RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1666-21
A-1997-21

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

S.H.,[1]

Defendant-Respondent,

and

N.F.,

Defendant.

———————————————

IN THE MATTER OF THE GUARDIANSHIP OF A.F., minor,

Appellant.

———————————————

[1] We use the parties' initials to protect the identity of the family pursuant to R. 1:38-3(d)(12).

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
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Plaintiff-Appellant/
Cross-Respondent,

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———————————————

Argued February 1, 2023 – Decided March 28, 2023

Before Judges Gooden Brown and DeAlmeida.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FG-20-0022-21.

Julie Goldstein, Assistant Deputy Public Defender, argued the cause for minor-appellant/cross-appellant A.F. (Joseph E. Krakora, Public Defender, Law

Guardian, attorney; Meredith Alexis Pollock, Deputy Public Defender, of counsel; Julie Goldstein, of counsel and on the briefs).

Mary L. Harpster, Deputy Attorney General, argued the cause for appellant/cross-respondent New Jersey Division of Child Protection and Permanency in A-1997-21 (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Salima E. Burke, Deputy Attorney General, and Mary L. Harpster, on the briefs).

Mary L. Harpster, Deputy Attorney General, argued the cause for respondent New Jersey Division of Child Protection and Permanency in A-1666-21 (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Mary L. Harpster, on the brief).

Adrienne Kalosieh, Assistant Deputy Public Defender, argued the cause for respondent S.H. (Joseph E. Krakora, Public Defender, attorney; Adrienne Kalosieh, on the brief).

PER CURIAM

In these consolidated appeals, the Law Guardian, on behalf of its client A.F., and the Division of Child Protection and Permanency (Division) each appeal from a January 20, 2022 order denying termination of parental rights of A.F.'s mother, defendant S.H., and dismissing the Division's guardianship complaint. For the reasons that follow, we reverse and remand for reconsideration of the evidence adduced at the guardianship trial.

I.

On April 15, 2021, the Division filed a verified complaint seeking to terminate defendant's parental rights and obtain guardianship of A.F. for the purpose of adoption. We will not recite in detail the circumstances that led to the filing of the guardianship complaint, which began with the emergency removal of A.F. on December 18, 2019. The removal was prompted by defendant's unremitted substance abuse during her pregnancy, which resulted in A.F. suffering from withdrawal symptoms and testing positive for cocaine and opiates at birth several days prior. Upon A.F.'s discharge from the hospital, she was placed with her paternal grandparents, who have cared for her since her removal and are committed to adoption.

Both defendant and A.F.'s father, N.F., subsequently entered stipulations admitting to child neglect resulting from their drug use, and the Division was granted custody of A.F. pursuant to N.J.S.A. 9:6-8.29 and N.J.S.A. 30:4C-12. N.F. later executed a voluntary surrender of parental rights, surrendering his parental rights to his parents. As a result, N.F. was dismissed from the litigation and is not participating in this appeal. During the ensuing litigation spanning over two years, defendant has been plagued with unrelenting substance abuse issues and untreated mental illness. Critically, defendant failed to maintain

sobriety for any extended period of time and repeatedly tested positive for illicit drug use despite the Division's efforts in affording her substance abuse and mental health treatment.

The four-day guardianship trial commenced on September 21 and concluded on November 12, 2021. At the trial, in addition to the introduction of numerous documentary exhibits, the Division presented three witnesses: Division supervisor, Fabiola Ricaldi; Division adoption caseworker, Allison James-Frison; and Dr. Alison Strasser Winston, the Division's psychological expert. Defendant produced one witness: A.F.'s paternal grandmother and resource parent, A.R.F. The Law Guardian presented no witnesses but supported termination.

At trial, Ricaldi testified about the Division's extensive involvement with defendant, detailing the services provided to reunify the family and help defendant correct the circumstances that led to A.F.'s removal. According to Ricaldi, defendant advised that she had a lengthy "history of using cocaine and heroin," and "had a diagnosis of bipolar [disorder]" for which she had been "prescribed . . . psychotropic medication." However, defendant explained that she "had weaned herself off of the medication."

As a result, the Division provided defendant with substance abuse evaluations and treatment, drug screens, psychological and psychiatric evaluations and counseling, parenting skills training, supervised visitation, and transportation services. However, defendant never successfully completed any of the substance abuse treatment programs and consistently tested positive for illicit drugs. She also failed to attend any psychiatric evaluations and did not complete the psychological evaluation. Further, defendant never completed the parenting classes and was "inconsistent with visitation." Ricaldi testified that despite bouts of regular attendance, generally, defendant would either "not show up" for visitation, "arrive late or leave early." In addition, the Division routinely had difficulty contacting and communicating with defendant, either in-person, telephonically, or electronically. Although defendant experienced periods of unstable housing, she normally resided with her mother and step-father.

Notwithstanding defendant's initial preference for A.F. to be placed with the paternal grandparents, who spoke mostly Portuguese, Ricaldi testified that the Division also "assessed a paternal uncle, the maternal grandmother, and . . . a maternal great aunt" for A.F.'s placement. However, all three were ruled out or declined to be considered as a placement option. Ricaldi also recounted her observations of A.F.'s interaction with the paternal grandparents,

describing the grandparents as "very loving towards [A.F.]," "very careful with her," and "very nurturing." Ricaldi testified that the grandparents had also "continually allowed" defendant and her mother to visit A.F. "in their home."

James-Frison, the custodian of the Division's records, testified about the Division's permanency plan for A.F. According to James-Frison, after defendant failed to correct the circumstances that led to A.F.'s removal, "[t]he plan [was] for termination of parental rights and adoption [by] the paternal grandparents." She explained that the plan was predicated on defendant's inability to "provide a safe and stable home for [A.F.]," defendant's "unresolved mental and substance abuse issues," and the fact that A.F. was "happy and healthy in the home of the paternal grandparents." James-Frison testified that defendant had acknowledged her inability to raise A.F. and had previously expressed a willingness to surrender her parental rights to the paternal grandparents, provided they agreed to never "take [A.F.] out of the country." However, as the relationship between defendant and the paternal grandparents deteriorated, defendant's plan changed.

In January 2021, a Division concurrent planner, accompanied by a Portuguese interpreter, met with the paternal grandparents to discuss the differences between kinship legal guardianship (KLG) and adoption. James-

Frison testified that the role of a concurrent planner was to speak with resource parents to ensure that they understood the differences between KLG and adoption. At the conclusion of the conversation, the paternal grandmother stated that she wanted to adopt A.F. Subsequently, following an August 31, 2021 court hearing, the court ordered the Division to review the new legislation regarding KLG with the paternal grandparents. James-Frison testified that she complied with the court order and discussed the new legislation with the paternal grandmother, who "was adamant about doing the adoption." However, no Portuguese interpreter was present.

During her testimony, A.R.F. confirmed that she and her husband had spoken with Division representatives "[s]everal times" about the difference between adoption and KLG.[2] She stated that a Portuguese interpreter was "[s]ometimes" present during the discussions. A.R.F. reiterated that she "want[ed] to adopt" A.F. so that she could "love" her and keep her "safe[]." She stated that defendant "can always . . . visit [A.F.] whenever she wants" and she would "teach [A.F.] who her parents [were]." A.R.F. explained that she wanted to adopt A.F. because under KLG, "in a few years, [the parents could] come to [c]ourt and take [A.F.] away from [her]." She understood that if she adopted

[2] A.R.F. testified with the aid of a Portuguese interpreter.

A.F., she would be "her mother" and would be responsible for raising A.F. "with love and tenderness." Although A.R.F. understood that with either adoption or KLG, she would have the right to make major decisions for A.F., she was adamant that the parental rights of defendant and her son should be terminated so that she could adopt A.F. and "have full custody of [her]," including inheritance rights.

Dr. Strasser Winston, the Division's expert, testified about the psychological evaluation she conducted of defendant and the comparative bonding evaluations she conducted of A.F. with defendant and with her paternal grandparents. According to Strasser Winston, she conducted a psychological evaluation of defendant in January 2021 "to assess her emotional functioning, her psychological functioning, [and] her parenting capacity." Strasser Winston completed "[a] record review and a clinical interview" of defendant but "was not able to administer psychological testing" because defendant "failed to follow up to complete the testing."

Strasser Winston testified that during the evaluation, defendant "reported a [long] history of heroin and cocaine use" precipitated by her dependency on "opiates" prescribed after she underwent surgery for "a torn ACL." Defendant also reported that the drugs "helped her to numb the pain" from dealing with her

father's "terminal illness" and "the end of her marriage." She acknowledged that she continued her drug use "throughout the pregnancy" and "relapsed multiple times" while attending substance abuse treatment programs during the litigation. Defendant also reported that "she had been diagnosed in 2015 with bipolar disorder and anxiety" and detailed symptoms consistent with the diagnosis. Although she had been prescribed psychotropic medications, she had not taken the medications because "[s]he did[not] like the side effects." She also denied "ever engag[ing] in any psychotherapy."

Based on the evaluation, Strasser Winston concluded that defendant "presented with serious [unaddressed] mental health and substance use issues, . . . and that she was not capable of safely parenting her daughter at that time." Strasser Winston added that defendant's failure to engage in any services to remediate her parental deficits since the evaluation in January 2021 "highlight[ed]" the fact that "she remain[ed] incapable of safely parenting her daughter."

Turning to the bonding evaluation, Strasser Winston testified that the evaluation was intended to assess A.F.'s "level of attachment" to defendant and to the parental grandparents and to assess "what would be in [A.F.'s] best interests." Strasser Winston explained that it was "really important for a child,

within the first five years of life, to develop at least one secure emotional attachment to a caregiver" to serve "as a foundation to develop more interpersonal relationships as they get older." In the absence of a secure attachment, "the child can develop all kinds of emotional difficulties," including "feelings of anxiety or depression or self-esteem issues."

Based on her observations, Strasser Winston characterized the level of attachment between defendant and A.F. "as an insecure attachment." She explained that A.F. was "familiar with [defendant]," and "comfortable with [defendant], but . . . [did not] consistently look to [defendant] to meet her needs." Strasser Winston stated that the insecure attachment was not surprising given the fact that A.F. "ha[d] never lived with [defendant]" and "[defendant] ha[d] not been consistent in attending visits with [A.F.]"

In contrast, Strasser Winston described the level of attachment between A.F. and the paternal grandparents as "a secure emotional attachment." According to Strasser Winston, "[A.F.] look[ed] to her grandparents to meet her needs consistently" and "view[ed] them as her psychological parents." Strasser Winston defined a psychological parent as "someone who[was] not necessarily the child's biological parent," but someone who "the child look[ed] to for

comfort, when they[were] upset or . . . hurt," and for "unconditional love and support, regardless of their behaviors."

Strasser Winston's "recommendation . . . for permanency" was to afford the paternal grandparents the opportunity to adopt A.F. In support, she explained that "[A.F.] view[ed] them as her psychological parents, she ha[d] a secure attachment to them," and they had "consistently been there to provide for [A.F.]" while "[defendant] ha[d] not." According to Strasser Winston, permanency was necessary for a child to have "a lifelong belonging to a family . . . to fulfill their emotional, physical, [and] educational needs." Without permanency, "the child can develop serious emotional difficulties" and "feelings of insecurity" that can "ha[ve] wide-ranging effects on all aspects of functioning."

Strasser Winston "ha[d] no doubt" that the paternal grandparents could remediate any harm that A.F. would suffer if defendant's parental rights were terminated. She also opined that A.F. would suffer harm if removed from her paternal grandparents given their attachment. Strasser Winston explained that bonding or attachment was "essential for optimal development" in a child and the disruption of a bond could "be highly detrimental to emotional functioning."

Following the trial, on January 20, 2022, the judge entered an order denying termination of defendant's parental rights, thereby dismissing the guardianship complaint. In an accompanying oral opinion, the judge credited the factual testimony offered by the Division's workers and made factual findings consistent with "their testimony and the[] admitted trial submissions." However, the judge found the paternal grandmother's testimony "questionable" and doubted "[w]hether [the paternal grandparents] actually underst[ood] the difference between KLG and adoption." In particular, the judge criticized A.R.F.'s testimony because A.R.F. had testified that "she want[ed] to adopt [A.F.] to give her safety and love," even though, in the judge's estimation, KLG would "provide[] the same safe and loving environment that [A.R.F.] prefer[red]." Furthermore, although the judge largely credited Strasser Winston's testimony regarding defendant's inability to care for A.F., she rejected as a net opinion the doctor's testimony that the paternal grandparents could mitigate any harm caused by termination.

The judge began her legal analysis by noting the applicability of the four-prong best-interest standard, codified in N.J.S.A. 30:4C-15.1(a), as modified by "the recently amended termination of parental rights and KLG statutes under [N.J.S.A.] 30:4C, which became effective July 2[], 2021." See L. 2021, c. 154.

In applying the newly enacted amendments, the judge noted that the statement of legislative intent provided that "kinship care is the preferred resource for children who must be removed from their birth parents," and that "parental rights must be protected and preserved whenever possible." Additionally, the judge observed that by deleting language that prioritized adoption over KLG, "the [Legislature] negated . . . KLG as a fallback to adoption." Taken together, the judge found that "the amendments on a whole[] clearly show[ed] the intent to have KLG as the primary go-to when determining the placement of children under the Division's care." This conclusion substantially colored the judge's ensuing analysis, particularly her application of prongs three and four.

Beginning with prong one, the judge explained that the Division was required "to prove that the child's safety, health, and development has been or will continue to be endangered by the parental relationship" by demonstrating the existence of "harm that threatens the child's health and will likely have continu[ing] deleterious effects on the child." Noting that "[t]he harm need not be physical," the judge found:

> It is undisputed that since [A.F.'s] birth, [defendant] has continually failed to substantially and meaningfully engage in treatment for her drug use and mental health needs. The [c]ourt does acknowledge [defendant's] attempts to comply and her repeated short-term admissions to detox facilities, but notes her

> continued use of heroin and cocaine and her failure to complete programs and engage in long-term treatment.
>
> [Defendant's] continued drug use and failure to attend proper treatment does pose a risk to [A.F.] and the Division has satisfied prong one by clear and convincing evidence.

As for prong two, the judge explained that "[t]he inquiry center[ed] on whether a parent is able to remove the danger facing the child," and the Division could satisfy its burden "by demonstrating that the parent has not cured the problem that led to the removal." The judge determined that "prong two ha[d] been established by clear and convincing evidence," explaining:

> Unquestionably, [defendant] has been unable to provide a safe and stable and permanent home for [A.F.]. [A.F.] is two years old and has spent her life in her current resource home with her paternal grandparents. [Defendant's] continued substance abuse without proper treatment has directly contributed to her inability to care for [A.F.]. Dr. [Strasser Winston] explained that [defendant's] continued failure to obtain treatment or proper treatment demonstrates an inability to provide the stability that [A.F.] needs. The evidence before the [c]ourt is clear and convincing that [defendant] is unable at this time to provide a safe and stable and healthy home for [A.F.] and thus, the Division has met its burden under prong two.

Turning to prongs three and four, the judge chastised the Division for continuing to pursue termination and adoption following the enactment of the legislative amendments, stating:

> The current statute . . . has changed the process by which the [c]ourt and the Division determine the appropriate placement of children in the care of the state. KLG is preferred to adoption. For the Division to argue otherwise is against the clear language of the statute and I quote, "[k]inship care is the preferred resource for children who must be removed from their birth parents because use of kinship care maintains children's connections with their families." In the instant case, [A.F.] was placed and remains in kinship home with her paternal grandparents. Yet, the Division, contrary to the clear language and purpose of the statute, is moving to terminate [defendant's] parental rights, so [A.F.] will be freed for adoption. The Division had ample time to amend its plan, since the statute's amendment from July 2021 prior to the instant trial, yet chose to stay on the path of termination.

Based on her interpretation of the amendments' language, the judge determined that "the Division ha[d] failed to prove by clear and convincing evidence pursuant to [N.J.S.A. 30:4C-15.1] that the parental rights of [defendant] . . . should be terminated" because "the Division failed to meet the burden set forth in prong[s] three and four." The judge explained that "[a]s to prong three, the Division is required to make reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside of the home and the [c]ourt will consider alternatives to termination of parental rights."

The judge found that although the Division made "reasonable efforts to provide services to [defendant]," including "substance abuse evaluations, psychiatric evaluations, individual therapy, supervised visitation, and bonding evaluations,"

> the same circumstances that initially led to the placement of the child, . . . that is [defendant's] untreated drug addiction and mental health issues, still exist and are unlikely to change in the foreseeable future. Thus, the first part of prong three has been satisfied with respect to termination of parental rights.

However, citing N.J.S.A. 30:4C-15.1(a)(3), the judge stressed that "the [c]ourt must also consider alternatives to termination of parental rights" and concluded that prong three had "not been met by clear and convincing evidence as there d[id] exist a more appropriate alternative to termination[,] a KLG." In support, the judge elaborated:

> When the [c]ourt considers, as it must, whether under the totality of the circumstances presented, there exists an appropriate alternative to the termination of [defendant's] parental rights, the [c]ourt relies on the clear language of the statute as explored above and finds that KLG would clearly be a more appropriate alternative to termination.
>
> . . . .
>
> KLG provides permanency and stability needed for a child, yet does not strip the parental rights. Moreover, nowhere in the statute is it required that the

> resource parent's consent is a prerequisite to the determination of KLG. While perhaps preferred, it is not required and it is quite clear from the record here that [the paternal grandparents] are completely committed and devoted to [A.F.] and would of course continue to care for her whether via KLG or adoption.
>
> . . . .
>
> It is worth noting that . . . [i]t is foreseeable, based on the evidence presented in this case, that [defendant] would lose all contact with [A.F.] if her parental rights were terminated, which is contrary to the mandates and the purpose of the governing statute.

The judge further emphasized the effect of the amendments:

> The [L]egislature has made it clear that kinship care is the preferred resource for children who must be removed from their birth parents because the use of kinship care maintains the children's connection with their family. Further, the [L]egislature has tasked the Division and the [c]ourt with assuring that the parental rights must be protected and preserved whenever possible. Nothing [in] the facts presented in the case demonstrate that . . . [defendant's] parental rights should not be preserved. That is the decree which must be upheld.
>
> . . . .
>
> Dr. [Strasser Winston] testified and has reflected in her report that [A.F.] has a positive and affectionate bond with [defendant]. According to the doctor . . . it is a positive relationship. This finding coupled with the supplementary statutory decree of Paragraph 1G further substantiates the appropriateness of KLG alternative to termination under the facts presented here. The

> [L]egislature has declared, and I quote, "[c]hildren are capable of forming healthy attachments with multiple caring adults throughout the course of their childhood, including with birth parents, temporary resource parents, extended family members, and other caring adults. It is unchallenged, accepted, and established by case law that children benefit also from a permanent home." This child is not going to lose the permanent home where she has been residing with her grandparents under the facts that have been presented here.

Finally, addressing prong four, the judge noted that the amended statutory language "determined that the existence of a healthy attachment between a child and a child's [resource] family parent does not in and of itself preclude the child from maintaining, forming, and repairing relationships with the child['s] parent or caregiver of origin." In light of this language, the judge found Strasser Winston's testimony regarding the relative harms of separating A.F. from her grandparents and the grandparents' ability to "mitigate any harm suffered if [defendant's] parental rights [were] terminated" "to be speculative, at best, as it does not address a very real loss in trauma that adopted children experience." The judge therefore excluded this portion of Strasser Winston's testimony as "a net opinion" and found that the Division had failed to establish that terminating defendant's parental rights would "not do more harm than good" to A.F., as required under prong four.

In conclusion, the judge again emphasized that "the clear and unambiguous declarations of our [L]egislature, which the [c]ourt must apply," informed her finding that "termination under the current facts and circumstances . . . [was] not in the best interest of [A.F.] wherein KLG [was] the more appropriate permanency plan," and "the Division ha[d] failed to meet each prong of the best interest standard by clear and convincing evidence." Accordingly, in a memorializing order, the judge denied the Division's petition for termination of defendant's parental rights, and these appeals followed.

II.

In A-1666-21, on behalf of A.F., the Law Guardian raises the following points for our consideration:

> POINT I
>
> THE TRIAL COURT ERRONEOUSLY INTERPRETED THE 2021 AMENDMENTS TO IMPUT[E] A PRESUMPTION FAVORING KLG OVER ADOPTION.
>
> > A. The Elimination of the Presumption Favoring Adoption is Not Equivalent to a Presumption Favoring KLG.
> >
> > B. Legislation Favoring Kinship Placements is Not the Same as a Presumption Favoring KLG.

C. The Alteration to the Second Prong of N.J.S.A. 30:4C-15.1(a) Does Not Express a Presumption Favoring KLG.

POINT II

THE TRIAL COURT MISAPPLIED THE LAW TO UNCONTROVERTED FACTS THAT ESTABLISH PRONGS THREE AND FOUR OF N.J.S.A. 30:4C-15.1(A) WERE SATISFIED.

A. KLG With the Paternal Grandparents is Not a Viable Alternative to Termination of Parental Rights.

B. Termination of Parental Rights Will Not Do [A.F.] More Harm Than Good.

In A-1997-21,[3] the Division makes the following arguments:

POINT I

THE TRIAL COURT'S JUDGMENT DENYING TERMINATION OF [DEFENDANT'S] PARENTAL RIGHTS SHOULD BE REVERSED AND A JUDGMENT OF GUARDIANSHIP DIRECTED BECAUSE THE COURT'S INTERPRETATION OF RECENT AMENDMENTS IS CONTRARY TO THE OVERRIDING PURPOSE OF THE BEST-INTERESTS TEST.

A. The Court's Analysis of the Second Part of Prong Three Was Legally Flawed Because It Assumes that Chapter 154

[3] In A-1997-21, on behalf of A.F., the Law Guardian filed a cross-appeal but submitted the identical merits brief as in A-1666-21.

Creates a Preference for [KLG] Over Termination of Parental Rights.

B. The Court Erred in Analyzing Prong Four Because It Made Generalized Assumptions About the Harm to Children From the Termination of Parental Rights Rather than Assessing [A.F.'s] Specific Situation.

POINT II

THIS COURT SHOULD DIRECT A JUDGMENT OF GUARDIANSHIP BECAUSE THE DIVISION SATISFIED THE FOUR PRONGS OF THE BEST-INTERESTS STANDARD UNDER N.J.S.A. 30:4C-15.1(A) BY CLEAR AND CONVINCING EVIDENCE.

A. The Division Appropriately Considered Alternatives to Termination.

B. Termination of Parental Rights Will Not Cause [A.F.] More Harm Than Good.

III.

Typically, "review of a trial court decision in a termination of parental rights case is limited." N.J. Div. of Child Prot. & Permanency v. T.D., 454 N.J. Super. 353, 379 (App. Div. 2018). "We accord deference to factfindings of the family court because it has the superior ability to gauge the credibility of the witnesses who testify before it and because it possesses special expertise in matters related to the family." N.J. Div. of Youth & Fam. Servs. v. F.M., 211

N.J. 420, 448 (2012) (citing Cesare v. Cesare, 154 N.J. 394, 413 (1998)). Thus, a trial court's decision will only be reversed if the findings are ""so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice[,]"" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare, 154 N.J. at 412), or if the findings "are so '"wide of the mark"' that our intervention is necessary to correct an injustice." F.M., 211 N.J. at 448 (quoting N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008)).

On the other hand, "[a] trial court's 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), and we do not accord deference "to [f]amily [c]ourt findings that are based on a 'misunderstanding of the applicable legal principles.'" N.J. Div. of Child Prot. & Permanency v. A.D., 455 N.J. Super. 144, 156 (App. Div. 2018) (quoting N.J. Div. of Youth & Fam. Servs. v. Z.P.R., 351 N.J. Super. 427, 434 (App. Div. 2002)). Likewise, in matters involving statutory construction, "[a] trial court's statutory interpretation is nonbinding," and "[w]e review issues of statutory interpretation de novo." N.J. Div. of Child Prot. & Permanency v.

D.C.A., 474 N.J. Super. 11, 24 (App. Div. 2022) (citing McGovern v. Rutgers, 211 N.J. 94, 108 (2012)).

In construing the meaning of a statute, we abide by certain well-established interpretive principles. "Where the plain language of a statute is clear, we enforce the statute as written." Correa v. Grossi, 458 N.J. Super. 571, 579 (App. Div. 2019). If a statute is ambiguous, a court is then guided by the Legislature's intent and "may turn to extrinsic evidence, 'including legislative history, committee reports, and contemporaneous construction.'" DiProspero v. Penn, 183 N.J. 477, 492-93 (2005) (quoting Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 75 (2004)). A statute's preamble is generally not considered part of the act it precedes, but "[a] court may turn to [the] . . . preamble as an aid in determining legislative intent." Calabotta v. Phibro Animal Health Corp., 460 N.J. Super. 38, 62 (App. Div. 2019) (first alteration in original) (quoting DiProspero, 183 N.J. at 496). However, "[t]o the extent that the preamble is at variance with the clear and unambiguous language of the statute, the preamble must give way." DiProspero, 183 N.J. at 497.

"A parent's right to enjoy a relationship with his or her child is constitutionally protected." In re Guardianship of K.H.O., 161 N.J. 337, 346 (1999). However, parental rights "are not absolute," N.J. Div. of Child Prot. &

Permanency v. D.H., 469 N.J. Super. 107, 114 (App. Div. 2021) (quoting K.H.O., 161 N.J. at 347), and "[t]he State may terminate parental rights to protect the welfare of the child[] . . . in circumstances where the parent is unfit, or the child has been harmed." D.C.A., 474 N.J. Super. at 24. Thus, "the State may terminate parental rights if the child is at risk of serious physical or emotional harm or when necessary to protect the child's best interests." N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 553-54 (2014).

N.J.S.A. 30:4C-15.1(a) "delineates a four-part inquiry which, taken as a whole, determines whether termination of parental rights is in a child's 'best interests.'" D.C.A., 474 N.J. Super. at 25. Under the statute, a court must consider whether:

> (1) The child's safety, health, or development has been or will continue to be endangered by the parental relationship;
>
> (2) The parent is unwilling or unable to eliminate the harm facing the child or is unable or unwilling to provide a safe and stable home for the child and the delay of permanent placement will add to the harm;
>
> (3) The [D]ivision has made reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home and the court has considered alternatives to termination of parental rights; and

> (4) Termination of parental rights will not do more harm than good.
>
> [N.J.S.A. 30:4C-15.1(a).]

To prevail, the Division must prove all four prongs of the best-interests standard by "clear and convincing" evidence. N.J. Div. of Youth & Fam. Servs. v. A.W., 103 N.J. 591, 611 (1986) (quoting Santosky v. Kramer, 455 U.S. 745, 748 (1982)). "Proof by clear and convincing evidence requires the factfinder to have 'a firm belief or conviction as to the truth of the allegations sought to be established.'" D.H., 469 N.J. Super. at 115 (quoting Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006)).

The four 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. These considerations "are 'extremely fact sensitive' and require particularized evidence that address the specific circumstances in the given case." Ibid. (quoting In re Adoption of Child. by L.A.S., 134 N.J. 127, 139 (1993)). Overall, "[t]he child's need for permanency and stability emerges as a central factor" in the analysis. N.J. Div. of Child Prot. & Permanency v. A.S.K., 457 N.J. Super. 304, 322 (App. Div. 2017) (quoting K.H.O., 161 N.J. at 357).

In July 2021, the Legislature enacted amendments to various sections of Title 9, governing acts of child abuse and neglect, Title 30, governing termination of parental rights (TPR) proceedings, and Title 3B, governing KLG proceedings. L. 2021, c. 154. With respect to TPR proceedings, the Legislature amended the second prong of N.J.S.A. 30:4C-15.1(a) to delete its second sentence. L. 2021, c. 154, § 9. The second prong formerly read as follows:

> 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. Such harm may include evidence that separating the child from his resource family parents would cause serious and enduring emotional or psychological harm to the child[.]
>
> [N.J.S.A. 30:4C-15.1(a) (2015) (amended 2021).]

The amendments also altered the KLG analysis. L. 2021, c. 154, § 4. Prior to 2021, N.J.S.A. 3B:12A-6(d)(3) required a court to find by clear and convincing evidence that adoption was neither feasible nor likely before awarding KLG, rendering KLG unavailable when a caretaker was willing to adopt the child. See N.J. Div. of Youth & Fam. Servs. v. T.I., 423 N.J. Super. 127, 130 (App. Div. 2011) ("[W]hen a caregiver in a case brought by the Division . . . unequivocally asserts a desire to adopt, the findings required [by N.J.S.A. 3B:12A-6(d)(3)] for a KLG that 'adoption of the child is neither

feasible nor likely' cannot be met."). The 2021 amendments deleted this language, thereby making KLG an equally available permanency plan for children in Division custody. L. 2021, c. 154, § 4; N.J.S.A. 3B:12A-6(d)(3).[4]

Additionally, the Legislature amended Title 9 to require the Division to "make reasonable efforts" to place children with suitable relatives or kinship caregivers before placing them elsewhere when effectuating an emergency removal. L. 2021, c. 154, § 5 (amending N.J.S.A. 9:6-8.30(a)). It also required judges to "first consider" placement with suitable relatives or kinship caregivers before ordering other placements during Title 9 proceedings. L. 2021, c. 154, §§ 6, 7 (amending N.J.S.A. 9:6-8.31(b) and N.J.S.A. 9:6-8.54(a)). Further, it amended Title 30 to require the Division to consider placement of children with relatives or kinship caregivers, and to conduct a search for such relatives or kinship caregivers within thirty days of accepting a child into Division custody. L. 2021, c. 154, § 8 (amending N.J.S.A. 30:4C-12.1(a) and (b)).

The preamble to the amendments reads as follows:

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[4] The 2021 amendments also permitted a "caregiver" to become a KLG once a child has resided with the "caregiver" for six consecutive months or nine of the last fifteen months. L. 2021, c. 154, § 2; N.J.S.A. 3B:12A-2 (defining "caregiver"). Previously, a child was required to reside with a "caregiver" for twelve consecutive months or fifteen of the last twenty-two months before KLG could be effectuated. See N.J.S.A. 3B:12A-2 (2012) (amended 2021) (defining "caregiver").

The Legislature finds and declares that:

a. Foster care is intended by existing state and federal statute to be temporary.

b. Kinship care is the preferred resource for children who must be removed from their birth parents because use of kinship care maintains children's connections with their families. There are many benefits to placing children with relatives or other kinship caregivers, such as increased stability and safety as well as the ability to maintain family connections and cultural traditions.

c. Federal law permits [KLG] arrangements to be used when the child has been in the care of a relative for a period of six months.

d. Parental rights must be protected and preserved wherever possible.

e. Children are capable of forming healthy attachments with multiple caring adults throughout the course of their childhood, including with birth parents, temporary resource parents, extended family members, and other caring adults.

f. The existence of a healthy attachment between a child and the child's resource family parent does not in and of itself preclude the child from maintaining, forming or repairing relationships with the child's parent or caregiver of origin.

g. It is therefore necessary for the Legislature to amend current laws 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.]

In D.C.A., we recently considered the amendments' effects on the analysis of the best-interest standard. There, the defendant-mother challenged a guardianship judgment against her, arguing that the Legislature's deletion of the second sentence of the second prong meant "all evidence concerning a child's relationship with [the] resource caregiver[was] barred, even in the context of other prongs of the best-interest standard." 474 N.J. Super. at 25-26. In rejecting that argument, we noted that "[t]he Legislature did not alter the other components of the best interest standard," and we did not interpret "the amendments to prong two to mean that such a bond may never be considered within any part of the best interests analysis." Ibid.

We explained that

> [n]either the legislative history nor the plain text necessitates such a sweeping conclusion. First, there is the text itself. Taken as a whole, the statute still requires a finding that "[t]ermination of parental rights will not do more harm than good." N.J.S.A. 30:4C-15.1(a)(4). "The question ultimately is not whether a biological mother or father is a worthy parent, but whether a child's interest will best be served by completely terminating the child's relationship with that parent."

[Id. at 26 (quoting E.P., 196 N.J. at 108).]

In that regard, we pointed out that "[t]he [trial] court must make an evidentiary inquiry into the status of children in placement, to determine whether the child is likely to suffer worse harm in foster or adoptive care than from termination of the biological parental bond." Ibid.; see also N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 281 (2007) ("[T]o satisfy the fourth prong, the State should offer testimony of a 'well[-]qualified expert who has had full opportunity to make a comprehensive, objective, and informed evaluation' of the child's relationship with both the natural parents and the foster parents."). Additionally, we explained that inasmuch as "[l]egislative materials indicate that a preference for the preservation of parental rights and kinship care was the specific concern in enacting the amendment," and "[r]esource placements may include relative caregivers," "removing the court's access to information concerning the child's ability to forge bonds with resource caregivers would disharmonize the statute." D.C.A., 474 N.J. Super. at 27.

Turning to the issue of KLG, we noted that based on the legislative findings to Chapter 154,

> [t]he Legislature . . . ma[de] several alterations to the code, most of which strengthened the position of kinship caregivers. The law was clearly intended to reflect a preference for viable kinship guardians and fit

> parents over unrelated foster caretakers. Because barring all evidence of foster placement, as defendant advocates, could actually harm a parent or kinship guardian's petition to retain rights, the Legislature's goal would go unfulfilled.
>
> [Id. at 27-28 (emphasis omitted) (citation omitted) (citing L. 2021, c. 154, § 1).]

We explained that the legislative history included commentary that the amendments were intended "'to make it clear . . . that the judge should be considering the totality of the circumstances in every case in evaluating facts and making a particularized decision based on the best interests of each child,'" instead of limiting the focus to "'the harm from separation from foster families . . . at the exclusion of other factors.'" Id. at 28 (quoting Assembly Health Meeting, 219th Leg., 2d Sess. at 44:35-45:50 (N.J. 2021) (statement of Francesco Ferrantelli, legislative aide), https://njleg.state.nj.us/archived-media/2020/AHE-meeting-list (archived proceeding May 17, 2021)).

We concluded:

> This emphasis on a "totality of the circumstances" approach is supported by the Court's longstanding interpretation of N.J.S.A. 30:4C-15.1. And to fully consider the "totality of the circumstances" courts must, at the very least, consider the child's bond to a current placement when evaluating prong four as discussed above. The legislative history and plain text, therefore, do not support the broad prohibition on this type of evidence, as defendant proposes.

> We construe the deletion from prong two more narrowly than defendant urges, in a way that gives greater effect to the alteration, in a manner that remains coherent with prong four. The amended statute, in our view, requires a court to make a finding under prong two that does not include considerations of caregiver bonding, and then weigh that finding against all the evidence that may be considered under prong four—including the harm that would result from disrupting whatever bonds the child has formed.
>
> [Id. at 28-29.]

Applying these principles here, we conclude the judge committed reversible error in her interpretation of the amendments and application of the law to the facts. The judge's determination that the amendments required the Division to pursue KLG instead of adoption is inconsistent with the statute's language and creates the absurd result of effectively foreclosing adoption by relatives. By allowing the preamble to dictate her analysis under prongs three and four of the best-interest standard, the judge mistakenly concluded that the amendments created a preference for KLG over adoption. In so doing, not only did the judge put the proverbial cart before the horse, but she also improperly allowed the preamble to override the clear statutory text even though prongs three and four of N.J.S.A. 30:4C-15.1(a) were unaltered by the 2021 amendments.

While a preamble may be used "as an aid in determining legislative intent," it remains subservient to "the statute that it introduces" and "must give way" when it "is at variance with the clear and unambiguous language of the statute." DiProspero, 183 N.J. at 496-97. Notwithstanding the Legislature's declaration that "[p]arental rights must be protected and preserved whenever possible," L. 2021, c. 154, § 1, this language cannot be used to substantively alter the otherwise clear directive set forth in prong three that the Division "prove by clear and convincing evidence that 'alternatives to termination of parental rights' have been appropriately considered," N.J. Div. of Youth & Fam. Servs. v. J.S., 433 N.J. Super. 69, 87 (App. Div. 2013) (quoting N.J.S.A. 30:4C-15.1(a)(3)).

We have previously stated that to satisfy the prong three requirement, "[t]he Division must perform a reasonable investigation of [timely-presented alternative caretakers] that is fair, but also sensitive to the passage of time and the child's critical need for finality and permanency." Ibid. Here, although the record shows that the Division performed the requisite investigation, the judge concluded prong three was not satisfied by placing outsized weight on the preamble instead of the plain language of the statute. "[A] court may neither rewrite a plainly-written enactment of the Legislature nor presume that the

Legislature intended something other than that expressed by way of the plain language." In re DiGuglielmo, 252 N.J. 350, 360 (2022) (quoting O'Connell v. State, 171 N.J. 484, 488 (2002)).

The judge's analysis of prong four was equally flawed. Like her prong three analysis, the judge mistakenly applied the legislative declarations as if they were operative statutory provisions and focused her analysis on the loss defendant would suffer if her parental rights were not preserved as well as an assumption of harm from adoption predicated on the judge's belief that adoption was generally harmful. In so doing, the judge erred by failing to consider evidence specific to the harm that A.F. would suffer if defendant's parental rights were terminated to support her prong four analysis.

As we stated in D.C.A., the fourth prong inquiry requires weighing "considerations of caregiver bonding . . . against all the evidence that may be considered under prong four—including the harm that would result from disrupting whatever bonds the child has formed." 474 N.J. Super. at 29; see also N.J. Div. of Youth & Fam. Servs. v. L.M., 430 N.J. Super. 428, 450 (App. Div. 2013) ("Any analysis under the fourth prong must necessarily include a discussion of a child's prospects of permanency as terminating parental rights

without any compensating benefit, such as adoption, may do great harm to a child.").

The strength of A.F.'s bond with her paternal grandparents was uncontroverted, as was Dr. Strasser Winston's opinion that A.F. would suffer harm if removed from her paternal grandparents given their attachment. The judge found that "[t]he record [was] replete with the efforts taken by . . . the paternal grandparents, to provide [A.F.] with a safe, stable, and loving home since her birth." These findings would support a conclusion that A.F. stood to gain a compensating benefit from adoption, especially in light of Strasser Winston's characterization of defendant's and A.F.'s attachment as "insecure" and testimony expressing doubt that defendant could care for A.F. in the foreseeable future, both of which the judge credited. See N.J. Div. of Youth & Fam. Servs. v. L.J.D., 428 N.J. Super. 451, 493-94 (App. Div. 2012) (determining that termination of parental rights did not do more harm than good to a child who had a "'consistently strong and positive bond with both [his] foster parents' with whom he ha[d] lived for almost his entire life, and who would mitigate any harm resulting from the severing of [parental] ties," and only an "insecure" and "tenuous" emotional connection with his biological mother).

The judge's analysis was also colored by her misapprehension that the terms "kinship care" and KLG were interchangeable when, in fact, they are legally distinct terms expressly defined by the child welfare statutes. This fundamental misunderstanding led the judge to conclude that under the 2021 amendments, KLG was preferred to adoption.

In the child welfare context, "kinship" or "kinship relationship" refers to "a family friend or a person with a biological or legal relationship with the child." N.J.S.A. 3B:12A-2; N.J.S.A. 9:6-8.30 to -8.31, -8.54; N.J.S.A. 30:4C-12.1(a). "Care" is "cognizance of a child for the purpose of providing necessary welfare services, or maintenance, or both." N.J.S.A. 30:4C-2(c). "Care" is distinct from "custody," which is separately defined as "continuing responsibility for the person of a child, as established by a surrender and release of custody or consent to adoption, for the purpose of providing necessary welfare services, or maintenance, or both." N.J.S.A. 30:4C-2(d). Thus, "kinship care" refers broadly to any situation where a person with a preexisting familial relationship to a child attends to that child's needs. See N.J.A.C. 3A:51-1.3.

Unlike kinship care, KLG is a specific type of legal guardianship, created by N.J.S.A. 3B:12A-1 to -7 (KLG Act), that may be presented by the Division as an alternative permanent plan in a permanency hearing. N.J.S.A. 3B:12A-

1(c); see also N.J. Div. of Youth & Fam. Servs. v. L.L., 201 N.J. 210, 222-23 (2010). A "kinship legal guardian" is defined as "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 pursuant to [N.J.S.A. 3B:12A-1 to -7]." N.J.S.A. 3B:12A-2; see also L.L., 201 N.J. at 223. The term "caregiver" refers specifically to a person "who has a kinship relationship with the child and has been providing care and support for the child, while the child has been residing in the caregiver's home, for either the last six consecutive months or nine of the last [fifteen] months . . . [and] includes a resource family parent as defined in [N.J.S.A. 30:4C-26.4]." N.J.S.A. 3B:12A-2. N.J.S.A. 30:4C-26.4 defines "resource family parent" as "any person with whom a child in the care, custody, or guardianship of the [Division] is placed by the [Division], or with its approval, for care."

The judge mistakenly interpreted the statement in the preamble that "[k]inship care is the preferred resource for children who must be removed from their birth parents" to be a declaration that "KLG is preferred to adoption." However, the Legislature's stated purpose was "to strengthen support for kinship caregivers" to ensure "increased stability and safety as well as the ability to maintain family connections and cultural traditions" for children removed from

their birth parents. L. 2021, c. 154, §§ 1(b), (g). The amendments were clearly intended to reflect a general preference for temporary placements with suitable persons who have a preexisting relationship with a child, rather than create a preference for KLG over adoption as a permanency plan. By conflating the terms, the judge substantively altered the text of the preamble, which in turn colored her flawed application of the best-interest standard.

The judge's findings eschewed evidence-based decision making in favor of an unsupported theory of the purpose of the amendments and misinterpretation of the plainly worded statutory best-interest factors. The judge ignored the totality of the circumstances, including the formidable evidence that showed very few redeeming qualities to the relationship between defendant and A.F. in contrast to the secure relationship between A.F. and her paternal grandparents, who served as A.F.'s psychological parents. Indeed, the substantial weight of the evidence pointed to the harmful effects of the parent-child relationship, whether due to defendant's unmitigated substance abuse, untreated mental illness, or her absence from A.F.'s life. "A parent's withdrawal of . . . solicitude, nurture, and care for an extended period of time is in itself a harm that endangers the health and development of the child." In re Guardianship of DMH, 161 N.J. 365, 379 (1999). We fail to see how KLG was

in A.F.'s best interests in the circumstances of the case. See N.J. Div. of Youth & Fam. Servs. v. P.P., 180 N.J. 494, 516 (2004) (Wallace, J., concurring in part and dissenting in part) (discussing the differences between KLG and TPR).

The judge's opinion suggests that her mistaken presumption in favor of KLG, as well as her mischaracterization of the paternal grandmother's testimony, led her to improperly discount A.R.F.'s express rejection of KLG. Based on A.R.F.'s trial testimony, the judge questioned whether the paternal grandparents "actually underst[ood] the difference between KLG and adoption." However, during her testimony, A.R.F. demonstrated her clear understanding of the difference between KLG and adoption when she confirmed that she wanted to adopt A.F. because under KLG, defendant would be able to "come to [c]ourt and take [A.F.] away from [her]." In fact, "[u]nlike a judgment terminating parental rights, [KLG] would not cut off the legal relationship of the parent and child"; instead, the parent "has the right to seek termination of the guardianship and a resumption of custody if at a later date she is able to provide a safe and secure home for the child." N.J. Div. of Youth & Fam. Servs. v. S.V., 362 N.J. Super. 76, 87 (App. Div. 2003) (citing N.J.S.A. 3B:12A-4(a)(2) to (5)). For this reason, A.R.F. understandably expressed a clear preference for adoption.

Instead of accounting for A.R.F.'s explicit preference for adoption, the judge dismissed it as irrelevant, concluding that "nowhere in the [KLG Act] is it required that the resource parent's consent is a prerequisite to the determination of KLG." Although a caretaker's preference for adoption is no longer a procedural bar to KLG, such a preference is relevant if it is informed by an understanding of the differences between the two, as occurred here. See N.J. Div. of Child Prot. & Permanency v. M.M., 459 N.J. Super. 246, 262 (App. Div. 2019) ("[W]e do not regard the preferences, if any, of the caregiver to be categorically irrelevant."); N.J. Div. of Youth & Fam. Servs. v. H.R., 431 N.J. Super. 212, 233 (App. Div. 2013) (remanding to establish on the record that caretakers received correct information regarding differences between KLG and adoption and indicated their preference).

Under the Kinship Legal Guardianship Notification Act, N.J.S.A. 30:4C-89 to -92, the Division is required to "inform individuals . . . who may be eligible to become kinship legal guardians" of the eligibility requirements and responsibilities associated with KLG, as well as the range of services potentially available to them. N.J.S.A. 30:4C-91. "A logical implication of the Notification Act is that the caregiver must be fully informed of the potential benefits and burdens of KLG before deciding whether he or she wishes to adopt." N.J. Div.

of Child Prot. & Permanency v. M.M., 459 N.J. Super. at 263. The record in this case strongly supports the paternal grandparents' fully informed commitment to adoption after being advised of and understanding the differences between KLG and adoption.

Although the KLG Act does not expressly state that a caregiver needs to consent to the arrangement, it provides that, "[u]pon petition of a caregiver, the court may appoint the caregiver as kinship legal guardian." N.J.S.A. 3B:12A-5(a) (emphasis added). That language obviously requires some level of participation and consent on the part of the caregiver before a KLG appointment can occur. Here, where A.R.F. unequivocally testified that she would not accept an arrangement where defendant retained her parental rights, KLG became functionally unavailable for want of A.R.F.'s consent.

The Division and the Law Guardian contend that the judge erred in excluding as a net opinion Dr. Strasser Winston's testimony regarding the paternal grandparents' ability to mitigate the harms A.F. would suffer from termination of defendant's paternal rights.

"The net opinion rule is a 'corollary of [N.J.R.E. 703] . . . which forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data.'" Townsend v. Pierre, 221 N.J. 36, 54-55 (2015)

(alterations in original) (quoting State v. Townsend, 186 N.J. 473, 494 (2006)). Under the rule, "'an expert's bare conclusions, unsupported by factual evidence, [are] inadmissible.'" Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 410 (2014) (alteration in original) (quoting Buckelew v. Grossbard, 87 N.J. 512, 524 (1981)). To avoid a net opinion, the expert must "'give the why and wherefore' that supports the opinion, 'rather than a mere conclusion.'" Pierre, 221 N.J. at 54 (quoting Borough of Saddle River v. 66 E. Allendale, LLC, 216 N.J. 115, 144 (2013)).

"The rule does not mandate that an expert organize or support an opinion in a particular manner that opposing counsel deems preferable." Ibid. However, it does require experts to "be able to identify the factual bases for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are reliable." Id. at 55 (quoting Landrigan v. Celotex Corp., 127 N.J. 404, 417 (1992)). This avoids speculative testimony. Harte v. Hand, 433 N.J. Super. 457, 465 (App. Div. 2013). We review the admission or exclusion of expert testimony for an abuse of discretion. Pierre, 221 N.J. at 52.

Here, the judge's explanation for excluding the purportedly objectionable portion of the doctor's opinion was that it was "speculative, at best, as it d[id] not address a very real loss in trauma that adopted children experience."

However, the doctor's opinion was supported by the comparative bonding evaluations she conducted. The record demonstrates that the doctor thoroughly explained the foundational concepts underlying her conclusions as well as her personal observations of the interactions between the parties. As such, we conclude the judge mistakenly exercised her discretion in excluding the doctor's testimony as a net opinion.

The Division urges us to essentially exercise original jurisdiction and enter a directed judgment of guardianship in its favor. We "may exercise . . . original jurisdiction as is necessary to the complete determination of any matter on review." R. 2:10-5. "Despite the utility of the original-jurisdiction authority, it is clear that resort thereto by the appellate court is ordinarily inappropriate when fact-finding or further fact-finding is necessary in order to resolve the matter." Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 2:10-5 (2023) (citing Price v. Himeji, LLC, 214 N.J. 263, 294-95 (2013)).

We decline to exercise original jurisdiction because a full reassessment of the evidence as it relates to all four prongs is necessary given that the four prongs are interrelated and overlap. N.J. Div. of Child. Prot. & Permanency v. R.L.M., 236 N.J. 123, 145-46 (2018). A remand for reconsideration of all four prongs is

therefore the appropriate remedy. However, the remand proceedings must be conducted by a different judge because the trial judge was clearly committed to her opinion, and A.F.'s best interests deserve a fresh review of the evidence. See R. 1:12-1(d) (stating a judge "shall not sit in any matter, if the judge . . . has given an opinion upon a matter in question in the action").

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.