

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NOS. A-1787-21  
A-1788-21  
A-2673-21

NEW JERSEY DIVISION  
OF CHILD PROTECTION  
AND PERMANENCY,

Plaintiff-Respondent,

v.

M. a/k/a M.P. and J.S.,

Defendants-Appellants.

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IN THE MATTER OF THE  
GUARDIANSHIP OF  
R.V.S. and H.S., minors.

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Submitted May 30, 2023 – Decided June 12, 2023

Before Judges Whipple, Mawla, and Smith.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Camden County,  
Docket No. FG-04-0165-21.

Joseph E. Krakora, Public Defender, attorney for appellant M. a/k/a M.P. (Christine Olexa Saginor, Designated Counsel, on the briefs).

Joseph E. Krakora, Public Defender, attorney for appellant J.S. (Marc D. Pereira, Designated Counsel, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Nicholas Dolinsky, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor R.V.S. (Meredith Alexis Pollock, Deputy Public Defender, of counsel; Damen J. Thiel, Designated Counsel, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor H.S. (Meredith Alexis Pollock, Deputy Public Defender, of counsel; Damen J. Thiel, Designated Counsel, on the brief).

#### PER CURIAM

In A-1787-21 and A-1788-21, defendants M.P. (Morgan)<sup>1</sup> and J.S. (Jeff) appeal from a January 31, 2022 guardianship judgment terminating their parental rights to R.V.S. (Reed). In A-2673-21, Morgan appeals from an April 14, 2022 judgment terminating her parental rights to H.S. (Hope). We affirm.

A-1787-21/A-1788-21

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<sup>1</sup> We use initials and pseudonyms pursuant to Rule 1:38-3(d)(12).

The guardianship trial involving Reed was tried over the course of two days. The Division of Child Protection and Permanency (Division) presented testimony from its adoption caseworker, and a psychological and bonding expert. The Division adduced over sixty documents into evidence. Morgan testified on her own behalf and Jeff did not testify. We summarize the relevant facts and findings.

Morgan and Jeff are the biological parents of Reed, born in 2017. Morgan had Hope in 2021. The identity of Hope's father is unknown. Morgan has two other children, born in 2003 and 2006, whom are not in her custody. Jeff is not the father of these children.

Between 2006 and 2014, the Division received twelve referrals alleging: Morgan and Jeff abused drugs while in the presence of the children; Morgan inadequately supervised her children; and Morgan got into verbal and physical disputes with her mother. The Division investigated each referral, which were determined to be either unfounded or not established.

In June 2017, the Division received a referral from the hospital where Morgan had given birth to Reed, stating Morgan and Reed tested positive for marijuana and opiates. Morgan admitted to using marijuana as a sleep aide, but denied using opiates. However, she admitted to using leftover pain medication

from a prior dental procedure leading up to Reed's birth. The Division's investigation revealed Morgan suffered from multiple mental health disorders, including bipolar, intermittent explosive, and borderline personality disorder.

At that time, Jeff denied using drugs and claimed if he took a drug screen test, he would "come clean." Two days later, both Morgan and Jeff tested positive for morphine. The Division implemented a safety protection plan, including intensive outpatient program (IOP) treatment for Morgan and Jeff. Morgan completed the IOP. Jeff tested positive for morphine in September 2017, but then tested negative for the remainder of that year.

In July 2018, Morgan overdosed on heroin. One of the children discovered her lying unresponsive in her backyard patio and called emergency services. Following her discharge from the hospital, Morgan admitted she relapsed because she was "stressed" by Reed's sleeping habits. The Division filed for emergent custody of the children. Morgan and Jeff consented to the removal while they sought substance abuse treatment.

Morgan and Jeff were subsequently ordered to undergo a substance abuse evaluation, comply with the recommended treatment, take psychological evaluations, submit to random urine screens, and attend biweekly visits with Reed. The psychological evaluation diagnosed Jeff with major depressive

disorder (moderate/severe, recurrent), generalized anxiety disorder, post-traumatic stress disorder (PTSD), panic disorder, cannabis use disorder, alcohol use disorder, attention deficit hyperactivity, and an unspecified learning disability.

The Division unsuccessfully attempted to contact Morgan multiple times between September 2018 and April 2020. She eventually completed a substance abuse and psychological evaluation. The evaluations revealed she had an extensive history of drug abuse, which included cocaine, crack cocaine, marijuana, and benzodiazepines. The psychological evaluation showed she suffered from anxiety, panic attacks, and post-traumatic stress disorder. She abused several types of substances, including opiates, stimulants, anxiolytics, and cannabis. She also had a history of domestic violence, coupled with childhood psychological abuse.

Between October 2018 and January 2019, Morgan and Jeff completed most of their treatments and tested negative on their urine screens. Morgan sought a full-time job, lived in stable housing, and attended mental health therapy. Jeff reported being homeless.

In February 2019, the children were reunified with Morgan and Jeff. The Division maintained care and supervision of the children. Not long after, Jeff

was arrested for unpaid traffic tickets and fines. In June 2019, the Division received a referral, alleging Jeff and Morgan were "nodding off" in their vehicle. Morgan tested positive for fentanyl, norfentanyl, buprenorphine, and norbuprenorphine. She claimed she relapsed because she had difficulty obtaining seroquel from her drug treatment provider. Months later, Morgan was incarcerated and then discharged from her drug treatment program due to non-attendance.

The Division made various attempts to have Morgan engage in substance abuse treatment without success, as she continued using fentanyl. By April 2020, she had ceased nearly all contact with the Division. The children were removed again in May 2020. The court ordered updated psychological evaluations and urine screens for both parents.

In September 2020, Morgan contacted the Division requesting transportation to a drug treatment facility. The Division provided her with a bus pass, but Morgan ultimately refused to attend treatment because she was pregnant with Hope. The Division also made attempts to contact Jeff, but he was unreachable until February 2021, when he initiated contact with the Division. When the Division offered Jeff visitation with Reed, he declined because he was "too busy" with work. That same month, Morgan told a

caseworker she used fentanyl and purchased suboxone from someone "off the street." She also declined visitation with Reed.

Hope was born in March 2021. Upon birth, Hope tested positive for heroin, exhibited signs of withdrawal, and had to be treated with morphine. Hospital staff informed the Division Hope was in the Neonatal Intensive Care Unit (NICU) after aspirating on meconium and suffering from respiratory distress. Morgan told the Division she regularly used heroin throughout the pregnancy and engaged in prostitution to buy drugs. The Division took custody of Hope and placed her in the same non-relative resource home as Reed.

Following the placement, the Division made multiple attempts to contact Morgan and Jeff, without success. After a month, the Division reached them and inquired about family, friends, and relative placement options for the children. Morgan and Jeff offered none.

On March 27, and October 7, 2021, the Division filed the guardianship complaints in Reed and Hope's matters, respectively. The court ordered Morgan and Jeff to attend psychological and bonding evaluations with the Division's expert. The expert performed a psychological evaluation of each parent and observed them in a clinical setting with Reed, and separately evaluated Morgan with Hope. The expert also evaluated each child with the resource parents.

Morgan told the expert her plan was to be reunified with the children and ultimately reunify with Jeff. She planned to get a part-time job and rely on Jeff for support as well, including having him watch the children. Morgan told the expert about her criminal history and domestic violence she suffered in "at least two relationships . . . ." Morgan disclosed she had previously attempted suicide and had two psychiatric hospitalizations. The expert recounted Morgan had been diagnosed with "bipolar disorder, intermittent explosive disorder, and borderline personality disorder, and was tried on a number of psychotropic medications. She reported a history of significant and recurring polysubstance usage, even in relatively recent time before the interview."

The expert found:

[Morgan] has some entrenched and maladaptive personality and character traits that give rise to difficulties in her functioning.

[Morgan] is psychologically less mature and less developed than most adults. She shows a paucity of age-expected psychological and emotional resources that leaves her prone to generally poor coping and adaptation. She has poor stress tolerance, poor frustration tolerance, and is inclined to impaired and problematic judgment. She has many unmet emotional needs that impinge upon how she thinks, feels, and behaves. She remains emotionally needy and often dependent, and has difficulty achieving and maintaining consistency and stability in her life and situation. She is rather entitled and falsely self-assured.



She often engages in denial, rationalization, and minimization of her problems.

. . . [S]he is chronically rather tenuous and vulnerable to alterations in her mood, behavior, and thinking. She indicated not being on any psychotropic medications at this time for the reported mood disorders. She has difficulty accurately understanding the nature and origins of her feelings, or realizing the impact that her emotions have on her behavior, thinking, and judgment.

The expert concluded Morgan was at "a heightened risk for criminal recidivism and general instabilities in her life and situation. . . . The effects of substances on her life and functioning are likely to be rather significant and profound. She remains a heightened risk for substance abuse relapse." Further, her prognosis for change was poor, she could not care for the children in the foreseeable future, and the permanency plan should not be reunification.

The Division's expert recommended various treatments for Morgan's betterment, but noted they were not for reunification, including: a psychiatric evaluation and prescription drug treatment, substance abuse evaluation and "ongoing frequent random drug testing," counseling and therapy, a "protracted and approved domestic violence victim program, . . . and parenting education programming." The expert noted Morgan also needed to obtain a stable residence and employment.

Regarding the bonding evaluation with Reed and Hope, the expert found as follows:

[Reed] has an ambivalent and insecure attachment and relationship with . . . [Morgan]. This is not a significant and positive psychological attachment and bond. Related to this, there is a low risk of the child suffering severe and enduring harm if the child's attachment and relationship with the birthmother is permanently ended.

. . . Neither child has a significant and positive psychological attachment and bond with the birthmother . . . .

Because Reed "formed a significant and positive psychological attachment and bond with the [resource parents] . . . there is a significant risk of the child suffering severe and enduring psychological or emotional harm if his attachment and relationship with the[m] . . . permanently ended." The expert found Hope "is in the process of solidifying a significant and positive psychological attachment and bond with the [resource parents] . . . and [it] is likely that in the coming months [she] will then solidify a significant and positive psychological attachment and bond with [them] . . . ." She too would suffer harm if the relationship with her resource parents ended.

The expert explained the important role of permanency in the children's lives, which he described as necessary to their "sense of consistency, stability, protection, and support that are necessary for proper growth and development."

He concluded permanency was unlikely to be achieved with Morgan or Jeff and was "readily achievable" with the resource parents, because they wished to provide the children with a permanent home and adopt them.

During the psychological evaluation, Jeff told the expert his goal was to be reunited with Morgan, Reed, and Hope. However, he lacked housing. The expert found Jeff resisted answering questions and glossed over his problems, even though he reported a long history of behavioral problems beginning in childhood and "significant and recurring adult . . . problems[,] . . . including unstable residence, . . . employment, and drug and legal problems." The expert noted "Jeff has entrenched and maladaptive personality and character traits that adversely impact his functioning. He reported mood issues and problems that he attributed to situational factors." The expert found

[Jeff] is psychologically less mature and less developed than most adults. He has a paucity of age-expected psychological and emotional resources that leave him prone to poor coping, poor stress tolerance, and often impaired judgment. Many of his views and beliefs are quite self-centered and self-absorbed, and reflect in many unmet emotional needs that often drive and compel him to behave in rather self-serving ways. . . . He has a heightened level of anger and resentment, and is often rather oppositional and defiant.

Jeff's numerous legal and criminal problems demonstrated "a heightened risk for criminal recidivism." Moreover, the expert found "[h]e is rather socially

detached and prone to antisocial behaviors and attitudes. He has much emotional instability, propensity for negative and unstable relationships, and rather self-defeating beliefs and attitudes. He continues to generally downplay and dismiss personal problems, and instead engage in rather primitive rationalizations and externalization of blame." Jeff "often loses behavioral and emotional control when he is emotionally provoked or stimulated. He has difficulty processing information when he is emotionally triggered." The expert found Jeff "is prone to interpersonal and relational problems. He is rather self-absorbed[,] . . . self-centered, . . . mistrusting and suspicious of others." These behavioral problems led to a lack of social supports. Jeff reported "significant history of polysubstance usage, even in fairly recent time[,]" which was corroborated by the Division's drug testing. He concluded Jeff "remains a heightened risk for substance abuse relapse."

The expert noted neither of the children had previously resided with Jeff. His "entrenched and maladaptive personality and character traits" made him vulnerable to "ongoing life instabilities." Jeff's "overall intellectual functioning is simplistic . . . [and h]is knowledge of parenting and childrearing [is] rather poor." The expert concluded Jeff's "prognosis for significant and lasting changes is poor" and he could not independently care for Reed for the

"foreseeable future." Reed's best interests required a permanency plan other than reunification with Jeff. As with Morgan, the expert found Reed had a healthy and positive bond with the resource parents, whereas his bond with Jeff was ambivalent and insecure.

The expert recommended Jeff also receive psychiatric treatment and take medication to address his impulse control and mood stabilizing issues, albeit not for reunification purposes. Additionally, Jeff required a "comprehensive substance abuse evaluation," "frequent random drug testing[.]" ongoing counseling, and therapy followed by "a protracted and approved anger management program, . . . and parenting education programming." The expert recommended Jeff obtain stable housing, social, and employment resources, and remain free from criminality and substance abuse.

The caseworker testified to the history of the Division's involvement and the services it provided each parent, including substance abuse and psychological evaluations and treatment, housing and transportation assistance, parenting classes, supervised and therapeutic visitation, and searches for relative placements. Morgan's mother and stepfather were unable to care for Reed or his sister, and no other family volunteered as a resource. The caseworker also testified she met with the resource parents and discussed the differences between

Kinship Legal Guardianship (KLG) and adoption before and after the law was amended in July 2021. The resource parents wished to adopt Reed and Hope together.

Morgan testified she had her own apartment and wanted to raise Reed without Jeff. However, she was unemployed. She claimed she was attending drug treatment daily, despite recently testing positive for fentanyl and admitting to marijuana use.

Following the close of testimony, the trial judge made detailed oral findings. She found the Division expert and caseworker credible, and concluded Morgan was not credible. The judge concluded the Division met its burden under the four best interests prongs in N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence, and termination of Morgan and Jeff's parental rights was in Reed's best interests.

The judge found the Division met prong one, because of the parents' "continued or recurrent drug abuse, inability to provide a stable and protective home, withholding of parental attention and care, [and] failure to provide for the child's daily needs." Neither parent had visited Reed for fifteen months.

The Division satisfied prong two because Morgan and Jeff failed to take advantage of the services which had been offered to help them establish stability.

Jeff continued using drugs and lacked stable housing, notwithstanding the looming guardianship trial. The judge credited the expert's testimony, noting the evidence supported his conclusion Jeff was at a significant risk for "substance abuse relapse" and "criminal recidivism and general instabilities in life." The judge found, overall, Jeff was "in no better position now than [he was], . . . [he] has not taken steps[,] . . . [he has] not rectified the problems[,] . . . [he has] not changed [his] attitude." Likewise, Morgan showed little improvement and was unable to parent Reed. She refused inpatient drug treatment, continued to abuse drugs, and failed to prioritize Reed and reunification.

Prong three was met because the Division proved it made reasonable efforts to reunify the family by offering services to both parents. The judge listed the litany of services provided, but Morgan never took advantage of them, especially the psychiatric services, despite her mental health needs. Although Morgan professed her love for Reed, she failed to follow through with the services necessary for reunification. Similarly, Jeff took partial advantage of service, and continued to relapse and be absent from the child's life.

The judge found there was no alternative to the termination of parental rights. The Division investigated Morgan's parents as a possible placement,

however, her mother and stepfather already cared for one of Morgan's older children, lived in a one-bedroom apartment, and could not care for a young child. Morgan's mother also had medical problems. The resource parents wished to adopt, despite "understand[ing] that KLG is also a permanency plan with a certain degree of finality . . . ."

The Division proved prong four, namely, that a termination of parental rights would not do more harm than good. The judge rejected the parents' argument that they needed more time to rehabilitate, noting further delay was not in Reed's best interests, considering he was removed from his parents' care twice, the parents were subject to two safety protection plans, and Reed was in his fourth placement. Neither parent showed signs of meaningful improvement. Morgan continued to use illicit substances, relapsed on multiple occasions, and was "nowhere near sobriety." Morgan and Jeff were unable to nurture, protect, and provide stability for Reed. Neither parent could mitigate harm to Reed resulting from a removal from his resource parents.

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The same trial judge presided at Hope's guardianship trial, which also lasted two days. The Division presented testimony from the same expert, a second adoption caseworker, and the resource mother. Morgan testified on her



own behalf and called a visitation facilitator from Multi-Therapy Services to testify. Approximately fifty exhibits were admitted into evidence.

The Division's expert explained he performed two psychological evaluations on Morgan in Reed and Hope's cases, and despite the passage of approximately five months between the evaluations, his conclusions had not changed. Morgan continued to abuse drugs and her ability for significant and lasting change was "poor." She could not independently care for Hope.

The results of the bonding evaluations were the same. Hope's attachment to Morgan was ambivalent and insecure. There was a low-risk Hope would suffer enduring harm if her relationship with Morgan was severed. Hope was clearly bonded with the resource parents, and Morgan could not ameliorate the harm to Hope if her relationship with the resource parents were severed.

The adoption caseworker testified regarding the Division's efforts to reunify Morgan with Hope, the services provided, and exploring placement alternatives for Hope. Morgan's mother and stepfather were ruled out because they could not care for another child. The caseworker met with the resource parents and discussed the differences between KLG and adoption. The resource parents wished to adopt Hope and she was doing well in their care.

The resource mother testified she preferred adoption over KLG because she wanted to "give [Hope and Reed] a better home" and "a chance to succeed in life . . . ." She explained her husband wished to adopt as well. Notwithstanding an adoption, she planned to tell Hope about Morgan and would help maintain a relationship with Morgan if Hope desired one.

The visitation facilitator testified he was unaware of Morgan's mental health and substance abuse issues. However, he stated Jeff caused Morgan stress because Jeff disagreed with her parenting style. He testified it was apparent Morgan loved Hope and her care was "appropriate" and "affectionate."

Morgan claimed she achieved stability because she had been living in the same apartment since April 2014 and was making progress in substance abuse treatment. She completed an IOP and voluntarily attended treatment twice per week. She claimed she continued to test positive for fentanyl because her "celiac disease or gluten allergies . . . was not allowing [her] body to flush out the toxins in a natural way." However, she admitted to using cocaine after the court terminated her parental rights to Reed, but pointed out her most recent drug test was negative for all substances.

The trial judge made oral findings and concluded the Division met its burden by clear and convincing evidence to terminate Morgan's parental rights.

The trial judge found the caseworker's testimony "helpful" and the expert's un rebutted testimony credible as well. The resource mother's testimony was "sincere[.]" and the judge found her credible. The judge described Morgan's testimony as "incredulous." She lacked credibility and was not forthright because she was clearly still using drugs, despite her testimony to the contrary. The visitation facilitator's testimony had limited benefit to the judge because "he was very guarded in his testimony." Moreover, "every single [visitation] report had identical language about what they did, [and] what he observed."

The judge found the Division proved best interests prongs one and two. She recounted the history of the Division's involvement with the family, including that Hope was removed at birth in April 2021 and placed with the same resource parents caring for Reed. Regardless of the reasons why Hope had swallowed her meconium, Morgan had "[c]learly, overwhelmingly" endangered Hope's "safety, health[,] and development" by using heroin during the pregnancy, not seeking prenatal care, and causing the removal. Morgan never visited the child either when she was in the hospital or after she was discharged. On one occasion when Morgan did have visitation, she argued with the facilitator because she insisted on taking Hope outside in freezing weather. Her visitation never progressed beyond supervised. The judge noted this

corroborated the expert's testimony that Morgan lacked the judgment to parent or care for the child. The judge cited the documents in evidence, namely, the psychological evaluations, positive drug screens, and evidence of subsequent relapses, and concluded Morgan was either "unwilling or unable to eliminate the harm, and unable or unwilling to provide a safe and stable home for [Hope]."

The judge also found Morgan incapable of parenting Hope in the foreseeable future. "Since 2018 she hasn't been available to the Division consistently, [and had] periods of being [missing]." Although Morgan had an apartment, she was unemployed and relied on Jeff's "contributions." Morgan accepted no responsibility for her drug use and had no parenting plan for Hope. "The situation has not really changed from [Hope's] removal . . . or even the other children's removal[] . . . before that." Morgan followed none of the recommendations of the psychological and psychiatric evaluations. The expert opined Hope required permanency and stability at her young age, and the evidence showed Morgan could not provide it. The judge concluded the delay in achieving permanency for Hope would add to the harm she suffered from her mother.

Regarding prong three, the judge found the Division "made more than reasonable efforts to provide services" to Morgan. The judge noted the Division

had provided Morgan with services for years, including psychological and substance evaluations, drug testing, transportation, and bus passes. The Division offered to take her to an addiction treatment center and "tried to work with her in every way possible." However, Morgan "went missing" and failed to take advantage of the services offered.

The judge found the Division considered alternatives to a termination of parental rights by exploring Morgan's family as a placement option. The maternal grandmother had a "small space, [a] medical condition, [and] she couldn't care for [a] young child." Moreover, the resource parents were educated about the differences between KLG and adoption and wanted the latter. The judge noted the amendments to the KLG statute did not require KLG in all cases, leaving adoption as an alternative. KLG was not a viable option because Hope and Morgan had no positive parent-child bond to preserve. The judge cited both bonding evaluations, which showed Hope had a positive bond with each resource parent because she spent her whole life with them, they meet her needs, and she is thriving.

The Division proved prong four because the evidence showed Morgan could not safely parent Hope. The judge cited the expert's testimony, which showed Hope would not suffer a greater harm by terminating her relationship

with Morgan, than if the relationship were severed with her resource parents. Further, delaying permanency would itself be a harm. The judge concluded the termination of parental rights was in Hope's best interests because Morgan "has had more than adequate time, and she squandered it. She can blame no one but herself."

In A-1787-21, Morgan raises the following arguments:

POINT I

THE TRIAL COURT ERRED IN CONCLUDING THAT [MORGAN] HARMED HER CHILD OR SUBJECTED HIM TO A SUBSTANTIAL RISK OF HARM.

POINT II

THE TRIAL COURT ERRED IN CONCLUDING THAT [MORGAN] WAS NOT ABLE OR WILLING TO REMEDIATE HER PERCEIVED PARENTING ISSUES.

POINT III

[THE DIVISION]'S EFFORTS WERE NOT REASONABLY TAILORED TO ASSIST [MORGAN] WITH REUNIFICATION AND [THE DIVISION] FAILED TO PROVIDE "REASONABLE SERVICES" AND FAILED TO MEET ITS LEGAL OBLIGATION TO STRIVE TO OVERCOME BARRIERS TO SERVICES. ALTERNATIVES TO TERMINATION OF PARENTAL RIGHTS WERE ALSO NOT PROPERLY CONSIDERED.

POINT IV

THE TRIAL COURT ERRED IN CONCLUDING THAT TERMINATION OF [MORGAN]'S PARENTAL RIGHTS IS IN THE CHILD'S BEST INTERESTS BECAUSE THE TRIAL COURT GAVE UNDUE WEIGHT TO THE BIASED, INCOMPLETE, AND NON-CREDIBLE OPINION OF [THE DIVISION]'S EXPERT AND IMPROPERLY CONSIDERED HARM TO THE CHILD FROM REMOVING HIM FROM THE RESOURCE PARENTS' CARE.

In A-1788-21, Jeff argues as follows:

POINT I

THE TRIAL COURT ERRONEOUSLY CONCLUDED THAT [THE DIVISION] ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT [JEFF] ENDANGERED, OR WILL ENDANGER, HIS CHILD'S SAFETY, HEALTH, OR DEVELOPMENT AND THE SUBSTANTIAL CREDIBLE EVIDENCE IN THE RECORD DOES NOT SUPPORT THE COURT'S UNDERLYING FINDINGS.

POINT II

THE TRIAL COURT ERRONEOUSLY CONCLUDED THAT [THE DIVISION] ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT [JEFF] IS UNWILLING OR UNABLE TO ELIMINATE THE HARM FACING HIS CHILD BECAUSE THE RECORD SHOWED HE IS WILLING AND ABLE TO PROVIDE A SAFE AND STABLE HOME FOR HIS CHILD.

POINT III

THE TRIAL COURT ERRONEOUSLY CONCLUDED THAT [THE DIVISION] ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT IT MADE REASONABLE EFFORTS TO PROVIDE MEANINGFUL SERVICES TO [JEFF] THAT WOULD ALLOW HIM TO CORRECT THE CIRCUMSTANCE WHICH LED TO HIS CHILD'S PLACEMENT WITH [THE DIVISION].

POINT IV

THE TRIAL COURT ERRONEOUSLY CONCLUDED THAT [THE DIVISION] ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT THE TERMINATION OF [JEFF]'S PARENTAL RIGHTS WILL NOT DO MORE HARM THAN GOOD BECAUSE THE TRIAL COURT RELIED ENTIRELY ON THE SPECULATIONS OF [THE DIVISION]'S AND THE LAW GUARDIAN'S EXPERT WITNESSES.

In A-2673-21, Morgan argues:

POINT I

ALTERNATIVES TO TERMINATION OF PARENTAL RIGHTS WERE NOT PROPERLY CONSIDERED BECAUSE THE TRIAL COURT FAILED TO CONSIDER KLG AS THE PREFER[R]ED RESOURCE PURSUANT TO THE JULY 2021 REVISIONS TO N.J.S.A. 30:4C-15.1(a), AND THE RESOURCE PARENTS' UNDERSTANDING OF WHAT ADOPTION ACTUALLY ENTAILS, AS WELL AS THE RESOURCE FATHER'S INTENT WITH REGARD



TO ADOPTION, REMAIN UNCERTAIN IN THE RECORD BELOW.

POINT II

THE TRIAL COURT ERRED IN CONCLUDING THAT TERMINATION OF [MORGAN]'S PARENTAL RIGHTS IS IN [HOPE]'S BEST INTERESTS BECAUSE THE TRIAL COURT GAVE UNDUE WEIGHT TO THE BIASED, INCOMPLETE, AND NON-CREDIBLE OPINION OF [THE DIVISION]'S EXPERT AND IMPROPERLY CONSIDERED HARM TO THE CHILD FROM REMOVING HER FROM THE RESOURCE PARENTS' CARE.

POINT III

THE TRIAL COURT ERRED IN CONCLUDING THAT [HOPE]'S SAFETY, HEALTH, OR DEVELOPMENT HAS BEEN ENDANGERED BY HER RELATIONSHIP WITH [MORGAN].

POINT IV

THE TRIAL COURT ERRED IN CONCLUDING THAT [MORGAN] WAS NOT ABLE OR WILLING TO REMEDIATE HER PERCEIVED PARENTING ISSUES.

Pursuant to our review of the record in all three matters, we conclude these arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add the following comments.

In striking a balance between a parent's constitutional rights and a child's fundamental needs, the trial court employs the four best interests prongs codified in N.J.S.A. 30:4C-15.1(a), and considers 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).]

"The four criteria enumerated in the best interests standard 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." In re Guardianship of K.H.O., 161 N.J. 337, 348 (1999). Parental fitness is the crucial issue. Ibid. Determinations of parental fitness are very fact sensitive and require specific evidence. Ibid.

Moreover, "[w]hen the condition or behavior of a parent causes a risk of harm, such as impermanence of the child's home and living conditions, and the parent is unwilling or incapable of obtaining appropriate treatment for that condition, the first subpart of the statute has been proven." N.J. Div. of Youth & Fam. Servs. v. H.R., 431 N.J. Super. 212, 223 (App. Div. 2013); see also N.J. Div. of Youth & Fam. Servs. v. L.M., 430 N.J. Super. 428, 444 (App. Div. 2013) (holding that a parent's "continued drug use, lack of appropriate housing, and failure to attend treatment clearly posed a risk to the children" and satisfied prong one of the best interests test).

The second prong of the best interests determination "in many ways, addresses considerations touched on in prong one." N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 451 (2012). This prong "relates to parental unfitness," K.H.O., 161 N.J. at 352, and "the inquiry centers on whether the parent is able to remove the danger facing the child[,]" F.M., 211 N.J. at 451. The Division may utilize expert testimony to show that, despite a parent's good intentions, that parent's cognitive limitations or mental health issues are sufficiently severe to prevent them from providing minimally adequate parenting in a safe and stable environment. N.J. Div. of Youth & Fam. Servs. v. A.G., 344 N.J. Super. 418, 440 (App. Div. 2001).

The second prong may be established by a parent's failure to respond to the services that would cure such harm in a sufficient fashion. Ibid. On the other hand, the second prong is not likely to be established where a parent responds to services and appropriately confronts or eliminates the harm, particularly in instances where future harm is considered and addressed. See N.J. Div. of Youth & Fam. Servs. v. A.R., 405 N.J. Super. 418, 437-38 (App. Div. 2009). Parental unfitness may be established by

indications of parental dereliction and irresponsibility, such as the parent's continued or recurrent drug abuse, the inability to provide a stable and protective home, the withholding of parental attention and care, and the diversion of family resources in order to support a drug habit, with the resultant neglect and lack of nurture for the child.

[K.H.O., 161 N.J. at 353.]

Under the third prong of the best-interests standard, the Division is required to assist the parents in remedying the circumstances and conditions that led to the placement of the child and in reinforcing the family structure, including but not limited to: consultation and cooperation with the parent in developing a plan for appropriate services; providing services to further the goal of family reunification; informing the family at appropriate interims of the child's progress, development, and health; and facilitating appropriate visitation.

N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 285 (2007). The services provided to meet the child's needs for permanency and the parent's right to reunification must be coordinated and must have a realistic potential for success. See N.J. Div. of Youth & Fam. Servs. v. J.Y., 352 N.J. Super. 245, 265 n.10 (App. Div. 2002).

At a minimum, the Division must

encourage, foster[,] and maintain the bond between the parent and child as a basis for the reunification of the family. [The Division] must promote and assist in visitation and keep the parent informed of the child's progress in [resource] care. [The Division] should also inform the parent of the necessary or appropriate measures he or she should pursue in order to continue and strengthen that relationship and, eventually, to become an effective caretaker and regain custody of his or her children.

[In re Guardianship of DMH, 161 N.J. 365, 390 (1999).]

Examples of services provided by the Division include daycare, housing assistance, referrals to drug treatment, health care referrals, parenting classes, counseling or therapy, therapeutic visitation, and regular visitation with the child. Id. at 390-91. The Division also has an ongoing obligation to monitor the services, modify them as facts and circumstances warrant, and address any implementation problems. Ibid. The requirement of reasonable efforts is not evaluated entirely on whether the efforts are successful. Ibid.

The third prong also requires the court to consider alternatives to termination of parental rights. For example, where a relative caregiver agrees to raise a child to adulthood, the court may award KLG to the relative pursuant to N.J.S.A. 3B:12A-1. Additionally, the Division has a statutory obligation to "search for relatives or persons with a kinship relationship with the child who may be willing and able to provide the care and support required by the child." N.J.S.A. 30:4C-12.1(a); see also N.J. Div. of Child Prot. & Permanency v. K.N., 435 N.J. Super. 16, 29 (App. Div. 2014), aff'd as modified, 223 N.J. 530 (2015). However, "the Division has [no] obligation to search the fifty states or even the twenty-one counties to identify a parent's siblings, cousins, uncles and aunts." N.J. Div. of Youth & Fam. Servs. v. K.L.W., 419 N.J. Super. 568, 582 (App. Div. 2011). Nor can a parent "expect the Division to locate a relative with no information . . . ." Ibid. The reasonableness of the Division's efforts to consider alternatives to termination is fact sensitive. A.G., 344 N.J. Super. at 435.

In New Jersey Division of Child Protection and Permanency v. D.C.A., we considered the amendments to the best interests prongs and the KLG statute, N.J.S.A. 30:4C-85, and rejected the defendant's argument that they 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. 11, 25-26 (App. Div. 2022), certif. granted, \_\_\_ N.J. \_\_\_ (2023). We held "[t]he Legislature did not alter the other components of the best interest standard." Id. at 25. "[T]he text itself[, t]aken as a whole, . . . still requires a finding that '[t]ermination of parental rights will not do more harm than good.'" Id. at 26 (third alteration in original) (quoting N.J.S.A. 30:4C-15.1(a)(4)). This requires the trial court "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. (citing M.M., 189 N.J. at 281) (requiring the Division to offer testimony from an "'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").

In reviewing a trial judge's decisions, we must defer to their factual findings unless they "went so wide of the mark that a mistake must have been made." M.M., 189 N.J. at 279. So long as "they are 'supported by adequate, substantial and credible evidence[,]" a trial judge's factual findings will not be disturbed on appeal. In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974)). We owe special deference to the trial judge's expertise in handling family issues. Cesare v. Cesare, 154 N.J. 394, 411-13 (1998).

Having thoroughly reviewed the record, we conclude the trial judge's factual findings are based on sufficient credible evidence, and considering those findings, her legal conclusions are unassailable. Her decision, that termination of defendants' parental rights is in the children's best interests, is amply supported by the record.

Affirmed in A-1787-21, A-1788-21, and A-2673-21.

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



CLERK OF THE APPELLATE DIVISION