr. Joseph D. Salerno, Ph.D., conducted a psychological evaluation of James on November 16, 2021. James acknowledged that the home he shared with Michelle lacked heat and hot water because he was in arrears on his gas bill. He also acknowledged Michelle had a severe drug problem and he understood he could not care for Jill with a drug user in his home.

Dr. Salerno concluded that James' enabling of Michelle's drug problem and his tolerance of drug use in his home created safety concerns for the infant.

Dr. Salerno recommended that James obtain stable housing and participate in family counseling to help him manage his relationship with Michelle.

The Division explored numerous relatives for Jill's placement both prior to removal and throughout the litigation. These relatives either declined or did not respond. The Division sent letters advising each relative that they were ruled out as a placement option but could seek reconsideration. None did.

Jill did well in resource care. Ms. V. was attentive to Jills special needs, which included services identified by early intervention specialists and potential surgery for an ophthalmological condition. Ms. V. told the Division caseworker that she would gladly allow continuing contact between Jill and her biological family, as demonstrated by her involvement with James, Michelle, and Jill's maternal grandmother during the litigation. Ms. V. nonetheless was clear that she was committed to adopting Jill after the Division discussed with her the differences between Kinship Legal Guardianship (KLG) and adoption.

James did not restore heat in his home. He and Michelle were facing imminent eviction. Michelle continued to abuse drugs and refused to comply with substance abuse services. On January 25, 2022, the court approved the permanency plan of termination of parental rights.

On February 24, 2022, the Division filed a complaint for guardianship. That same day, James told the Division he was inheriting a trailer home and would not allow Michelle to live with him if she was abusing drugs. However, he did not want to reunify with Jill in the new home because he did not want to parent without Michelle. In view of Dr. Salerno's recommendation, the court ordered the Division to refer James and Michelle to family therapy once Michelle completed drug treatment. The court also ordered the Division to assess James' new home and provide him with drug screening, a psychological evaluation, and a bonding evaluation. James never appeared for his court-ordered bonding evaluations and failed to attend psychological evaluations throughout the guardianship litigation. When the Division's adoption worker offered to provide transportation to a rescheduled evaluation, James refused. Michelle remained uncooperative with substance abuse services.

James never restored heat to his trailer home and was later evicted. He and Michelle moved in with Jill's maternal grandmother in November 2021. However, the grandmother ordered them to leave her house in 2022 after "a huge fight . . . a blowout." James then moved into a motel with Michelle.

The Division continued to transport Jill to her maternal grandmother's home for visits with James and Michelle. James and Michelle became

increasingly inconsistent in visiting the child and stopped visiting altogether in May 2022. They never resumed visitation.

The trial occurred over the course of two days in August 2022. Division caseworker Eric Ahiekpor testified that James did not have the heat restored to his home, was later evicted, and was living in a motel. He also testified that Jill has been living with Ms. V. since she was discharged from the neonatal intensive care unit.

Jill's law guardian presented expert psychological testimony from Dr. James L. Loving, Psy.D., who evaluated the bond between Ms. V. and Jill. Dr. Loving and Ms. V. discussed both adoption and KLG during the clinical interview. Dr. Loving testified that Ms. V. understood KLG and was not interested in it.

Dr. Loving opined that Jill had a strong, secure attachment to her resource parent and viewed her as a reliable parent figure. Dr. Loving further opined that Ms. V. could mitigate any long-term emotional harm resulting from termination of parental rights and supported adoption.

James called an investigator from the Public Defender's Office of Parental Representation to testify on his behalf. She investigated the mobile home that

James planned to move into and concluded there were no child safety concerns. She further testified that Michelle was not supposed to live with James.

James testified on his own behalf. He confirmed that he did not own the trailer but said he expected it to be given to him within weeks. He admitted that he was unable to access the trailer. When asked why it had taken so long to transfer the trailer's title, James explained his deceased friend's son had inherited the trailer but still needed documentation confirming his inheritance. James admitted on cross-examination he had nothing in writing to confirm the owner's intent to gift the trailer to him. He did not permit the Division to inspect the trailer, even though he had allowed the Public Defender investigator to do so on three occasions.

James testified that he currently lived in a motel and that Michelle lived with a friend. He admitted, however, that they were still in a relationship, she slept in his motel room multiple nights every week, and she kept belongings there. He further admitted he would permit Michelle to move into the trailer with him if she stopped using drugs. James claimed he would parent Jill independently if Michelle was still using drugs and denied saying he did not want to parent without her.

When asked about his prolonged absence from Jill's life, James testified "we kind of lost the - - the sync" and "I got a bit disorganized" when Michelle stopped living with Jill's maternal grandmother.

II.

Following a two-day hearing, the trial court issued a comprehensive oral opinion and made extensive findings of fact. It found Ahiekpor and Dr. Loving to be credible witnesses. In contrast, the court found the defense investigator's testimony was contradictory, "wanting for explanation," "not completely forthcoming," and therefore, not credible. Importantly, the court also found James' testimony not credible.

With respect to the first prong of the best interests test, the court found that James knew Michelle used drugs while she was pregnant, used them in his home, and still used them. The court found that enabling Michelle's drug abuse posed a threat to Jill's safety, health, and development. The court added that James' intention to continue his relationship with Michelle, thereby giving her access to Jill, continued to endanger his daughter.

The court also found that James endangered Jill through his inability to maintain suitable housing. James' inability to obtain title to the trailer since February 2022 signaled to the court that his plans may be "aspirational." The

court concluded that James' inability to maintain stable housing for the past eighteen months showed that "it is more likely that [James] will not be able to provide day to day nurturing for [Jill] for a long period of time."

The court also cited James' persistently unstable housing in its prong two analysis. The court found James unable or unwilling to provide a safe and stable home for Jill. The court further found James was not ready to be an independent caretaker for Jill based on his demonstrated lack of commitment to his daughter. The court reasoned that James gave priority to Michelle over Jill, never visited his daughter without Michelle, and had not visited Jill during the four months before trial because he was "out of sync" with Michelle. The court concluded that James' practice of allowing Michelle to spend several nights per week with him at his motel indicated that she will likely have a significant presence in his home, which would pose a significant and continued risk of harm to Jill through exposure to drug abuse.

As to the third prong, the court found the Division made referrals to visitation services, scheduled psychological and bonding evaluations, and attempted to help Michelle with her addiction. The court found that Dr. Loving's credible testimony established that Ms. V. understood KLG, was not interested

in it, and was fully committed to adoption. The court found that there were no alternatives to termination.

With respect to the fourth prong, the court found that neither parent had remediated the harm done to Jill. Further, they did not make any effort to maintain a relationship with Jill, as shown by inconsistent visitation. The court stressed that Jill has been in the same safe, stable, and loving resource home for her entire life. The court noted the stark contrast between Ms. V.'s commitment to adoption with James' lack of effort to maintain a parent-child relationship with Jill. The court also credited Dr. Loving's testimony that Ms. V. could mitigate any harm that might come from terminating James' parental rights.

Having found the Division met its burden with respect to all four prongs by clear and convincing evidence, the court entered a judgment of guardianship terminating James' and Michelle's parental rights to Jill. This appeal follows.

III.

James raises the following contentions in his brief: the trial court erred in finding that the relationship between the parent and child caused harm; the court erred in its finding that James was unable to eliminate the harm that led to the child's removal; the court erred in finding that the Division proved it made reasonable efforts to provide services; the court erred in finding that the Division

proved that termination would not cause more harm than good; and the court erred in failing to find that James has made progress in both obtaining housing and planning to parent on his own.

IV.

We begin our analysis by acknowledging the foundational legal principles governing this appeal. A parent has a constitutional right to raise his or her biological child, which "is among the most fundamental of all rights." N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 447 (2012) (citing N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 102 (2008)); In re Guardianship of K.H.O., 161 N.J. 337, 346 (1999). However, that right is not absolute. N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 553 (2014); N.J. Div. of Youth & Fam. 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 & Fam. Servs. v. G.M., 198 N.J. 382, 397 (2009); In re Guardianship of J.C., 129 N.J. 1, 10 (1992).

To effectuate those concerns, the Legislature created a multi-part test to determine when it is in the child's best interest to terminate parental rights. Specifically, N.J.S.A. 30:4C-15.1(a) requires the Division to prove four prongs by clear and convincing evidence:

(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 Division 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 four prongs of the test are "not discrete and separate," but rather "relate to and overlap with one another to provide a comprehensive standard that identifies a child's best interests." K.H.O., 161 N.J. at 348. "The considerations involved in determinations of parental fitness are 'extremely fact sensitive' and require particularized evidence that addresses the specific circumstances in the given case." Ibid. (quoting In re Adoption of Child. by L.A.S., 134 N.J. 127, 139 (1993)). The trial court must consider "not only whether the parent is fit, but also whether he or she can become fit within time to assume the parental role necessary to meet the child's needs." N.J. Div. of Youth & Fam. Servs. v. R.L., 388 N.J. Super. 81, 87 (App. Div. 2006) (citing

J.C., 129 N.J. at 10). When applying the best interests test, moreover, a trial court must pay careful attention to a child's need for permanency and stability without undue delay. In re Guardianship of D.M.H., 161 N.J. 365, 385-86 (1999).

Our review of a family judge's factual findings in a guardianship trial is limited. In re Guardianship of J.N.H., 172 N.J. 440, 472 (2002). Findings by a Family Part judge are "binding on appeal when supported by adequate, substantial, and credible evidence." Cesare v. Cesare, 154 N.J. 394, 412 (1998) (citing Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). We may reverse a factual finding only if there is "'a denial of justice' because the family court's 'conclusions are [] "clearly mistaken" or "wide of the mark."'" Parish v. Parish, 412 N.J. Super. 39, 48 (App. Div. 2010) (alteration in original) (quoting E.P., 196 N.J. at 104).

Accordingly, an appellate court should not disturb the trial court's factual findings unless we are "convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant, and reasonably credible evidence as to offend the interests of justice." Cesare, 154 N.J. at 412 (quoting Rova Farms, 65 N.J. at 484). "[T]he conclusions that logically flow from those findings of fact are, likewise, entitled to deferential consideration upon appellate review."

R.L., 388 N.J. Super. at 89. However, the "interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P., v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). "Whether the facts found by the trial court are sufficient to satisfy the applicable legal standard is a question of law subject to plenary review on appeal." State v. Cleveland, 371 N.J. Super. 286, 295 (App. Div. 2004). See also N.J. Div. of Child Prot. & Perm. v. A.B., 231 N.J. 354, 369 (2017) ("we review the judge's legal conclusions de novo"). We add that no appellate deference is owed to a trial court's interpretation of a statute. Maeker v. Ross, 219 N.J. 565, 574 (2014) (citing Aronberg v. Tolbert, 207 N.J. 587, 597 (2011)); see also N.J. Div. of Child Prot. & Perm. v. Y.N., 220 N.J. 165, 177 (2014) ("we need not defer to the Appellate Division's or trial court's interpretive conclusions").

V.

Applying the governing legal principles to the present facts, we conclude the trial court's findings with respect to all four prongs are based upon substantial credible evidence in the record. We therefore affirm substantially for the reasons set forth in the trial court's thorough oral decision. We add the following comments.

We are not persuaded by James' argument that the trial court erred by judging him on his current fitness rather than his potential for fitness. James' reliance on N.J. Div. of Youth & Fam. Servs. v. F.M., 375 N.J. Super. 235 (App. Div. 2005), is misplaced. That case involved a mother who needed additional time for reunification but had made substantial personal improvement by complying with services after police discovered her children in a deplorable home. Here, the trial court considered James' potential fitness and found he "will not be able to provide day to day nurturing for [Jill]for a long period of time." Furthermore, in F.M., the mother prioritized her children over a paramour with a drug problem. Here, the opposite is true.

Nor are we persuaded by Jamses' contention that the trial court erred by relying on hearsay to establish that the resource parent, Ms. V., understood the difference between KLG and adoption along with her clear preference for the latter permanent placement option. James argues that because Ms. V. never testified at trial, the trial court had no way to evaluate whether she understood the information provided by the Division when she signed a KLG information form.

James posits that as a general matter, hearsay statements are insufficient to support legal conclusions in child welfare matters. As a result, James

contends, the trial court did not establish that the Division met its obligations under the third prong by clear and convincing evidence.

James did not object when the Division elicited the testimony from Ahiekpor and Dr. Loving concerning Ms. V.'s understanding of KLG[4] and her preference for adoption. It is well-established that hearsay, which is subject to a well-founded objection, is generally evidential if no objection is made. See State v. Ingenito, 87 N.J. 204, 224 n.1 (1981) (Schreiber, J., concurring).

Moreover, the record shows Ms. V. spoke with both the permanency and adoption caseworkers about the differences between KLG and adoption, acknowledged receipt of the Division's information distinguishing the two permanent placement options, and Dr. Loving observed Ms. V. to be knowledgeable about the difference between the two plans. We are satisfied the Division established that Ms. V. understood the difference between the two options and made a clear choice.

[4] A kinship legal guardian is "a caregiver who is willing to assume care of a child due to parental incapacity, with the intent to raise the child to adulthood, and who is appointed the kinship legal guardian of the child by the court." N.J.S.A. 3B:12A-2. KLG transfers "certain parental rights" to the guardian, but "retains the birth parents' rights to consent to adoption, the obligation to pay child support, and the parents' right to have some ongoing contact with the child." N.J.S.A. 3b:12A-1(b).

We also reject James' argument that the trial court should have imposed KLG on Ms. V. because James claimed to be close to obtaining stable housing. For one thing, KLG cannot be forced on an unwilling party. See N.J.S.A. 3B:12A-5 (initiation of KLG proceedings begins with the filing of a petition by the caregiver). Putting that principle aside, James' argument that KLG was needed to afford him the time to "prove his intention to parent Jill without Michelle" is unavailing, given his prior refusal to consider reunification without Michelle, his poor visitation track record once he lost "the sync" with Michelle and their continued cohabitation. The law is clear that "parents do not have the right to extend litigation indefinitely until they are able to safely care for their children." N.J. Dept. of Child Prot. & Perm. v. S.D., 453 N.J. Super. 511, 524 (App. Div. 2018).

Turning to the fourth prong of the best interest standard, James contends the trial court erred by finding his bond with Jill was weak because neither the Division nor the Law Guardian presented supporting expert testimony. However, the Division and Law Guardian were unable to do so because defendant thwarted their efforts when he refused to attend the court-ordered bonding evaluation. And defendant had sporadic, and later no, visitation time with Jill, preventing the forming of any relationship with her. Accordingly, we

are satisfied the trial court appropriately balanced James' lack of effort to maintain a relationship with his daughter against Ms. V.'s commitment to adoption, finding ultimately that Jill's best interests are served by keeping her in the only home she has known since birth.

Finally, we are unpersuaded by James' reliance on N.J. Div. of Youth & Fam. Servs. v. S.A., 382 N.J. Super 525 (App. Div. 2006), for the proposition that he was prejudiced by a "rush to terminate his parental rights." In S.A., the mother's parental rights were terminated after only six months of litigation even though she made efforts to address her addiction and was expected to be released from jail around the time of her child's first birthday. S.A., 382 N.J. Super. 535-38. Here, in contrast, James had more than a year and a half to demonstrate his commitment to providing a safe home for his daughter. His claim that he made "extensive concrete progress" is not supported by the record. We reiterate and emphasize, moreover, that "parents do not have the right to extend litigation indefinitely until they are able to safely care for their children." S.D., 453 N.J. Super. at 524.

To the extent we have not addressed them, any remaining arguments raised by James lack sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION