

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1594-22

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

G.F.,

Defendant-Appellant,

and

D.L.,

Defendant.

IN THE MATTER OF THE
GUARDIANSHIP OF K.L.,
a minor.

Submitted September 13, 2023 – Decided September 19, 2023

Before Judges Haas and Puglisi.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Cape May County, Docket No. FG-05-0003-22.

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

Matthew J. Platkin, Attorney General, attorney for respondent (Donna Arons, Assistant Attorney General, of counsel; Alicia Y. Bergman, Deputy Attorney General, on the brief).

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

PER CURIAM

Defendant G.F. is the biological parent of K.L.¹ Defendant appeals from the November 16, 2022 judgment of guardianship terminating her parental rights to the child. Defendant contends that the Division of Child Protection and Permanency (Division) failed to prove the fourth prong of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence. The Law Guardian supports the termination on appeal as it did before the trial court.

¹ We refer to defendant and the child by initials to protect their privacy. R. 1:38-3(d)(12).

Based on our review of the record and applicable law, we are satisfied that the evidence in favor of the guardianship petition overwhelmingly supports the trial court's decision to terminate defendant's parental rights. Accordingly, we affirm substantially for the reasons set forth by the trial court in its thorough oral decision rendered on November 16, 2022.

We will not recite in detail the history of the Division's interactions with defendant and K.L. Instead, we incorporate by reference the factual findings and legal conclusions contained in the trial court's decision. We add the following brief comments.

The guardianship petition was tried before the trial court over the course of two days. The Division presented overwhelming evidence that established, by clear and convincing evidence, all four statutory prongs outlined in N.J.S.A. 30:4C-15.1(a). In its thorough decision, the trial court concluded that termination of defendant's parental rights was in K.L's best interests, and fully explained the basis for each of its determinations.

The scope of our review of a trial court's decision to terminate parental rights is limited. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012). "Because of the family courts' special jurisdiction and expertise in family matters," we accord deference to the trial court's fact-finding and the

conclusions that flow logically from those findings of fact. Cesare v. Cesare, 154 N.J. 394, 413 (1998). We are bound by those factual findings so long as they are supported by sufficient credible evidence. N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 279 (2007).

The trial court's opinions track the requirements of N.J.S.A. 30:4C-15.1(a), and are supported by substantial and credible evidence in the record. F.M., 211 N.J. at 448-49. After appraising the record in light of the findings of fact contained in the court's decisions, we find nothing that requires our intervention. The trial court carefully reviewed the relevant evidence and fully explained its reasons in a logical and forthright fashion.

Defendant's arguments on appeal are limited to her contention that the trial court erred when it concluded that the Division satisfied the fourth statutory prong, which requires the court to determine whether termination of parental rights will not do more harm than good to the child. N.J.S.A. 30:4C-15.1(a)(4). We disagree.

N.J.S.A. 30:4C-15.1(a)(4) "serves as a fail-safe against termination even where the remaining standards have been met." Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 609 (2007). The question is "whether a child's interest will best be served by completely terminating the child's relationship with that

parent." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 108 (2008). The ultimate determination to be made under the fourth prong is "whether, after considering and balancing the two relationships, the child will suffer a greater harm from the termination of ties with [the] natural parents than from the permanent disruption of [the] relationship with [the] foster parents." In re Guardianship of K.H.O., 161 N.J. 337, 355 (1999).

In finding the Division met the fourth prong, the trial court relied on unrefuted expert testimony establishing that defendant was not able to provide consistency and stability to K.L. now or in the foreseeable future. The unrebutted testimony of one of K.L.'s resource parents² and the Division caseworker also amply demonstrated that the resource parents were committed to adopting K.L. in order to provide him with the permanency he so desperately needed in his life.

Nevertheless, defendant argues that "the trial court erred when it found that termination of [her] parental rights would not do more harm than good without [requiring the Division to produce] bonding evaluations that weighed [K.L.'s] relationship with [her] and the resource parent[s]." Again, we disagree.

² The resource parents are defendant's brother and his wife.

Defendant is correct that weighing the potential harm from terminating parental rights against separating the child from foster parents ordinarily requires expert testimony on the strength of each relationship. K.H.O., 161 N.J. at 355. However, there is no bright-line rule requiring bonding evaluations in every termination case. N.J. Div. of Youth & Family Servs. v. A.R., 405 N.J. Super. 418, 439-40 (App. Div. 2009). Contrary to defendant's contention, when the termination action is based on parental unfitness rather than bonding, the proper inquiry under the fourth prong focuses on the child's need for permanency and the parent's inability to care for him or her in the foreseeable future. N.J. Div. of Youth & Family Servs. v. B.G.S., 291 N.J. Super. 582, 593 (App. Div. 1996).

Here, the trial court's finding on prong four was not premised on bonding, but instead on K.L.'s need for permanency, and defendant's inability to provide that permanency to the child. Based upon the overwhelming evidence presented by the Division, the court found that defendant could not overcome her substance abuse problems and her continued interpersonal conflicts with K.L.'s biological father,³ or provide a safe and stable home for K.L. According to the

³ The court also terminated the parental rights of K.L.'s biological father, D.L., on November 16, 2022. D.L. has not challenged that determination and he is not a party to this appeal.

Division's expert, defendant would not be in a position to adequately and consistently parent K.L. now or in the foreseeable future. On the other hand, the record demonstrates that the resource parents have given K.L. a stable home and will continue to do so after they adopt him.

Under these circumstances, there is no reason to believe that terminating defendant's parental rights, thus freeing her child for adoption by the resource parents, would do more harm than good. Accordingly, a comparative bonding evaluation was not required to balance defendant's undisputed parental unfitness against K.L.'s obvious need for permanency. B.G.S., 291 N.J. Super. at 593. Therefore, the trial court properly concluded that all of the requirements of N.J.S.A. 30:4C-15.1(a) were satisfied, including prong four of the statutory test.

In sum, children like K.L. are entitled to a permanent, safe and secure home. We acknowledge "the need for permanency of placements by placing limits on the time for a birth parent to correct conditions in anticipation of reuniting with the child." N.J. Div. of Youth & Fam. Servs. v. C.S., 367 N.J. Super. 76, 111 (App. Div. 2004). As public policy increasingly focuses on a child's need for permanency, the emphasis has "shifted from protracted efforts for reunification with a birth parent to an expeditious, permanent placement to promote the child's well-being." Ibid. That is because "[a] child cannot be held

prisoner of the rights of others, even those of his or her parents. Children have their own rights, including the right to a permanent, safe and stable placement."

Ibid.

The question then is "whether the parent can become fit in time to meet the needs of the children." N.J. Div. of Youth & Fam. Servs. v. F.M., 375 N.J. Super. 235, 263 (App. Div. 2005); see also N.J. Div. of Youth & Fam. Servs. v. P.P., 180 N.J. 494, 512 (2004) (indicating that even if a parent is trying to change, a child cannot wait indefinitely). After carefully considering the evidence, the trial court reasonably determined that defendant was unable to parent K.L. and would not be able to do so for the foreseeable future. Under those circumstances, we agree with the trial court that any further delay of permanent placement would not be in the child's best interests.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION