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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1945-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

N.M.,

Defendant-Appellant,

and

A.H.,

Defendant.

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IN THE MATTER OF THE
GUARDIANSHIP OF A.N.H.,
a minor.

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Submitted February 6, 2023 – Decided March 1, 2023

Before Judges Whipple, Mawla, and Marczyk.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Cumberland County, Docket No. FG-06-0015-21.

Joseph E. Krakora, Public Defender, attorney for appellant (Carol A. Weil, Designated Counsel, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Sookie Bae-Park, Assistant Attorney General, of counsel; Lisa J. Rusciano, Deputy Attorney General, on the brief).

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

PER CURIAM

The trial court, after assessing the four prongs of N.J.S.A. 30:4C-15.1(a), terminated defendant N.M.'s parental rights to one of her children, A.N.H. (Avery).[1] This appeal followed. We affirm.

Avery was born prematurely, with neo-natal abstinence syndrome, and tested positive for various controlled substances at birth. She was removed from defendant's care by the Division of Child Protection and Permanency

[1] We use pseudonyms to protect the identity of the family pursuant to Rule 1:38-3(d)(12) and for ease of reference. In doing so, we mean no disrespect.

(Division), who placed her with a resource family.[2] The Division subsequently sought to terminate defendant's parental rights and find a permanent placement for Avery.

N.M. remained in Brooklyn, New York during the trial, despite being presented the opportunity to appear remotely. The Division presented expert testimony, as well as testimony from the adoption caseworker and resource parent. The court found for the Division and entered a judgment of guardianship, terminating N.M.'s parental rights.

N.M. has never asserted she can raise Avery. She instead argues the judgment must be reversed because the court did not consider alternatives to the termination of parental rights, such as her relatives—specifically, her mother, V.M. Defendant has four older children, all in the care of V.M. She contends kinship legal guardianship (KLG) was a better option for Avery, as opposed to outright termination, and the court did not consider the recent revisions to the KLG statute in its decision. N.M. asserts the court incorrectly concluded the Division proved prong three of the "best interests" standard, N.J.S.A. 30:4C-15.1(a)(3).

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[2] Avery's father, A.H., has voluntarily surrendered his parental rights to Avery.

N.M. also asserts the Division wrongly terminated visits between Avery and V.M., who she claims was ready and willing to raise the child, and did not properly evaluate the Division's decision to rule out other relatives as placement options. As a result, N.M. argues the Division did not meet the fourth best-interests prong, N.J.S.A. 30:4C-15.1(a)(4), because adoption would do more harm than good. Finally, N.M. claims if the judgment is affirmed, Avery will lose all contact with her siblings, family, and culture.

In this appeal, our review of the judge's decision is limited. We defer to her expertise as a Family Part judge, Cesare v. Cesare, 154 N.J. 394, 411-13 (1998), and are bound by her factual findings so long as they are supported by sufficient, credible evidence. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (citing In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)). We conclude the factual findings of Judge Mary K. White are fully supported by the record, and the legal conclusions drawn therefrom are unassailable. Judge White gave thoughtful attention to the importance of permanency and stability from the perspective of the child, and she found the Division had established by clear and convincing evidence all four prongs of N.J.S.A. 30:4C-15.1(a), which permits termination of parental

rights so long as doing so is in the best interests of the child. In re Guardianship of K.H.O., 161 N.J. 337, 347-48 (1999).

Based on our review of the record, N.M. refused to cooperate with services or appear for trial. The Division provided access to services in New York; N.M. never took advantage of what was offered. The Division's expert found no bond between defendant and Avery.

Seeking a placement alternative, the Division contacted several of defendant's relatives, including V.M. V.M. was assessed twice for placement, and each time the Division ruled her out based on her failure to complete probation for a 2016 weapons conviction, the fact she had an active warrant, and the criminal background of her live-in boyfriend. The Division concluded it could not place Avery with V.M. due to these unresolved issues.

After reviewing the record and considering Judge White's findings rendered in her oral decision, we conclude the trial court had sufficient and credible evidence to conclude adoption was in Avery's best interests. We add the following comments.

N.M. argues the court erred in finding the Division met prongs three and four of N.J.S.A. 30:4C-15.1(a)(3)(4), because the July 2021 amendments to the statutory scheme indicate a preference for KLG over adoption.

Defendant is correct insofar as the statute intends KLG to be considered over adoption. As we noted in New Jersey Division of Child Protection and Permanency v. D.C.A., the "[l]egislative materials indicate that a preference for the preservation of parental rights and kinship care was the specific concern in enacting the [2021] amendment." 474 N.J. Super. 11, 27 (App. Div. 2022). Indeed, the Legislature found "[k]inship care is the preferred resource for children who must be removed from their birth parents. 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." L. 2021, c. 154, §1.

The changes to the statute themselves "strengthened the position of kinship caregivers." D.C.A., 474 N.J. Super. at 27. Clearly, the intent was "to reflect a preference for viable kinship guardians and fit parents over unrelated foster caretakers." Ibid. However, these changes do not mean adoption is never appropriate. Nor do they act to prohibit courts from considering the potential for adoption or the child's bond with the resource family. Id. at 29.

Defendant contends the court failed to consider alternatives to termination of parental rights. We have noted the following:

> [I]f . . . the Division has been lax or capricious in its assessment of such timely presented alternative

> caregivers, it bears the litigation risk that a Family Part judge will conclude, under N.J.S.A. 30:4C-15.1(a)(3), that it has failed to prove by clear and convincing evidence that "alternatives to termination of parental rights" have been appropriately considered.
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> [N.J. Div. of Youth & Fam. Servs. v. J.S., 433 N.J. Super. 69, 87 (App. Div. 2013).]

But J.S. did not review the Division's "investigative or decision-making authority" beyond this inquiry. J.S. explains while the Division must seek out relatives to act as placements for the child, a trial court need not second-guess each decision the Division makes. Ibid.

The trial court assesses, as part of the evaluation of the third prong, the alternatives to termination of parental rights. N.J.S.A. 30:4C-15.1(a)(3). Here, the Division sought out multiple relatives and each were ruled out. Ten of them told the Division they were unable or unwilling to take Avery.

There was no indication V.M., or anyone else, pursued an administrative appeal of their rule out. Nor is there anything in the record showing that V.M. resolved the issues barring her from obtaining custody of Avery or made an attempt to meet with the Division to discuss her status as a potential KLG.[3]

[3] The trial court suggested a KLG arrangement with the resource parent as a caregiver was not an option because neither [N.M.] nor [V.M.] asked for it. However, it was not their burden. While "[t]he parents of the child who is the subject of the complaint may request . . . that the court consider a [KLG]

We also reject N.M.'s arguments under the fourth prong, which inquires as to whether termination would do more harm than good. N.J.S.A. 30:4C-15.1(a)(4). "Prong four 'serves as a fail-safe against termination even where the remaining standards have been met.'" N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 108 (2008) (quoting N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 609 (2007)).

Case law indicates this prong usually prevents termination only when the child is unlikely to achieve permanency in the future. See id. at 111. Simultaneously, however, harm under the fourth prong may be established through disruption of a sibling relationship. See In re Guardianship of J.N.H., 172 N.J. 440, 478 (2002).

N.M. argues because Avery and her siblings are Black, and the resource parents are White, Avery will be harmed by separation from her biological siblings. We recognize such harm exists. Even the Division expert noted the importance of connection with siblings when racial identity is a factor. Defendant is also correct that no bonding evaluations between Avery and her siblings were ever performed.

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arrangement as an alternative disposition" when the Division files a complaint for guardianship, "[o]nly the [D]ivision or the court shall have legal standing to seek a [KLG] arrangement as an alternative disposition." N.J.S.A. 30:4C-87. We do not consider this misconception material in this case.

Judge White acknowledged Avery had four siblings with whom defendant had a pre-existing relationship and noted the law "recognize[s] that those relationships are . . . important to sustain." She also noted the resource parents were mindful of preserving that relationship. However, such preservation is discretionary, and the resource parents have no legal obligation to continue sibling relationships. Nevertheless, the court did not find this an appropriate basis for choosing KLG over adoption. Given the other formidable obstacles to KLG, this we neither an abuse of discretion nor a mistake of law. Ultimately, it does not change the analysis under the fourth prong of the best-interests standard.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION