

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0886-22  
A-0887-22

NEW JERSEY DIVISION  
OF CHILD PROTECTION  
AND PERMANENCY,

Plaintiff-Respondent,

v.

D.C.A. and J.J.C.B.,

Defendants-Appellants,

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

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Submitted October 12, 2023 – Decided November 3, 2023

Before Judges Currier, Firko and Susswein.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Cumberland County,  
Docket No. FG-06-0030-22.

Joseph E. Krakora, Public Defender, attorney for appellant D.C.A. (John A. Albright, Assistant Deputy Public Defender, of counsel and on the briefs).

Joseph E. Krakora, Public Defender, attorney for appellant J.J.C.B. (Bruce P. Lee, Designated Counsel, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Janet Greenberg Cohen, Assistant Attorney General, of counsel; Mary L. Harpster, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Meredith Alexis Pollock, Deputy Public Defender, of counsel; Neha Gogate, Assistant Deputy Public Defender, of counsel and on the brief).

#### PER CURIAM

Defendants D.C.A. (Divina<sup>1</sup>), and J.J.C.B. (Javier) appeal the October 28, 2022 order terminating their parental rights to their child, S.I.C. (Sam). Defendants are the parents of four older children, who were the subject of a prior guardianship proceeding in which their parental rights were terminated to those children. N.J. Div. of Child Prot. & Permanency v. D.C.A., 474 N.J. Super. 11

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<sup>1</sup> We use initials and fictitious names to refer to the parties and their children. R. 1:38-3(d)(12).

(App. Div. 2022), certif. granted, 253 N.J. 599 (2023).<sup>2</sup> After a careful review of defendants' contentions in light of the record and applicable principles of law, we affirm.

## I.

Sam was born in March 2021. Because defendants had not remedied the concerns that prevented them from having custody of their older children, the New Jersey Division of Child Protection and Permanency (the Division) determined that "placing Sam back in this couple's care at this time will be putting him at risk of harm." Sam was placed in a resource home.

During the trial, two Division caseworkers assigned to the family's case testified. The initial caseworker related the history of domestic violence between the parents, beginning in 2018 and continuing through the time of Sam's birth. The police had responded to several calls in 2020 and 2021 regarding disputes between the parties. Divina was arrested for assaulting a police officer in August 2020 and again in September 2021 after she threw a brick through Javier's car window.

### Divina

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<sup>2</sup> On September 12, 2023, the Supreme Court heard oral argument in that case regarding the issue of whether the 2021 amendments to N.J.S.A. 30:4C:15.1(a) barred all evidence of a child's relationship with their resource caregivers.

The caseworker testified that Divina had undergone several psychological and psychiatric evaluations prior to Sam's birth. In 2018, a psychologist recommended Divina see a mental health clinician and a psychiatrist and complete parenting classes. Divina was also evaluated by a psychiatrist in 2019, 2020, and 2021. In 2020, the psychiatrist recommended cognitive testing, a neuropsychological evaluation, individual counseling, and prescribed medication.

Divina attended therapy sessions at Omni Health Services, Inc. (Omni) for approximately a year in 2019 and 2020. However, in March 2021, she began missing sessions and was eventually discharged. In its discharge papers, Omni stated that Divina would "benefit from long term treatment to help her cope with life stressors and their depressive symptoms." It recommended other specific service providers.

In October 2021, Divina attended four counseling sessions at Gateway Wellness Center. The Division also offered Divina therapy sessions at Total Family Solutions, Cumberland County Guidance Center, It Takes a Family, Omni, and Oaks Integrated.

Divina and Javier attended separate visits with Sam at Community Treatment Solutions. However, after both defendants stopped attending visits,

they were discharged from the program on February 25, 2022. Javier saw Sam once each in March and June 2022.

In March 2022, the Division referred Divina to a therapeutic supervised visitation program. Although she completed an intake appointment, Divina failed to contact the visitation coordinator and her case was closed. The Division referred Divina a second time, but again after completing an intake appointment, she did not contact the visitation coordinator. Divina saw Sam one time in May and June 2022.

A psychiatrist who evaluated Divina in 2019 and 2020 also assessed her on May 11, 2021. In her report, the psychiatrist stated that "[Divina] appears to be functioning at a lower than average intellectual range. However, I do not have testing for [Divina] and it is possible that she has some neurocognitive distortions, which interfere with her ability to function." She reiterated her earlier recommendations that Divina undergo cognitive testing and a neuropsychological evaluation.

Dr. Jonathan Mack, Psy.D., completed a neuropsychological evaluation of Divina in June 2022. He testified during the trial in October 2022 and his report was admitted into evidence following his testimony.

During the interview, Divina told Dr. Mack she was in an accident in 2016 when she was struck by a motor vehicle as she was walking in a crosswalk. Divina said she was diagnosed with epilepsy but was no longer taking seizure medication. Despite the Division's involvement with Divina for the prior four years, Dr. Mack confirmed Divina had never told the Division about the accident.<sup>3</sup>

When Dr. Mack interviewed Divina's parents, they contradicted some of the information Divina had provided. Divina's parents said her seizures started in 2015, and other than fatigue and dizziness, there were no lasting impacts. Divina's parents stated her personality and functionality were the same before and after the accident and she had developed hearing loss when she was three years old, not after the accident.

Dr. Mack's report concluded:

Based on the totality of the evidence available to me, [Divina] is a victim of severe traumatic brain injury who has been able to recover to an extent in order to work, but who remains highly symptomatic with severe neurocognitive dysfunction as well as persistent posttraumatic symptoms including dizziness, vision problems, hearing loss in both ears (left ear worse than

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<sup>3</sup> Divina did not disclose this information regarding her past medical history to the Division or any evaluators in the litigation involving her four older children.

right ear), chronic headaches, balance difficulties, having fallen at work twice, numbness in her tongue, tinnitus, chronic pain in the neck, head, and shoulders, posttraumatic insomnia, memory dysfunction, . . . and marked loss of academic abilities. . . .

Comprehensive neuropsychological evaluation reveals that [Divina] has been misclassified due to the failure to recognize that her severe lack of judgment, emotional dysregulation, dysregulation of aggression and anger, forgetfulness, and so forth are direct consequences of severe traumatic brain injury.

. . . .

From a parenting perspective, [Divina] has no acknowledgment of her difficulties or of the type of help that she needs. She has thus far been resistant to getting help, and has cognitive impairments that impair her from following through with what she needs to do for herself, let alone for her children. Furthermore, [Divina]'s brain injury impairs her judgment and other neurocognitive functions, to the extent that she is unable to be a minimally effective parent now, and certainly into the short-term immediate future. [Divina]'s denial of her own deficits is a negative predictor in terms of her long-term outcome.

I think that [Divina] needs psychotherapeutic, neurological, and psychiatric follow-up on an urgent basis. [Divina] has already lost the rights to her four older children. I think it unlikely that [Divina] will be able to improve enough in terms of her judgment, memory, comprehension, persistence, and follow-through to be able to become a minimally effective parent in the foreseeable future, and certainly not within a year or two . . . .

. . . .

Regarding the best interest of her child [Sam], again, based on the totality of the evidence, it is my opinion that it is unlikely that [Divina] will be able to establish improved functioning in the necessary timeframe for her rights to be returned in regard to [Sam]. Permanency for [Sam] is an important issue and it is judged to be unlikely that [Divina] can become minimally effective as a parent in the next year or two, based on the totality of the evidence available to me at this time.

During his trial testimony, Dr. Mack reiterated "it would be optimistic" for Divina to be restored to a "minimally effective parent" in between twelve and twenty-four months. He stated that even if she acknowledged her traumatic brain injury (TBI) was a problem, and cooperated and was willing to work with service providers, it would be more than a year before she could be an effective parent to Sam.

The Division also attempted to assist Divina with seeing a primary care physician and obtaining a better quality of medical insurance coverage. Divina declined the assistance. She also refused to see a psychiatrist or take any medication.

Divina was employed at times during the litigation, reporting that she worked at factories and a propane company. Her housing situation was unstable,



despite assistance from Catholic Charities and the Deferred Action for Childhood Arrivals program in 2021.

On the morning of the first day of trial, Divina flew to Puerto Rico. She explained that she was looking for housing, but Sam would not be able to stay there with her. Divina was present on the third day of trial but then returned to Puerto Rico. Divina had not provided the Division with her current address or any proof of income.

#### Javier

Dr. Perez-Rivera completed a psychological evaluation of Javier in 2018. Javier denied any instances of domestic violence with Divina and did not believe he had a mental health condition or a substance abuse problem. Javier admitted he drank excessively while married to his ex-wife, but said he drank less when he came to the United States in 2015, although he would still drink excessively on occasion. Javier said this caused "some tension in his relationship with [Divina]." Javier denied using drugs.

Dr. Perez-Rivera concluded that Javier's cognitive abilities were in the "[a]verage" range and that he "ha[d] personality traits that are maladaptive and dysfunctional." She stated in her report that:

It is highly probable that [Javier] is presently meeting the diagnostic criteria for Adjustment Disorder,

Unspecified Type. He also likely meets the diagnostic criteria for Paranoid Personality Disorder. Given that he was guarded and attempted to present himself in an overly positive light throughout the evaluation, these are presently assigned as provisional diagnoses. He might actually suffer from more severe psychopathology, such as Delusional Disorder. Regardless, he presently requires intervention.

....

There are significant risk factors [regarding Javier's ability to parent], including [Javier's] moderately impaired mental health, limited psychological insight, use of externalization of blame as a defense mechanism[], deficits in his understanding of the common developmental milestones in children and adolescents, deficits in employing disciplining techniques that are associated with the best outcomes, as well as those that are best suited for children the age of [his children], lack of housing, possible history of having been the batterer in domestic violence situations, criminal charges for disorderly conduct, and confusing accounts as to his involvement with [Divina], that make [Javier] quite a questionable candidate to provide his children with safe and effective parenting at this time. It is unknown whether interventions will result in progress towards becoming a safe and effective parent. [Javier] is expected to be particularly resistant in making any changes, as he presently has limited insight into any mental health deficits or parenting skills deficits, and externalizes blame for his involvement with [the Division].

....

[Javier] reported that [the Division's] involvement is due . . . to [a] misunderstanding. He does not

understand the impact that all the various accounts that [Divina] has given to [the Division], particularly those that reference him as a batterer and rapist, could have in regards to the case outcome. [Javier] believes that once he gets an apartment, he can have his family back.

Dr. Perez-Rivera recommended that Javier receive mental health treatment, take parenting skills classes, undergo a psychiatric evaluation to determine if medication would be beneficial, receive housing assistance, and that the Division should monitor his interactions with Divina.

Javier was also evaluated by a psychiatrist, Samiris Sostre, M.D., in 2019. She observed that "[h]is reliability as a historian was poor and he appeared to withhold information." She also noted that "[Javier] was withholding information from [her], not out of suspiciousness or paranoia, rather out of poor cooperation with the evaluation." The psychiatrist concluded that Javier did not suffer from a disorder that required psychiatric treatment or medication and recommended that he receive individual and domestic violence counseling because of the allegations of domestic violence and his inability to address Divina's aggressive behaviors.

Following an evaluation with a psychologist in 2020, the doctor recommended that Javier receive couples counseling, individual therapy, a

substance abuse evaluation, parenting classes, and supervised visits with his children.

Dr. Sostre evaluated Javier for a second time in June 2021. The psychiatrist concluded that Javier was "guarded and evasive" and did not understand the concerns with Divina's behavior or how her behavior impacted the children. Dr. Sostre recommended individual counseling to address Javier's and Divina's behavior.

The Division referred Javier for a substance abuse evaluation regarding his issues with alcohol in April 2021, but he did not attend any of the appointments. He was referred again in August 2021, and started the substance abuse evaluation, but did not complete it. He was referred a third time in November 2021, and completed one session of outpatient services. Javier was referred two additional times but did not attend the appointments and he subsequently moved to Puerto Rico.

On November 4, 2021, Javier told a Division caseworker that he was staying with friends. On December 2, 2021, the case notes state that "[Javier] is not able to receive services due to not having an address, he also has no source of income due to challenges of completing the process for disability and unemployment." Javier moved to Puerto Rico in the summer of 2022, just prior

to the start of trial. Before moving, Javier rented a room in New Jersey, but admitted that it was not suitable for Sam to live there because other residents smoked marijuana. The Division had provided him with alternative housing options.

The Division requested defendants to undergo a forensic evaluation with Dr. Alan J. Lee, Psy.D, but they refused to attend.

### Sam's Placement

The Division considered several of defendants' family members as a viable placement for Sam. One individual was ruled out because there was an active restraining order against her and a substantiated finding of child abuse against her and her spouse. Divina's parents were disqualified for prior criminal charges involving the sexual assault of a minor and they did not comply with the agency. Two other family members did not want to be a resource parent.

Sam has remained in the same resource home since he was discharged from the hospital. He lives with a married couple and another baby that was placed there. Sam is developing normally and is "very, very happy." The Division discussed the differences between adoption and kinship legal guardianship (KLG) with the resource parents and they signed an updated adoption and KLG comparison chart. The caseworker testified at trial that the

resource parents "prefer[ed]" legal adoption. They advised that if they were allowed to adopt Sam, they would create an email account to send pictures and updates to defendants. Defendants have acknowledged Sam is doing well in the resource home.

### The Trial Court's Decision

In a comprehensive oral decision issued October 28, 2022, Judge Mary K. White found the Division had satisfied the four prongs of the best interests of the child standard under N.J.S.A. 30:4C-15.1(a) and terminated defendants' parental rights to Sam. In considering prong one of the statute, Judge White found Sam's health and safety were endangered by defendants' issues with their mental health, domestic violence, alcohol abuse, and unstable housing. Judge White found that prong two was satisfied because of defendants' failure to complete services and lack of visitation with Sam. Judge White concluded that prong three was satisfied because, despite Dr. Mack's diagnosis of Divina with a TBI after she had already received multiple evaluations and services, the Division had provided reasonable services to defendants and had considered alternative options to the termination of their parental rights. After considering Sam's need for permanency and defendants' inability to provide it in the near future, Judge White concluded that the Division had satisfied its burden under

the fourth prong. The court's decision was memorialized in an October 28, 2022 order.

## II.

On appeal, Divina argues that the court erred: in concluding the Division satisfied prongs one and two; in finding the Division made reasonable efforts towards reunification because the Division did not diagnose Divina with a TBI until the eve of trial; in failing to consider alternatives to termination of parental rights because there was no evidence that KLG was factually or legally unavailable; and because KLG was available, termination of parental rights would do more harm than good.

Javier contends on appeal that the court erred in concluding the Division satisfied prongs one and two, and in failing to consider KLG as an alternative to termination of parental rights.

The Law Guardian supports the Division's position and requests this court affirm the order terminating defendants' parental rights.

A trial court's findings of fact are binding on appeal if they are "supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998) (citing Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). Especially in the Family Part, a judge's findings should be reviewed

under a deferential standard of review. Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (citing Cesare, 154 N.J. at 413). "We invest the family court with broad discretion because of its specialized knowledge and experience in matters involving parental relationships and the best interests of children." N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 427 (2012). However, our review of a court's interpretation of legal issues is de novo. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019).

Parents have a "fundamental liberty interest . . . in the care, custody, and management of their child," which "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." Santosky v. Kramer, 455 U.S. 745, 753 (1982). Further, parents maintain this right even when a child is placed in foster care. In re Guardianship of J.C., 129 N.J. 1, 9-10 (1992) (citing Santosky, 455 U.S. 745). The New Jersey Legislature has set forth that "[t]he preservation and strengthening of family life is a matter of public concern as being in the interests of the general welfare." In re Guardianship of K.H.O., 161 N.J. 337, 347 (1999) (alteration in original) (quoting N.J.S.A. 30:4C-1(a)).

Still, parental rights are not absolute. Ibid. The State has a "parens patriae responsibility to protect the welfare of children." J.C., 129 N.J. at 10. The State



may intervene in the parent-child relationship and terminate parental rights if the relationship will continue to harm the child. See In re Guardianship of D.M.H., 161 N.J. 365, 377 (1999).

"The balance between parental rights and the State's interest in the welfare of children is achieved through the best interests of the child standard[,]" which is established in N.J.S.A. 30:4C-15(c) and elaborated in N.J.S.A. 30:4C-15.1(a) as four prongs. K.H.O., 161 N.J. at 347-48. They are:

- (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.

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

The Division must prove each prong by clear and convincing evidence. N.J. Div. of Youth & Fam. Servs. v. A.W., 103 N.J. 591, 611-12 (1986). The

prongs "are not discrete and separate; they 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 court may not make presumptions against parents in termination of parental rights cases, and all doubts which arise "must be resolved against termination of rights." Id. at 347.

A.

We begin with defendants' contentions regarding the first and second prongs of N.J.S.A. 30:4C-15.1(c). Divina argues that the court erred in finding her mental health, housing issues, and involvement in domestic violence incidents endangered Sam's safety and health. And because Divina did not refuse treatment for her TBI, she contends the Division did not satisfy prong two.

Javier argues that the court erred in determining his consumption of alcohol and involvement in domestic violence incidents were sufficient to satisfy prongs one and two. In addition, since Javier and Divina are no longer in a relationship, Javier asserts there is no longer a harm to Sam even if there were previous incidents of domestic violence.

To satisfy the first prong, there must be evidence that the parent caused the child harm. K.H.O., 161 N.J. at 348. While one single harm may be

sufficient, "the focus is on the effect of harms arising from the parent-child relationship over time on the child's health and development." Ibid.

Prong two requires there be parental unfitness, which can "be demonstrated that the parent is 'unwilling or unable to eliminate the harm' that has endangered the child's health and development" or "if the parent has failed to provide a 'safe and stable home for the child' and a 'delay in permanent placement' will further harm the child." Id. at 352 (citing N.J.S.A. 30:4C-15.1(a)(2)). While prongs one and two are separate inquiries, they are related and "evidence that supports one informs and may support the other as part of the comprehensive basis for determining the best interests of the child." D.M.H., 161 N.J. at 379.

The Division presented evidence to the court regarding several domestic violence incidents between defendants. On appeal, Javier contends the court erred in admitting those police reports without an appropriate custodian of records to authenticate them. We see no error.

The Supervisor of the Vineland Police Department and Director of the Millville Police Department provided certifications attesting to the nature and authenticity of the records. The police reports were admissible as business records under N.J.R.E. 803(c)(6). The court did not rely on the officers'

conclusions in the records and used them only for the limited purpose of showing that defendants called police and police responded. Defendants did not contest those facts. In addition, the Division caseworker was present at the January 2021 incident and observed Javier was intoxicated. The court did not err in admitting the police reports for this delineated limited purpose.

The police reports revealed that in 2018, police arrived at defendants' residence and noted bruising on Divina's arms. Javier was arrested and charged with assault. In addition, the Division learned of domestic violence incidents that occurred in New York prior to defendants' moving to New Jersey and that at one point Divina was living in a domestic violence shelter in New York. There were also calls made to the police after Sam's siblings were removed from defendants' care. Judge White noted these events were "occurrences that required the intervention of police that address unresolved issues between the parties that are disruptive to a stable home or an ability to provide a safe home to the children . . . ." The court's determination that Javier displayed alcohol abuse, was involved in domestic violence incidents with Divina, and refused to address these issues was supported by the evidence.

There also was no error in finding Divina's mental health issues satisfied statutory prongs one and two. Despite years of involvement with the Division

regarding five children, Divina never disclosed to the Division, the countless doctors or therapists who evaluated her or the myriad of programs she attended that she had a serious accident in 2016 that resulted in severe injuries including a TBI. In each evaluation, Divina was asked about and recounted her medical history; she never mentioned the 2016 accident.

Furthermore, even after Dr. Mack learned of the accident and diagnosed Divina with a TBI, Divina did not comply with any of the doctor's recommendations. She even failed to attend the feedback session offered by Dr. Mack to review his findings with her. Divina's failure to complete the recommended services offered by numerous professionals endangered Sam's health and safety and reflected Divina's unwillingness to eliminate the harm. The court properly relied on Divina's prior conduct and her non-compliance with previous evaluations and service recommendations in performing its analysis regarding prongs one and two.

Moreover, Dr. Mack opined that even if Divina had followed his recommendations and successfully complied with and completed services, it was unlikely that she could become a "minimally effective parent" within the next two years. Sam has lived with his resource family since birth. Divina and Javier rarely visited him and had not seen him in months prior to the trial. Neither

defendant made any attempt to eliminate the harm suffered by Sam from their failure to spend time with him.

B.

Divina also challenges the court's finding under prong three that the Division provided reasonable services to her. She contends that the doctors who evaluated her did not ask the proper questions to elicit the information about her 2016 accident and resulting TBI. We are unpersuaded and cannot fault the Division for failing to investigate Divina's undisclosed medical history.

The accident occurred two years prior to the Division's initial involvement with Divina's older children. Divina did not disclose the accident or any resultant injuries to the Division then or at any time in the next four years as the litigation continued. Despite not knowing of Divina's medical situation, the Division referred her to numerous evaluators, who all found some mental health concerns and recommended numerous services to address them. Divina steadfastly refused to complete those services and did not go to further recommended evaluations and testing.

Judge White noted that Divina did not present any evidence that she could not recollect the accident or its aftermath. The judge stated Divina told evaluators through the years "about her high school degree, her studies, her

miscarriages, her postpartum depression, [and] about where she lived. . . ." There is ample evidence that the Division provided both defendants with reasonable services to address the circumstances that led to Sam's placement in a resource home.

The second part of prong three requires that "the court has considered alternatives to termination of parental rights." N.J.S.A. 30:4C-15.1(a)(3). Both defendants argue that the trial judge erred in failing to consider the availability of KLG as an alternative to terminating their parental rights. We discern no merit to this argument.

Effective July 2021, various sections of statutes concerning child protective services were amended. See L. 2021, c. 154. The Legislature declared "[k]inship care is the preferred resource for children who must be removed from their birth parents" and amended several statutes "to strengthen support for kinship caregivers[] and ensure focus on parents' fitness and the benefits of preserving the birth parent-child relationship, as opposed to considering the impact of severing the child's relationship with the resource family parents." L. 2021, c. 154, § 1. Consistent with that intent, the Legislature made several amendments to the KLG Act, N.J.S.A. 3B:12A-1 to -7, including elimination of the requirement that adoption of the child be "neither

feasible nor likely" before a court may appoint a guardian. L. 2021, c. 154, § 4; N.J.S.A. 3B:12A-6(d)(3).

Judge White properly considered that Sam's resource family was informed of the option of KLG. The parents stated they "prefer[red]" adoption after having been apprised of the difference between KLG and adoption. In amending the KLG Act and prong two of the child's best interests standard, the Legislature did not foreclose adoption. Instead, it emphasized the need for consideration of kinship caregiving. Here, both the Division and Judge White properly considered Sam's resource parents' role in providing kinship care to him. However, the evidence presented at the guardianship trial amply supports Judge White's finding that termination of defendants' parental rights was in Sam's best interest.

### C.

To satisfy prong four, the Division must prove that "[t]ermination of parental rights will not do more harm than good." N.J.S.A. 30:4C-15.1(a)(4). Termination of parental rights inherently involves harm, but the inquiry focuses on "whether, after considering and balancing the two relationships, the child will suffer a greater harm from the termination of ties with her natural parents than from the permanent disruption of her relationship with her foster parents."



K.H.O., 161 N.J. at 355. When there has been no bonding evaluation, and the termination of parental rights is based on parental unfitness, the trial judge must consider the child's "need for permanency and [the parents'] inability to care for [them] in the foreseeable future." N.J. Div. of Youth & Fam. Servs. v. B.G.S., 291 N.J. Super. 582, 593 (App. Div. 1996).

Defendants refused to attend the bonding evaluation scheduled with Dr. Lee. In considering prong four, Judge White found defendants did not have any relationship with Sam as their visits with him were minimal and then ceased altogether. Javier had relocated to Puerto Rico and Divina was also looking for housing there at the time of trial.

The judge also noted Dr. Mack's opinion that even if Divina complied with recommended treatment and services, it would be at least two years before she could be considered even a minimally effective parent. See N.J. Div. of Youth & Fam. Servs. v. P.P., 180 N.J. 494, 512 (2004) (indicating even if a parent is trying to change, a child cannot wait indefinitely); D.M.H., 161 N.J. at 385 ("[W]e are mindful of strong policy considerations that underscore the need to secure permanency and stability for the child without undue delay.").

In concluding termination of parental rights would not do more harm than good, Judge White properly considered defendants' actions of removing

themselves from [Sam's] life, their inability to provide him with a safe and stable home in the foreseeable future, and Sam's need for permanency.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION