

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0716-22

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

T.R.-R., a/k/a T.N.R. (deceased),

Defendant,

and

C.J.C.,

Defendant-Appellant.

IN THE MATTER OF THE
GUARDIANSHIP OF X.I.C.,
a minor.

Submitted August 1, 2023 – Decided August 10, 2023

Before Judges Firko and Mitterhoff.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FG-07-0102-20.

Joseph E. Krakora, Public Defender, attorney for appellant (Adrienne Kalosieh, Assistant. Deputy Public Defender, of counsel and on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Sookie Bae-Park, Assistant Attorney General, of counsel; Lisa J. Rusciano, 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 C.J.C. (Charles)¹ appeals from a judgment of guardianship terminating his parental rights to X.I.C. (Xander), born in 2011. Defendant T.R.-R. a/k/a T.N.R. (Teresa) passed away in 2014. Charles argues the Division of Child Protection and Permanency (Division) failed to establish by clear and convincing evidence the second part of prong three of the statutory four-prong best interests test under N.J.S.A. 30:4C-15.1(a), alternatives to termination of

¹ We employ initials and pseudonyms to identify the parties, the child, and others to protect the child's privacy and because records relating to Division proceedings held pursuant to Rule 5:12 are excluded from public access under Rule 1:38-3(d)(12).

parental rights, and prong four, that terminating his parental rights would not do more harm than good. Charles contends the judge erred in failing to correctly apply the July 2, 2021 statutory amendments to the Kinship Legal Guardianship (KLG) Act.² Charles contends the Division led the resource parent Ms. C. (Carol) to believe, and had its expert testify, that KLG was not preferable to adoption because his intention to reserve the right to petition to resume custody under a KLG introduces a lack of permanency for Xander, and the judge erred by not exploring KLG as an alternative to termination of parental rights.

Charles does not challenge the judge's finding that the child's safety, health, or development has been or will continue to be endangered by the parental relationship under prong one, or that he failed to mitigate harm under prong two, or the adequacy of services under part one of prong three. The Law Guardian seeks affirmance. We conclude, after reviewing the record in light of Charles's arguments, that the judge correctly applied the governing legal principles, and sufficient credible evidence supports the judge's findings. Therefore, we affirm.

² On July 2, 2021, the Legislature enacted L. 2021, c. 154, deleting the last sentence of N.J.S.A. 30:4C-15.1(a)(2), which read "[s]uch harm may include evidence that separating the child from [their] resource family parents would cause serious and enduring emotional or psychological harm to the child."

I.

We begin our discussion with the legal framework governing the termination of parental rights. Parents have a constitutionally protected right to the care, custody, and control of their children. Santosky v. Kramer, 455 U.S. 745, 753 (1982); In re Guardianship of K.H.O., 161 N.J. 337, 346 (1999). That right is not absolute. N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 553 (2014). 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 these concerns, the Legislature established the standard for determining when parental rights must be terminated in a child's best interests. N.J.S.A. 30:4C-15.1(a) requires the Division prove by clear and convincing evidence the following four prongs:

- (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 [judge] has considered alternatives to termination of parental rights; and

(4) Termination of parental rights will not do more harm than good.

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." 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 address[es] the specific circumstance[s] in the given case." R.G., 217 N.J. at 554 (internal quotation marks omitted) (second alteration in original) (quoting N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 280 (2007)).

II.

A. Family History

The Division first became involved with Teresa in the matter under review in May 2012 when the Administration for Children's Services (ACS) in New York, which had an open case with the family, advised they had moved to New Jersey. ACS reported concerns to the Division about Teresa's mental health problems, a prior suicide attempt, and a history of domestic violence.

A month later, the Division received another referral alleging Teresa had injured Charles in a domestic dispute. She was arrested and incarcerated. The Division conducted an emergency removal of Xander and obtained legal custody of him.³ Xander remained in the home, which was poorly kept, under Charles's care. The court ordered Teresa to vacate the home and have supervised visits with Xander pursuant to a safety protection plan signed by Charles. He acknowledged to the Division that he understood these conditions but nonetheless allowed Teresa to take Xander unsupervised to daycare twice in September 2012.

In December 2017, the Division learned that Charles continued to permit Teresa to stay with him. The Division removed Xander and placed him in a resource home. Charles was substantiated for inadequate supervision. Charles did not visit Xander for ten months while he was in foster care. The Division offered services to Charles and Teresa, who did not participate at first. Later on, Charles cooperated, and the Division worked towards reunification with Xander. Charles had been evicted from his apartment, and the Division advised

³ "A 'Dodd removal' refers to the emergency removal of a child from the home without a court order, pursuant to the Dodd Act, which, as amended, is found at N.J.S.A. 9:6-8.21 to -8.82. The Dodd Act was authored by former Senate President Frank J. 'Pat' Dodd in 1974." N.J. Div. of Youth & Fam. Servs. v. N.S., 412 N.J. Super. 593, 609 n.2 (App. Div. 2010).

him to obtain stable housing. In December 2014, the judge ordered reunification and Xander was returned to Charles.

Two months later, Charles was incarcerated. He left Xander in the care of his mother, Sandy, who lived in New York. In April 2015, Charles remained incarcerated. The Division again obtained custody of Xander and placed him with Sandy. The Division directed Sandy to apply for custody of Xander in New Jersey and directed that Charles not reside with them. In November 2015, the judge dismissed the Title 9 matter, and the Division closed its case. In 2017, Xander moved in with Charles and his spouse, Kate. A referral was made to the Division in June 2017 about Xander's well-being. Charles could not be located. In September 2017, the Division again obtained care and supervision of Xander and closed the case two months later.

In April 2018, the Division received a new referral from ACS alleging Charles left Xander unsupervised in a vehicle in New York City while he visited his girlfriend. Xander was frightened and got out of the vehicle to seek help. The police became involved and arrested and incarcerated Charles for child endangerment. Xander was released to Kate's care. But two weeks later, Kate advised the Division that she could no longer care for Xander because of a

domestic violence incident that occurred involving Charles resulting in the issuance of a temporary restraining order.

In May 2018, the Division again took custody of Xander and placed him with Carol, a Division approved resource parent, where he still remains. Charles was released from custody but made no contact with the Division. Charles did appear at a court hearing, and the judge ordered him to have no contact with Xander until the Division assessed whether he could provide a safe home for the child.

The Division enrolled Charles in a program that provided therapy, parenting education, and anger management classes. A standing order was issued requiring Charles to provide the Division with any changes in his address or employment status, and provide proof of employment. In March 2019, the Law Guardian represented that Xander "has a strong connection with his current caretaker [Carol] and that [she] would be open to [KLG]," but preferred adoption. In April 2019, the judge approved a permanency goal of reunification. Charles continued to have liberal, unsupervised visitation with Xander, arranged through Carol. But Charles's visits with Xander became inconsistent and stopped entirely by April 2020.

In early 2020, Carol again expressed that she wanted to adopt Xander. Carol explained that Charles's missed visits with Xander disappointed the child. Xander has sickle cell anemia, and Carol facilitated his treatment with healthcare providers. During the pandemic, Charles would not provide Xander with his phone number, and they had no contact.

Based on Charles's inconsistent visits with Xander and his failure to secure stable housing in April 2020, the judge approved the Division's permanency plan of termination of parental rights followed by adoption. On May 22, 2020, the Division filed a complaint for guardianship. In December 2020, the judge ordered Charles to provide the Division with his address, but he failed to do so. The following year, Charles barely visited or contacted Xander. The caseworker arranged for weekly video conferences, but Charles did not answer Xander's calls. Xander underwent therapy to address Charles's behavior toward him. In August 2021, Xander desired to be adopted, and Carol also indicated she preferred to adopt Xander and did not want KLG.

In February 2021, Charles submitted to a psychological bonding and evaluation with Karen D. Wells, Psy.D. Charles was living in a hotel and claimed to be working as a mortgage underwriter. Charles claimed he could not take care of Xander in the past, but the only thing he needed was permanent

housing to establish reunification. Dr. Wells opined that Charles has not been able to offer Xander a stable home or family life for the past four years. Dr. Wells noted that Charles was inconsistent with visitation and contact with Xander and assumed little, if any, personal responsibility for his failure to regain custody.

Dr. Wells stated that despite Charles's claim that he wanted to see Xander, he did not take advantage of liberal visitation; did not prioritize Xander's needs; and could not meet his day-to-day "care, protection, guidance, and stability," now or in the foreseeable future. Dr. Wells opined that termination of parental rights was in Xander's best interests to give him the stability and care he needs.

In her bonding evaluation report, Dr. Wells stated Xander was not responsive to Charles at first, but after Charles engaged him in a discussion about the family's history and Xander's sickle cell anemia, the child showed interest and hugged his father. Despite this display of affection, Dr. Wells saw no indication that Xander considered Charles an available and reliable parent. Dr. Wells reported, "[t]he moments spent with his father are good, and the absence of his presence has been normalized."

Dr. Wells noted Charles failed to appreciate the importance of building trust with Xander, such as maintaining contact, and was unaware of the adverse

impact his absence had on Xander. Dr. Wells describe Charles's and Xander's bond as "intact but insecure" and noted that Xander does not consider Charles as his psychological parent. Dr. Wells stated Xander has thrived without Charles while in foster care for most of his life. Dr. Wells noted Carol said she wanted to adopt Xander to prevent Charles from taking the child again, and she did not want Xander to worry about being left alone.

In April 2022, Dr. Wells conducted a second evaluation. Dr. Wells noted Xander told her that he wanted to live with Carol. At that time, Xander had not seen Charles for about two years. Dr. Wells reported that Carol provided continuity of care for Xander, and the two had a secure bond, with Xander viewing Carol as his primary parental figure and psychological parent. Dr. Wells explained that Xander looked to Carol for "a safe place to share his thoughts and feelings without fear" she would abandon him or withhold love. Dr. Wells stressed that Xander needed permanency and Carol was committed to adoption. According to Dr. Wells, disrupting Xander's relationship with Carol would cause him emotional trauma, and Xander "already suffered the loss of a mother." Losing another mother would be "devastating" to Xander and likely cause "psychological and emotional regression" in Dr. Wells's view.

B. The Guardianship Trial

The judge held a two-day trial. Carol, Dr. Wells, and caseworker Hakima Benjamin testified on behalf of the Division. Carol testified that the Division explained the difference between KLG and adoption to her several times, she understood the difference, and preferred adoption. Carol expressed concern that KLG would allow Charles to "have some type of control" or "impact" on Xander's life, and she wanted the child to understand he could be in her home permanently.

Carol testified she tried to facilitate visits between Xander and Charles, but the inconsistency in the visits saddened Xander. On cross-examination, Carol explained she previously considered KLG, but Charles made things worse over time causing her to prefer adoption. Dr. Wells testified Charles claimed he would obtain stable housing but never did. Dr. Wells testified that Charles had no objection to Xander living with Carol, but Charles was opposed to adoption. In Dr. Wells's opinion, Charles was not fit to parent Xander. She stated that Xander did not trust Charles's lack of reliability or his promises, which impacted the child's self-esteem.

Dr. Wells testified Charles has a "narcissistic personality" and lacked the psychological and emotional ability to provide a stable home. In addition, Dr.

Wells opined that reunification posed a risk to Xander of neglect, instability, lack of housing, and lack of attention to his medical and educational needs. Dr. Wells opined that Xander would not suffer any harm from termination of parental rights, other than losing a source of familial information. And, Dr. Wells stated Carol already mitigated the harm to Xander emanating from being separated from Charles and could continue to mitigate the harm in the future. Dr. Wells emphasized that KLG would continue to expose Xander to Charles's inability to care for his needs. Dr. Wells concluded that she supported termination of parental rights and adoption by Carol because a delay in permanency would be detrimental to Xander.

Benjamin testified the Division worked with Charles to obtain housing assistance, but he did not take advantage of it. Benjamin testified that Charles completed a therapy, parenting skills, and domestic violence program. She testified Charles never provided a verifiable address and proposed living in a motel with Xander. Benjamin testified that Xander has lived in foster care for six years and lived two years with his grandmother. According to Benjamin, Xander told her every time he saw her that he wanted to be adopted by Carol.

Charles did not testify and did not present any witnesses or evidence. The Law Guardian did not present any evidence but joined in the Division's request to terminate Charles's parental rights to Xander.

III.

Subsequent to the presentation of the evidence and closing arguments of counsel, the judge issued a forty-page written decision summarizing the matter's procedural history and making factual findings as to each of the required elements of the best-interests-of-the-child standard set forth in N.J.S.A. 30:4C-15.1(a). Based on those findings, the judge determined the Division sustained its burden of proving by clear and convincing evidence it was in Xander's best interests to terminate Charles's parental rights.

In her opinion, the judge found Carol's testimony about wanting to adopt Xander to be "heartfelt and emotional." The judge also found Carol to be credible about making Xander available for visits with Charles in the future if termination was granted. The judge found Benjamin's testimony "credible, forthright, and honest," and noted her familiarity with the case.

The judge also credited Dr. Wells's testimony noting she was "responsive, clear, and unwavering." The judge found Carol was "unwavering and unembellished" and "filled with emotion" when she testified about her desire to

adopt Xander. The judge emphasized that Carol was emotional when explaining how Xander was negatively affected when Charles failed to visit. In addition, the judge found Carol and Benjamin testified credibly about their observations of Xander changing over the years "in his demeanor toward his father" because of Charles's inconsistent communication and contact.

More particularly, the judge found Charles engaged in a long-term and consistent failure to: make himself available to Xander with the care, secure home, and parental attention he deserves and needs; make himself available to participate in services offered by the Division in a reasonable manner; and provide Xander with the permanency to which he is entitled. The judge found those failures caused Xander harm, and endangered his safety, health, and development.

The judge also determined that although the Division attempted to provide reasonable services, Charles demonstrated a disinterest and unwillingness to address or remediate the harm that necessitated Xander's removal. The judge further found the evidence established that termination of Charles's rights in favor of the permanent and secure home available through adoption by Carol, will not do more harm than good.

The first prong of the best interests test requires the Division demonstrate that the "child's safety, health, or development has been or will continue to be endangered by the parental relationship." N.J.S.A. 30:4C-15.1(a)(1); see K.H.O., 161 N.J. at 352. The concern is not only with actual harm to the child but also the risk of harm. In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999) (citing N.J. Div. of Youth & Fam. Servs. v. A.W., 103 N.J. 591, 616 n.14 (1986)). The focus is not on a single or isolated event, but rather "on the effect of harms arising from the parent-child relationship over time on the child's health and development." K.H.O., 161 N.J. at 348.

The Court has explained a parent's withdrawal of nurture and care for an extended period is a harm that endangers the health of a child. D.M.H., 161 N.J. at 379 (citing K.H.O., 161 N.J. at 352-54). When children "languish in foster care" without a permanent home, their parents' "failure to provide a permanent home" may itself constitute harm. Id. at 383 (second quotation citing N.J. Div. of Youth & Fam. Servs. v. B.G.S., 291 N.J. Super. 582, 591-93 (App. Div. 1996)).

Under prong one, the judge found Xander's safety, health, and welfare will be endangered by a continued relationship with Charles due to his two prior findings of inadequate supervision, evidencing his inattentiveness and neglect

of Xander. The judge recounted the incidents when Charles placed Xander "at risk of harm and/or endangered his health, safety, and development" when he left Xander unattended in a car for at least an hour when he went to see his girlfriend in New York City, and the incident when Charles left Xander in Teresa's care, who was "known to pose a safety risk to Xander," in violation of a court order.

The judge highlighted that Carol arranged for liberal unsupervised visits with Xander, but he was "inconsistent" with visits, to the point Xander no longer trusted "anything [Charles] said or promised." The judge noted evidence was presented to show Charles would not answer Xander's phone calls, and Xander "decided he would no longer try." The judge placed great weight on Dr. Wells's testimony that Xander had been in foster care for four years, and Charles "minimized his responsibility for the duration of his placement" and offered a "distorted perception" of the extent of his contact with Xander. The judge credited Dr. Wells's testimony that Charles "seems to dismiss that being an available, reliable, and consistent source of primary care for a child is quintessential to the child's ability to trust, have a healthy self-esteem, and develop positive relationships now and in the future."

The judge explained how Dr. Wells opined that Xander was affected when he saw pictures of Charles on Facebook travelling but was unable to reach him. The judge noted Dr. Wells's testimony about the "deterioration" of the father and son relationship and concluded that Charles had not provided the "nurturance, protection, stability, and guidance" Xander needs. If Xander was reunified with Charles, the judge accepted Dr. Wells's opinion that Xander would be "at risk for repeated patterns of neglect, abandonment, and poor attention to his medical, social, and emotional needs."

The judge emphasized that Xander, who is ten years old, only spent two non-consecutive years in the care of Charles. The judge noted Charles's "withdrawal of solitude, nurture, and care for Xander" has harmed his "health and development." There was substantial credible evidence in the record to support the judge's finding under prong one.

The judge need not wait until children are "irreparably impaired" by parental abuse or neglect. D.M.H., 161 N.J. at 383. "The State has a *parens patriae* responsibility to protect children from the probability of serious physical, emotional, or psychological harm resulting from the action or inaction of their parents." N.J. Div. of Youth & Fam. Servs. v. C.S., 367 N.J. Super. 76, 110 (App. Div. 2004). There is no basis for us to disturb the judge's finding that the

Division satisfied prong one as against Charles by clear and convincing evidence.

Regarding prong two, which overlaps with prong one, the judge found Charles was unwilling or unable to eliminate the harms described, notwithstanding he had years to do so. The judge emphasized that Charles made no real effort to rectify his parental inadequacies and refused to take responsibility for his actions and is unstable or unwilling to provide a safe home. The judge also found that Charles was "never forthcoming about his housing searches" and never gave the Division a "viable address." Charles currently lives in a hotel. The judge found Charles "is unwilling or unable to nurture and care for Xander" as demonstrated through his absence, his unavailability to the child, and his failure to secure housing. There is substantial credible evidence in the record to support the judge's finding under prong two.

The third prong requires evidence that "[t]he [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 [judge] has considered alternatives to termination of parental rights." N.J.S.A. 30:4C-15.1(a)(3). "Reasonable efforts may include consultation with the parent, developing a plan for reunification, providing services essential to the

realization of the reunification plan, informing the family of the child's progress, and facilitating visitation." M.M., 189 N.J. at 281 (internal quotation marks omitted) (citation omitted).

Under the first part of prong three, the judge found the Division provided "numerous and continuous" services to Charles in an effort to reunify him with Xander. The judge noted that Charles completed the recommended services, but "he has failed to establish stability," and "failed to be there for [Xander] over and over again." The judge also found the Division explored, without success, housing resources and offered home assessments of any residence Charles offered, but he failed to coordinate meetings with the Division. On this point, the judge noted that for the entirety of Xander's placement, Charles has moved from place to place without having his residence assessed.

Under the second part of prong three, the judge stressed Charles was "never barred from seeing Xander in person" and was "encouraged" to have visits, which he did not do with any regularity, even when the Division offered him transportation. The judge also found that the Division had explored, without success, alternatives to termination, and assessed relatives and KLG, but all were eventually ruled out.

Finding Carol well-informed of the difference between KLG and adoption, the judge found Carol initially agreed to KLG in the past, in February 2020, but now "unequivocally" expressed her preference and commitment to adopting Xander. The judge found based on Carol's commitment to adoption, KLG was not in Xander's best interests, relying on In the Matter of D.C., 203 N.J. 545, 566 (2010), noting that neither a resource parent (nor a parent) controls the KLG decision. The judge pointed out her obligation to consider KLG despite Carol's preference for adoption. The judge concluded that KLG would only benefit Charles, and the judge emphasized Xander's desires to be adopted in tandem with Dr. Wells's opinions regarding his best interests. The record supports the judge's determination under prong three.

Finally, the judge concluded under prong four that the termination of Charles's parental rights would not do more harm than good. The judge emphasized Dr. Wells testified that Xander has a "waning bond" with Charles and does not consider him as his psychological parent. Xander "would not suffer enduring and irreparable harm." The judge added there was "no probable expectation" Charles would make the changes necessary to provide Xander with a safe and stable home and "the permanency he so desperately need[s] and deserve[s]."

The judge gave great weight to Dr. Wells's testimony that Xander has shown he has the "wherewithal" to "sustain [Charles's] absence" and can "thrive" without him and without permanency, Xander would encounter "negative consequences." The judge was satisfied that Carol has "done her best" to mitigate any harm Xander has suffered because Charles did not visit or make good on a promise. The judge stressed that Xander has waited long enough for a permanent home, and has been in five different placements in his life. The record supports this determination. This appeal followed.

IV.

Before us, Charles argues the Division failed to prove by clear and convincing evidence the second part of prong three and prong four of the best interests of the child test.⁴ We are unpersuaded.

⁴ Charles does not contest the judge's factual findings and legal conclusions under prongs one and two or the first part of prong three. Accordingly, we could consider any contentions regarding these findings waived. See Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2023) ("[A]n issue not briefed is deemed waived."); Telebright Corp. v. Dir., N.J. Div. of Taxation, 424 N.J. Super. 384, 393 (App. Div. 2012) (deeming a contention waived when the party failed to include any arguments supporting the contention in its brief). We have nevertheless reviewed the judge's prong one, two, and the first part of prong three findings and are satisfied they are supported by substantial, credible evidence in the record and the judge's legal conclusions unassailable.

KLG allows a relative to become the child's legal guardian and commit to care for the child until adulthood, without terminating parental rights. N.J. Div. of Youth & Fam. Servs. v. P.P., 180 N.J. 494, 508 (2004). The Legislature created this arrangement because it found "that an increasing number of children who cannot safely reside with their parents are in the care of a relative or family friend who does not wish to adopt the child or children." N.J. Div. of Youth & Fam. Servs. v. L.L., 201 N.J. 210, 222-23 (2010).

Prior to July 2, 2021, KLG was considered "a more permanent option than foster care when adoption '[was] neither feasible nor likely.'" P.P., 180 N.J. at 512 (emphasis added) (quoting N.J.S.A. 3B:12A-6(d)(3) to (4)). As such, "when a caretaker . . . unequivocally assert[ed] a desire to adopt," the standard to impose a KLG was not satisfied because the party seeking a KLG arrangement would not be able to show that adoption was neither feasible nor likely. N.J. Div. of Youth & Fam. Servs. v. T.I., 423 N.J. Super. 127, 130 (App. Div. 2011). In other words, when permanency through adoption was available to a child, KLG could not be used as a defense to the termination of parental rights. N.J. Div. of Youth & Fam. Servs. v. D.H., 398 N.J. Super. 333, 341 (App. Div. 2008).

On July 2, 2021, however, the Legislature amended N.J.S.A. 3B:12A-6(d)(3) and removed the statutory requirement that adoption be "neither feasible

nor likely," making KLG an equally available permanency plan for children in the Division's custody. However, the Legislature did not delete paragraph (d)(4) of the KLG statute, which requires a court to find "awarding [KLG] is in the child's best interest," N.J.S.A. 3B:12A-6(d)(4), before it can order KLG. Thus, the amended KLG statute simply ensures a resource parent's willingness to adopt no longer forecloses KLG. But the amendment to N.J.S.A. 3B:12A-6(d)(3) does not affect the trial court's application of the best interests test for parental termination cases as codified under N.J.S.A. 30:4C-15.1(a)(1) to (4).

Substantial credible evidence in this record supports the judge's findings that the Division thoroughly explored alternatives to termination of parental rights. N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008). Charles's assertion that L. 2021, c. 145 ("2021 amendments") compel KLG is unsupported by the overriding purpose of child protection laws. See N.J. Div. of Child Prot. & Perm. v. D.C.A., 474 N.J. Super. 11 (App. Div. 2022), certif. granted 253 N.J. 599, 599-600 (2023). The children's best interests are the polestar of any termination decision. D.H., 398 N.J. Super. at 338.

The third prong of the best interests test requires evidence that "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 [judge] has considered alternatives to termination of parental rights." N.J.S.A. 30:4C-15.1(a)(3). "Reasonable efforts may include consultation with the parent, developing a plan for reunification, providing services essential to the realization of the reunification plan, informing the family of the child's progress, and facilitating visitation." M.M., 189 N.J. at 281 (internal quotation marks omitted).

"An evaluation of the efforts undertaken by [the Division] to reunite a particular family must be done on an individualized basis." D.M.H., 161 N.J. at 390. The evaluating court must also consider "the parent's active participation in the reunification effort." Ibid. In any situation, "[t]he services provided to meet the child's need for permanency and the parent's right to reunification must be 'coordinated' and must have a 'realistic potential' to succeed." N.J. Div. of Youth & Fam. Servs. v. L.J.D., 428 N.J. Super. 451, 488 (App. Div. 2012) (quoting N.J. Div. of Youth & Fam. Servs. v. J.Y., 352 N.J. Super. 245, 267 n.10 (App. Div. 2002)).

This requires the Division to "encourage, foster and maintain the parent-child bond, promote and assist in visitation, inform the parent of the child's progress in foster care and inform the parent of the appropriate measures [they] should pursue . . . to . . . strengthen their relationship." R.G., 217 N.J. at 557

(alterations in original) (internal quotation marks omitted) (quoting D.M.H., 161 N.J. at 390). What constitutes reasonable efforts varies with the circumstances of each case. D.M.H., 161 N.J. at 390-91.

Regarding the second part of prong three, Charles does not challenge the Division's efforts to reunify him with Xander. Charles instead argues the judge incorrectly quoted the statute and failed to appreciate the 2021 amendments that dispense with the judge focusing on whether Xander's removal from Carol would cause harm because such a removal was not proposed. Charles further asserts the judge misconstrued KLG as a permanency plan and improvidently determined that the waning bond between Charles and Xander required termination of parental rights. In support of his argument, Charles cites to Carol's testimony that she would allow continuing contact between him and Xander if the judge ordered KLG. Charles asserts the judge erred in failing to give preference to KLG over adoption. We are unpersuaded.

We are satisfied the judge's finding that Carol had considered KLG in the past but was no longer interested in KLG and preferred adoption is supported by the substantial credible evidence in the record. The 2021 amendments do not make KLG a bar to termination of parental rights followed by adoption because

the court must still apply the best interests factors. Moreover, a caregiver must petition a court for a KLG appointment under N.J.S.A. 3B:12A-5(a).

The record shows Carol clearly rejected KLG at trial because she wants to give Xander a permanent and stable home. We disagree with Charles's argument that his purported prospect of regaining custody supersedes the clear goals of the KLG statute as amended. Moreover, Xander was emphatic that he wishes to be adopted by Carol. In sum, it is clear the judge's determination rested on Xander's best interests.

We agree with the judge's observation that the 2021 amendments "do not elevate KLG as the more preferential goal to adoption," and the "polestar" in the consideration of a child's placement is the best interests of the child, not the parent. Xander now calls Carol "momma," and he has not contacted Charles since June 2022. Moreover, Carol testified she's had an "open door policy" of contact between Charles and Xander. We consider any incorrect quotation by the judge harmless because the balance of the judge's analysis and findings illustrate that the termination of Charles's rights would not inflict greater harm on Xander.

V.

We are also satisfied with the judge's finding that the termination of Charles's parental rights under prong four "will not do more harm than good," N.J.S.A. 30:4C-15.1(a)(4), as it is supported by substantial credible evidence. N.J. Div. of Youth & Fam. Servs. v. K.T.D., 439 N.J. Super. 363, 368 (App. Div. 2015). The judge acknowledged under prong four, after balancing and considering the relationships between the child and the natural parent and caregiver, the child "will suffer a greater harm from the termination of ties with [their] relationship with the[] foster parent[]," citing N.J. Div. of Youth & Fam. Servs. v. I.S., 202 N.J. 145, 181 (2010) (quoting In re Guardianship of J.N.H., 172 N.J. 440, 478 (2002)).

Here, the judge stressed Carol was the only individual who has given Xander "stability" for four years. Moreover, the judge gave credence to Carol's testimony that she ensured Xander's "medical, education, psychological, and behavioral needs" are met, and Carol is the one who is there for Xander on his birthdays and makes sure he eats his "vegetables." Xander's "behavioral needs" have improved under Carol's care, and she tends to his sickle cell anemia treatments. Dr. Wells testified that Xander has an insecure bond with Charles.


It was well within the judge's discretion to afford significant weight to Carol and Dr. Wells's testimony. Dr. Wells was the only expert that could speak to Charles's capability as a parent and his inability to provide the necessary safe and stable home and emotional support Xander needs. See N.J. Div. of Youth & Fam. Servs. v. J.S., 433 N.J. Super. 60, 93 (2013); see also Cnty. of Middlesex v. Clearwater Vill., Inc., 163 N.J. Super. 166, 173-74 (App. Div. 1978).

We are also satisfied by the judge's finding of Xander's need for permanency and stability, and her determination that Charles would not be able to provide either in the foreseeable future. Moreover, Charles did not present a viable plan to make the changes necessary to provide Xander with the loving, safe, and stable home he needs and deserves.

At bottom, we are satisfied the judge correctly determined the Division presented clear and convincing evidence establishing all four prongs of the best interests of the child standard under N.J.S.A. 30:4C-15.1(a). To the extent we have not specifically addressed any of Charles's arguments, we conclude they are of insufficient merit to warrant extended discussion in a written 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