

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1983-21
A-1984-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

C.A. and M.N.,

Defendants-Appellants.

IN THE MATTER OF THE
GUARDIANSHIP OF N.N. and
A.N., minors.

Submitted May 24, 2023 - Decided July 10, 2023

Before Judges Currier, Mayer and Enright.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Gloucester County,
Docket No. FG-08-0035-21.

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

Joseph E. Krakora, Public Defender, attorney for appellant M.N. (Caitlin A. McLaughlin, Designated Counsel, on the briefs).

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

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

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

PER CURIAM

Defendants C.A. (Cathy)¹ and M.N. (Maurice) appeal from the February 14, 2022 judgment of guardianship terminating their parental rights to their children, N.N. (Nyah), born in 2012, and A.N. (Andre), born in 2016. After a careful review of defendants' contentions and the record in light of the applicable principles of law, we affirm.

¹ We use initials and pseudonyms to ensure the parties' privacy. R. 1:38-3(d).

I.

We derive the facts from the evidence presented at the guardianship trial.

The Division of Child Protection and Permanency (Division) first became involved with the family in November 2013, when a caller reported Cathy had driven to the reporter's home "crying . . . and sa[ying] she d[id] not want to live anymore." The reporter stated Maurice and Cathy both had issues with alcohol abuse.

The reporter told the Division that several days later, a family member came to Cathy's house and found her unconscious while Nyah was standing in a dry bathtub. Cathy was brought to the hospital and placed under suicide watch for alcohol withdrawal. She was also diagnosed with depression. Her blood alcohol content (BAC) was three times the legal limit. Cathy remained in the hospital for six days and was instructed to attend outpatient meetings after discharge. Cathy went to the meetings for approximately a week and then stopped attending them.

The reporter also stated that on October 31, 2013, Cathy had driven with Nyah to her sister's house while under the influence of alcohol. Maurice acknowledged to the reporter that when he got home on Halloween, he noticed Cathy was drinking. Nevertheless, he permitted Cathy to drive the car with

Nyah in it. Maurice said he had a drinking problem, and he and Cathy drank a "half jug of wine every night." The Division did not substantiate any risk of physical injury to Nyah's health and welfare against either parent.

In 2014, the Woodbury Police Department received a call that an individual, later identified as Cathy, was unconscious and lying outdoors in a grassy area next to the YMCA. The reporter noted a child was sitting next to Cathy. Before officers arrived, Cathy had regained consciousness and begun walking home. The reporter described her as "stumbling, slurring her speech, and smell[ing] of alcohol." Cathy said she had consumed wine but was fine and just wanted to go home. The officers took her to the hospital, where her BAC was four times the legal limit.

Division workers spoke with Maurice that evening. He admitted to purchasing wine for Cathy and drinking rum and coke four days a week and on weekends, "but not to the point of intoxication." He said he believed he could stop "drinking on his own[,] but he [might] need help." The workers informed Maurice a safety protection plan was in place requiring Maurice or Cathy's parents to supervise Cathy at all times and forbidding the consumption of alcohol at the family home.

After the hospital released Cathy, a Division worker met with her. Cathy said she started drinking after fighting with Maurice at night and continued drinking the next morning. She decided to take a walk with Nyah, but her legs had given out. Cathy said she drank "every other day" but not to the point of intoxication and the incident near the YMCA was "the worst it ha[d] been." The worker informed Cathy of the safety protection plan; Cathy agreed to the plan and signed it. The Division later substantiated allegations of neglect and inadequate supervision against Cathy.

Criminal charges were filed against Cathy as a result of these events. She subsequently pleaded guilty to fourth-degree cruelty and neglect of a child and was sentenced to four years' probation in 2015.

Following a psychological evaluation in October 2014, the psychologist found Cathy's alcohol use was "very serious and . . . require[d] inpatient treatment as she [was] having serious withdrawal symptoms that include[d] seizures." The expert stated Maurice was not an appropriate supervisor for Cathy because of his own regular alcohol use. The psychologist recommended Cathy undergo regular, random screening for alcohol use and continue to participate in Alcoholics Anonymous (AA) and "in parenting education as she [was] lacking empathy, awareness of different roles for children and adults and

willingness to tolerate a child's independence all of which is needed to be an appropriate parent."

In December, after Maurice refused to submit to certain drug screens and Cathy tested positive for Suboxone, a drug she was not prescribed, the court granted the Division care and supervision of Nyah and ordered Cathy and Maurice be supervised by defendants' grandparents while with Nyah. The Division closed the case two years later—on December 12, 2016.

On December 27, 2016, Cathy called the police stating Maurice was intoxicated and preventing her from leaving the home with the children. By the time the police arrived, Maurice's mother had picked him up. Cathy reported to the police that three days earlier, Maurice punched her arm while she was holding one of the children, leaving a bruise. Cathy explained Maurice was not working and was drinking every day. Maurice was charged with simple assault but Cathy refused to apply for a restraining order. When questioned by the Division about the incident the following day, Cathy denied Maurice had punched her. She also retracted her statement that Maurice was drinking every day to the point of intoxication. The worker spoke with Nyah, who stated she attended preschool and felt safe at home.

Later that day, the same Division worker contacted Maurice, who advised he was living with his mother and would be staying there until he met with the worker the following day. However, Maurice contacted the worker the following morning reporting he was sick with the flu. Maurice said he was aware of the domestic violence referral to the Division and explained it was a one-time incident due to his frustration with being injured and out of work. He denied drinking daily, or to the point of intoxication, and that he had punched Cathy. Maurice stated the bruises on Cathy's arm were caused when she was physically aggressive towards him. As to the criminal charge, Maurice said he had gone to the police station the day before and was advised there was no warrant for his arrest.

On January 3, 2017, the worker spoke with Cathy who confirmed Maurice was continuing to reside at his mother's house. She said he visited on New Year's Eve, stayed until midnight, and then returned to his mother's home. Cathy further said she was not concerned by Maurice's alcohol use. The family subsequently declined services, and the Division closed the case.

Cathy and Maurice reunited in February 2017. Cathy asked the State to dismiss the assault charges.

In April 2017, the Division received a referral that Maurice had "berated and physically attacked [Cathy] in front of the children and [Cathy] was . . . covered in bruises." The reporter said Maurice threw a phone at Cathy, causing a bruise on her chest. However, Cathy told the reporter the bruises resulted from a dog bite. The reporter further informed the Division that Maurice was preventing Cathy from using the family car and leaving the home unless it was to run errands. In addition, Maurice was consuming alcohol and smoking marijuana daily in the home. Cathy had remained sober. The children were not harmed.

The Division worker arrived unannounced at the family's home that afternoon. Cathy and Andre were home. Cathy said Maurice had left the home earlier and had not returned. She thought he might have gone to his mother's house. Cathy stated Maurice was not working because of back pain and he was drinking more alcohol to cope. Cathy told the worker she did not want to go to the police, file a domestic violence complaint, or apply for a restraining order because Maurice "is usually a great man and does well caring for her and the children." She conceded Maurice did get intoxicated and would yell and berate her and that the bruises on her chest were from Maurice. She initially denied having bruises on other parts of her body, but then began to cry when the worker

asked if she had bruises on her arms and legs. She also said Maurice had taken her cell phone when he left that morning. Nyah denied ever seeing her parents getting physical with one another but stated she hears them fighting.

Later that month, Andre's pediatric group contacted the Division with concerns about Andre's health, specifically his failure to thrive. When the pediatrician saw Andre in February, they ordered lab work but defendants never completed the testing.

In an interview with Maurice in May, he stated he was attending multiple AA meetings per day. He reported living with his mother and visiting his children during the day. Maurice denied punching Cathy or causing her bruises. The Division concluded the allegations of neglect and substance abuse were not established.

In June 2017, Cathy's friend reported a history of domestic violence and alcohol abuse by Maurice and that he had assaulted Cathy the previous night by kicking, punching, and pushing her while she was holding Andre. The friend said Maurice was intoxicated and the altercation was observed by several neighbors. When Cathy tried to run to the neighbors, Maurice followed. Maurice had also broken a window. The police were called and Maurice was

arrested. The children were not injured, but Cathy had bruises "all over and a big bruise on her head."

The friend said after Maurice was released, he returned to the home around 3:00 a.m., entering through the window he had broken earlier. He tried to grab Andre and leave with him, but Cathy intervened and again called the police. The reporter stated "[Cathy] lets [Maurice] back into her life again and again," and "this is the first time [Cathy] admitted to the police that she had been hit by [Maurice] but . . . it happened in front of neighbors."

Although Cathy initially did not want a restraining order, she later applied for and received a temporary restraining order (TRO) against Maurice.

The Division found there was not a preponderance of evidence that the children were abused or neglected but "evidence indicate[d] that [Nyah] was placed at risk of harm. Police reports reflect [Maurice] was arrested for [the] domestic violence incident. Police observed and documented bruises on [Cathy]'s face and forearms. [Cathy] obtained [a] TRO and is in [the] process of pursuing [a] [final restraining order] against [Maurice]."

In August, while the TRO was in effect, Maurice contacted Cathy on Facebook to apologize. Maurice also asked his sister, a teacher at Nyah's school,

to give Cathy a letter. The Division instructed Cathy to inform the school of the TRO.

During a visit to Cathy's home in December 2017, the Division learned Maurice had been to the house several times. As the Division worker and Cathy were speaking, Cathy received a phone call from her neighbor informing her that Maurice was outside the house. The worker notified Cathy that if Maurice was outside, he would be in violation of the TRO. Cathy said she would call the police if he returned.

In February 2018, Cathy told the Division worker that Maurice called her home "'non-stop,' twenty-three times in total, came to the home and banged on the windows, yelling 'open the f—king door'" and threatening Cathy's sister. Cathy said Maurice broke the lock on the door. He also came to the house with several acquaintances to get some of his possessions out of the garage. Cathy told him to return when she was not home, but he refused to leave and Cathy called the police, who arrived but did not make him leave. Cathy reported "the kids were very scared." Maurice left, but then returned later with friends. Nyah told the worker that her father was at the house the previous night and she was scared that he would hurt Cathy.

In March, Cathy informed the Division the home was in foreclosure. Although the worker provided a list of low-income apartments, Cathy said she might move in with Maurice because she felt she had no other choice. The caseworker assisted Cathy in calling several apartment complexes. Cathy said she would go to a complex the next day to fill out an application.

In September 2018, the Division received a referral that Cathy was admitted to the hospital suffering from an alcohol withdrawal-induced seizure. She was intoxicated upon admission and had to be restrained due to withdrawal symptoms. While enrolled in a treatment program, Cathy disclosed she had begun drinking again. Cathy admitted she was taking cough medicine with wine while the children were sleeping. The reporter also stated Maurice was drinking alcohol. The Division determined there was not a preponderance of evidence that the children were abused or neglected. But there was reason to believe "the children were harmed or placed at risk of harm." The Division also learned Cathy had resumed making mortgage payments and the foreclosure proceedings were dismissed.

On June 23, 2019, Cathy called the police saying Maurice grabbed her and pushed her against the wall. She said he attempted to choke her and punched a

hole in the wall. He fled from the home when she threatened to call the police. Andre was home during the incident.

While the Division worker was present at the house, Maurice returned, the police were called, Maurice was arrested, and Cathy applied for another TRO. As Maurice was being arrested, Maurice yelled he needed something to drink. Three-year-old Andre went into the house and brought Maurice a beer. Cathy and the children were taken to domestic violence safe housing where they remained for about two weeks. However, after speaking with Maurice on the phone, Cathy moved back in with him.

Nyah and Andre both told Division workers they saw the fight between their parents. Nyah said "Daddy punched Mommy in the head," and Andre stated "[y]eah, he's in jail." Nyah further explained the children were in the living room when the fight occurred and when they went into the kitchen to break it up, Nyah put her arms out to walk between Cathy and Maurice. The caseworker asked Andre if he saw what happened; he replied, "Mommy went boom and then [a]hh."

When the lender foreclosed on the house in August 2019, Cathy and the children moved in with neighbors and Maurice went to live with his mother.

The Division investigation found the allegations of neglect, family violence harming the child, and domestic violence against Maurice were substantiated.

After the foreclosure, the Division lost contact with the family and made "numerous attempts . . . to locate" them without success. When they found out where Cathy was living with the children, they went to the hotel with the police. The officers advised Cathy that if Maurice was in the hotel room, they intended to arrest him for violating the TRO.

While speaking to Cathy, the officers noticed a pair of jeans on the bed; Cathy said they belonged to Maurice. Cathy explained she thought the TRO was dismissed. When Cathy also confirmed Maurice had been staying in the hotel with them, the officers and caseworkers advised her "that she and her husband were violating the TRO and her husband was in jeopardy of being arrested."

Cathy told the police and Division workers that Andre was with Maurice at his job and Nyah was at school. However, when the officers arrived at Maurice's place of employment, they could not find Maurice or Andre. Officers and the caseworkers noted Cathy appeared calm, nonresponsive, and "lacked a sense of urgency about the situation and [the] Division's concerns." She further did not "appear genuine and forthcoming with information" about Maurice's and

Andre's whereabouts. The Division executed an emergency removal of the children.

Cathy tested positive for alcohol in several drug screens after the removal. Maurice refused to comply with the drug screens, hair follicle testing or undergo a psychological evaluation.

The court granted the Division's complaint for custody, care, and supervision in September 2019. Cathy dismissed the TRO on the same day. Defendants were given separate weekly supervised visits with the children.

In November, Cathy moved in with her mother. The mother informed the Division she was not interested in being considered as a placement for the children. The mother also told the Division that Cathy had started a job.

On January 5, 2020, Cathy underwent a psychological evaluation with David Bromberg, Psy.D. Cathy told the doctor about her alcohol use and treatment. Dr. Bromberg found Cathy had a substance use disorder and needed treatment for alcohol abuse. Dr. Bromberg described Cathy as "somewhat minimizing" the history of domestic violence in her relationship with Maurice and she only "disclosed a greater degree of violence when asked very specific questions." According to Dr. Bromberg, Cathy stated Maurice "thr[ew] objects,

grabb[ed] her by the throat, name call[ed], head butt[ed] her, and frequently push[ed] her."

In discussing the history of domestic violence, Dr. Bromberg stated Cathy reported the violence started at the beginning of defendants' relationship, was "very frequent," and varied in abusive behavior. He opined that if the relationship were to continue, which he found was highly likely, there was a high risk the abuse would continue regardless of Maurice's compliance with treatment programs.

Dr. Bromberg diagnosed Cathy with severe alcohol use disorder, a victim of domestic violence, generalized anxiety disorder, in full remission from major depressive disorder after a single moderate episode, personal history of past sexual abuse in childhood,² and perpetrator of parental child neglect. He recommended substance abuse treatment, ongoing random drug screens, outpatient psychotherapy, a psychiatric evaluation with a substance abuse specialist, and domestic violence victim counseling. The psychologist recommended Cathy not serve as the supervisor for Maurice's visits with the

² Cathy reported she was sexually abused by her mother's boyfriend's children when she was between four and six years old. The abuse ended upon the termination of the relationship between her mother and the boyfriend. Dr. Bromberg found "[n]o services related to this aspect of her history appears to be needed at this time."

children, Nyah be assessed to determine whether she needed services stemming from her witnessing the domestic violence, and monitoring for Andre in case he showed signs of aggression.

Cathy tested positive for codeine on drug screens in February and March and once for alcohol in March. During this time frame she reported Maurice approached her, grabbed her by the arm tight enough to leave red marks, made suicidal and homicidal statements, and then fled. Cathy reported she was afraid of Maurice.

In March 2020, the Division contacted numerous maternal and paternal relatives to assess them as potential placements for the children. All declined.

At some point in March or April, Maurice and Cathy reunited, appearing together for a visit over a video conference. Maurice acknowledged the domestic violence in his relationship with Cathy and stated he wanted to receive services. During this period, Division workers documented increased aggressive behavior by both Andre and Nyah.

In May 2020, Maurice was arrested for simple assault and criminal contempt for violating the TRO. He pleaded guilty to the charges in August and was released after spending ninety-four days in jail. He was sentenced to two years' probation and ordered to undergo all recommended treatment and

complete an anger management program. In September, Cathy reported her relationship with Maurice was going well after his incarceration and she planned to dismiss the TRO.

At the end of October 2020, Maurice told the Division the TRO remained active but Cathy intended to dismiss it. The two were living together in an apartment.

On November 17, a caseworker, on the way to a scheduled meeting with Cathy prior to her supervised meeting with the children, noticed a woman lying on her back in the shoulder on the side of the road. The worker pulled over and approached the woman to see if she was all right and discovered it was Cathy. After the worker got Cathy to move to the side of the road, Cathy said she and Maurice were drinking again.

In December, the Division visited Cathy at home and discussed her failure to comply with the required services. In addition, Cathy had missed several visitations.

Later that month, a Division worker visited the resource home. The resource parent expressed concern with the plan for reunification, explaining that Cathy's inconsistent visitation was "having a negative impact on the children." The resource parent had previously advised the Division she did not

want to adopt the children. In April 2021, the children moved to their current resource home. The new resource parents were willing to adopt both children.

In January 2021, Cathy did not answer the door when the Division worker arrived nor any of their phone calls. Cathy replied her phone was broken because Maurice "got mad at her and broke it." The worker advised Cathy and Maurice the next court date would be a permanency hearing where the Division would request the court change the plan to termination of parental rights. The worker stressed the need for defendants to comply with the required services.

About one week later, during a scheduled visit at the mall, Nyah noticed a small bruise on Cathy's face. When Nyah asked what happened, Cathy stated she was not sure.

Cathy was admitted to the hospital on February 4, 2021 after a friend called the paramedics because Cathy was displaying an "altered mental status and possibly drank hand sanitizer." At the hospital, Cathy stated she felt very depressed. An empty hand sanitizer bottle was found in her purse.

A Division worker visited defendants later that month. The worker asked Cathy if she still wanted to dismiss the restraining order. The worker noted Cathy said "yes" and that "she fe[lt] guilty because she would be taking the kids away from their father."

Neither Cathy nor Maurice appeared at the next court hearing. Nor did either of them answer any of the calls the court made to reach them.

The Division was also in touch with Maurice's and Cathy's sisters as to their willingness to serve as permanency options for the children. The family members advised it was best for the children to be adopted outside of the family because Maurice had threatened and bullied them and other family members and they did not think they could keep the children safe. Maurice's brother-in-law reported that Maurice "ha[d] graduated from alcohol and marijuana use to crystal meth."

As of March 23, 2021, Cathy had neglected to attend her substance abuse evaluation, and was not compliant with her psychotherapy, hair follicle, or random urine screen requirements. Maurice similarly was not compliant with any of the required services. The TRO was still active and no family members were interested in adoption. When asked, Cathy admitted she knew Maurice was using crystal meth. Maurice also admitted to its use. Cathy dismissed the TRO in May.

The Division filed a complaint for guardianship seeking termination of defendants' parental rights. Maurice continued to refuse drug screenings and

told the Division he would have tested positive for amphetamines. He also failed to attend the ordered therapy sessions.

Cathy called the police in June 2021 reporting a domestic violence incident. She also stated Maurice continued to offer to buy her wine even though he knew she was trying to stop drinking. Two weeks later, when a Division worker noticed a faded bruise on Cathy's neck, Cathy said, "she had been full of bruises but they are almost all gone."

Cathy underwent a psychological evaluation with James L. Loving, Psy.D. In his report, Dr. Loving found Cathy "ha[d] done remarkably little to address [her] problems to ensure her children's safety." He noted that although Cathy recognized her issues, she seemed resigned to continue along her current path. He stated, "she continues to pose major risks in her role as a parent, and her prognosis for safe reunification within the foreseeable future is extremely poor." Dr. Loving noted the ongoing domestic violence in defendants' relationship and found "there is no reason to expect or believe [defendants] will end their relationship and maintain a genuine separation in the foreseeable future." He concluded that "the goal of adoption for both [Nyah] and [Andre] by their current caregivers" was appropriate. Otherwise, the children would be in a

"permanency limbo" of waiting for an outcome that, if it ever occurred, would likely be unsuccessful.

Dr. Loving also evaluated Maurice. In his report, the psychologist concluded Maurice had "significant parenting-related risks[]" which have recurred for almost the entirety of his two children's lifetimes and which have stood in the way of reunification since he and his wife lost custody." Dr. Loving noted Maurice's "dogged[]" resistan[ce]" to addressing his substance abuse and domestic violence issues. According to Dr. Loving, Maurice posed an "extremely high risk for future [domestic violence] incidents." This put the children at risk—especially noting the fact Nyah had previously attempted to break up an altercation—of physical harm and emotional trauma. Dr. Loving also found Maurice "appears unable or unwilling to ensure his children's safety in the context of his wife's significant alcohol abuse" and he and Cathy have not provided stable housing for the children. This failure posed a risk of the children experiencing homelessness or transient housing. As with Cathy, Dr. Loving supported the Division's goal of adoption.

When trial began on January 10, 2022, all counsel agreed to the virtual format. Defendants appeared sitting together in a car using a cell phone. They informed the court they were staying in a hotel because they were quarantining

with COVID-19. Although they had wi-fi access in their hotel room, Maurice stated he did not want other people hearing their "business." Counsel agreed to defendants proceeding in this manner. In counsel's briefs, they reference defendants' having moved into the hotel room as the proceedings continued.

Dr. Loving testified regarding his psychological evaluations of defendants. He also stated he completed bonding evaluations with the children and defendants, and with the children and their current resource parents. The Division informed the court it only intended to present Dr. Loving regarding his psychological evaluations.

Dr. Loving testified consistent with his report, stating defendants were "mostly non-compliant" in addressing substance use issues and domestic violence. Despite the existence of the TRO, Cathy continued to live with Maurice. Cathy was not attending any services.

The psychologist explained that during Cathy's evaluation, he noticed she had bruising on her chest. She said it was from a domestic violence incident with Maurice a few days before the evaluation. She acknowledged drinking for many years and that there was a history of domestic violence throughout her twenty-six-year relationship with Maurice.

According to Dr. Loving, there was an extremely high risk of Cathy continuing to abuse alcohol and remain living in a domestic violence situation. Dr. Loving said Cathy was at "risk of failing to protect the children from harm" by continuing to return to Maurice. In addition, defendants' housing situation was "unstable." He concluded Cathy's prognosis for addressing and overcoming the risks she posed was "extremely poor."

Dr. Loving then testified regarding his evaluation of Maurice. He said Maurice's compliance with any services or offered programs was "almost zero." In addition, Maurice told Dr. Loving he did not find anything wrong with his marijuana use and denied needing substance abuse treatment.

According to Dr. Loving, Maurice "adamantly denied that he had ever hit, punched, struck[,] . . . [or] choked [Cathy]. What he acknowledged was there have been times when they have grabbed each other. That[] [was] the extent of the domestic violence that he acknowledged."

Dr. Loving concluded Maurice posed the same risks to the children as he described about Cathy. He added an additional risk for the children was that Maurice "significantly downplay[ed] the domestic violence and his responsibility for it." Dr. Loving said the prognosis for Maurice addressing his issues was "extremely poor."

In discussing permanency for the children, Dr. Loving said reunification with either parent would not be safe, and he supported the children being adopted by their current resource parents.

During cross-examination of Dr. Loving, defendants' counsel sought to question him regarding his bonding evaluations. The Division objected because it did not present those evaluations as part of its direct examination.

The court stated, "[W]e're dealing with expert opinion testimony and . . . we start with the premise that no testifying expert can be compelled to render an opinion. And it[] [is] the offering party who controls what opinions the expert or what topics the expert is going to render opinions on." Therefore, the court sustained the objection but stated it was "free to take any inferences as far as not addressing them."

Dr. Loving testified his understanding was that Nyah would like to reunify with her parents but she was happy with the resource parents. He believed Andre wanted to live with defendants.

The Division also presented testimony from one of the children's resource parents. The parent testified he was a licensed clinical social worker and worked as a school counselor. He and his partner had cared for the children since April

2021. The parent described the children were in counseling to support them in the "general life transitions because of their involvement with the Division."

When asked about kinship legal guardianship (KLG), the resource parent said he and his partner discussed it with the Division; he knew KLG and adoption were equally permanent plans and the Division would support them in their choice. The resource parent explained "we felt that [KLG] was not in our best interest or the interests of the children. We are not kin. We are not related, however, through adoption we feel that we can provide the children with a safe and structured, supportive environment." He further stated he and his partner supported ongoing contact between the children and defendants as long as it was "safe and secure and appropriate."

The Division presented the current caseworker who recounted the Division's long history of interaction with the family as set forth above. The caseworker testified the children seemed "happy, comfortable[,] and safe in the [resource] home." She said the Division had considered and ruled out more than ten friends and family members as potential placements for the children. The caseworker said the resource parents were meeting the children's needs and they were "adamant on adoption and . . . against KLG." She informed the court the resource parents "have made plans [to enable communication with defendants]."

They[] [have] talked about emails and P.O. boxes that would be available for communication."

According to the caseworker, Nyah has said she wanted to stay with the resource parents but was hesitant to say so because she did not want to hurt defendants' feelings. Andre, however, "goes back and forth. It depend[ed] on the day."

Cathy then testified. Prior to her testimony, she spoke to her attorney in a "breakout room." Maurice was asked to leave the hotel room while Cathy testified. She explained she planned to go back to work as a medical assistant although she had to renew her license to do so.³ She said she and Maurice were living with his mother and caring for her after an illness, but they were looking for other places to live. She said the mother's home had adequate space for the children. Cathy said she was willing to undergo further tests and another substance abuse evaluation.

Maurice also testified. He acknowledged he submitted another person's urine one time during a drug screen. He said he would be willing to do frequent hair follicle tests and he was currently enrolled in a batterer's intervention program. He admitted using crystal meth.

³ Cathy's license had been inactive since Nyah was born in 2012.

II.

On February 14, 2022, the court issued an oral decision. The court noted the four prongs established under N.J.S.A. 30:4C-15.1. In considering whether the Division needed evidence of bonding evaluations to meet its burden, the court referred to the legislative intent behind the recently amended portion of the statute, L. 2021, c. 154, § 1, regarding KLG. The court stated the Legislature found it necessary "to strengthen support for kinship care caregivers and ensure focus on parents' fitness and the benefits of preserving the birth parent [and] child relationship" instead of focusing on "the impact of severing the child's relationship with the resource family parents."

Although bonding evaluations are still relevant, the court found the Division's decision to proceed without that evidence "[wa]s not dispositive on whether it can, nonetheless, meet its burden of proof by clear and convincing evidence without it." Because the Legislature did not remove bonding evaluation evidence but only changed the "relative weight" it should be accorded, the court concluded the Division could still meet its burden without offering the bonding evaluation evidence.

After considering the evidence, the court applied it to the statutory prongs. As to prong one, the court found the Division met its burden of showing "the

child[ren]'s safety, health or development has been or will continue to be endangered by the parental relationship" by clear and convincing evidence. The court explained there are "continuing and ongoing struggles with alcohol abuse" for Cathy, enabled by Maurice. The court also noted Maurice's own unaddressed substance abuse issues.

The court found the substance abuse and the domestic violence issues were longstanding, with the substance abuse starting with Nyah's birth and the domestic abuse dating back approximately twenty-six years. The parents also failed to protect the children—Cathy by failing to shield them from Maurice's domestic violence, and Maurice by failing to safeguard them from Cathy's alcoholism.

In addressing the second prong, "the parent is unable or unwilling to eliminate the harm facing the child, or is unable or unwilling to provide a safe and stable home," the court found Dr. Loving "squarely and unequivocally" addressed the statute's requirements. Maurice continued to provide alcohol to Cathy even though Cathy acknowledged her drinking problem. The court found delaying permanent placement would "certainly add to the harm" because the children had been removed from their parents for two-and-a-half years.

Regarding prong three, the court noted the Division continuously offered services to the family, which defendants did not take advantage of. The court stated: "Neither party has [been] treated for substance abuse in a meaningful way" and the domestic violence was "completely unaddressed." The court declined to discuss KLG as it was not presented as an alternative to adoption because the resource parents wanted to adopt the children.

In considering the fourth prong, that termination would do no more harm than good, the court "considered the overall context of the case." The court again acknowledged the lack of bonding evidence, but reiterated it was not necessary. The court did not doubt a bond existed between the children and defendants but stated "the children have a right to permanency." The court found defendants "have been involved in a relationship rife with domestic violence for [twenty-six] plus years, whe[re] [Cathy] is an alcoholic with no treatment in sight." Moreover, "[t]he children are entitled to a sense of permanency and a sense of household and not [to] continue to wait for their parents to even start the process."

The court entered a judgment of guardianship on February 14, 2022. We consolidated defendants' appeals.

III.

On appeal, Cathy contends the court erred in not requiring Dr. Loving to testify regarding his bonding evaluations. Without such evidence, Cathy asserts the Division did not satisfy the fourth prong of the statute. And if the court did not err in excluding the bonding evaluation evidence, Cathy argues the court should have drawn an adverse inference from the Division's failure to present it.

Cathy also challenges the court's findings under prong one, contending the court was biased against victims of domestic violence in finding she harmed her children when she failed to stop her husband from abusing her. As to prong three, Cathy asserts the Division took no efforts to protect her from domestic violence and the resource parent misunderstood the difference between KLG and adoption. Cathy further contends the court abused its discretion in permitting the parties to participate in the proceedings together because she was a victim of domestic violence sharing a cell phone with her abuser.

Maurice contends the court erred in its findings on all four prongs. The Law Guardians ask this court to affirm the trial court's order.⁴

⁴ Although Andre vacillated between desiring to live with defendants or his resource parents, the Law Guardian represents on appeal that Andre has changed his position and wishes to permanently live with his resource parents.

We defer to the trial court's findings of fact, which "are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). We accord particular deference to a family court's factfinding "[b]ecause of the family courts' special jurisdiction and expertise in family matters." Id. at 413; Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016). However, our review of a court's interpretation of legal issues is de novo. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019).

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

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

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

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

- (1) The child's safety, health, or development has been or will continue to be endangered by the parental relationship;
- (2) The parent is unwilling or unable to eliminate the harm facing the child or is unable or unwilling to provide a safe and stable home for the child and the delay of permanent placement will add to the harm;
- (3) The [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 Division must prove each prong by clear and convincing evidence. N.J. Div. of Youth & Fam. Servs. v. A.W., 103 N.J. 591, 611 (1986). The prongs

"are not discrete and separate; they relate to and overlap with one another to provide a comprehensive standard that identifies a child's best interests." K.H.O., 161 N.J. at 348. The court may not make presumptions against parents in termination of parental rights cases, and all doubts which arise must be resolved against termination of rights. Id. at 347.

A.

We are satisfied the trial court issued thorough findings regarding the first and second statutory prongs. Both defendants endangered the children's safety in their use of illegal substances and alcohol abuse. In addition, there was a longstanding history of domestic violence in defendants' relationship. As the court found, there was ample evidence that neither defendant was willing or able to eliminate the harm or to provide a stable home, again evidenced by the ongoing substance abuse, domestic violence and foreclosure proceedings. Cathy often refused to apply for a restraining order. If she did receive an order, she quickly dismissed it or ignored it, permitting Maurice to live with her and see the children. Maurice refused to acknowledge his behaviors or the negative impact they had on the family.

We find no merit in Cathy's argument that the court penalized her for being a victim of domestic violence. Cathy did not follow any of the Division's

recommendations or pursue provided services. Moreover, she caused harm to the children in allowing Maurice to return to the family home time and again. Both children witnessed the domestic violence. Nyah stated she attempted to break up altercations between her parents. There was also evidence that Andre was developing aggressive behaviors.

The court accepted Dr. Loving's testimony that Cathy was extremely likely to allow the situation to continue because she maintained her relationship with Maurice. She did not have nor did she seem willing to form and implement a plan to shield the children from Maurice's persistent domestic violence. Cathy was simply unable to parent her children safely.

B.

As to prong three, the Division continually offered services to the family, which were largely ignored by defendants. As the court stated, "Neither [defendant] has [been] treated for substance abuse in a meaningful way" and the domestic violence was "completely unaddressed."

In addition, Cathy's argument that the Division failed to obtain restraining orders on her behalf lacks merit. The Division referred Cathy to countless domestic violence services and safe housing and offered assistance in obtaining restraining orders. Under Division policy, it was required to obtain the victim's

consent prior to applying for a protective order. Cathy refused to obtain restraining orders on multiple occasions, and even when she received one, she dismissed or ignored it.

Nor did the court err in not considering KLG as an option. The resource parents unequivocally wish to adopt the children. Moreover, the resource parent testified he was aware KLG was an option and he understood it. Therefore, the court properly declined to consider KLG as a viable alternative. See N.J. Div. of Child Prot. & Permanency v. M.M., 459 N.J. Super. 246, 265 (App. Div. 2019).

C.

We turn to defendants' argument that the court erred in not requiring Dr. Loving to testify regarding his bonding evaluations. They assert the fourth statutory prong requires an analysis and balancing of the relationships of the child with the adoptive parent versus the biological parent.

Prong four addresses whether "[t]ermination of parental rights will not do more harm than good." N.J. Div. of Youth & Fam. Servs. v. A.R., 405 N.J. Super. 418, 442 (App. Div. 2009) (alteration in original). It is a fail-safe guard against termination that applies when the remaining elements have all been satisfied. Ibid.

Dr. Loving's testimony regarding the effects of terminating the parental relationship satisfied the fourth prong. Defendants could not provide their children a stable and safe home. The children witnessed domestic violence between their parents. They were present when Cathy was unconscious from alcohol abuse. Dr. Loving opined defendants would continue to present these risks to the children as long as the parental relationship existed. Furthermore, as the court found, neither parent demonstrated a willingness or capability to take the necessary actions to eliminate the risks.

Despite the proffers of assistance from the Division, defendants have made no progress towards reunification with their children. In the meantime, the children remain in an uncertain state. The court found the children deserved permanency and, according to Dr. Loving, reunification with either parent was not an option and was unlikely to ever be an option. In assessing the evidence presented here, a bonding evaluation was not necessary for the court to make its determination regarding prong four. See N.J. Div. of Youth & Fam. Servs. v. B.G.S., 291 N.J. Super. 582, 593 (App. Div. 1996) ("[T]he present termination action was not predicated upon bonding, but rather reflected [the child's] need for permanency and [the parent's] inability to care for [the child] in the foreseeable future.").

Moreover, N.J.R.E. 611(b) provides that "[c]ross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness' credibility." We have stated that the scope of cross-examination rests in the trial judge's discretion. Singer Shop-Rite, Inc. v. Rangel, 174 N.J. Super. 442, 448 (App. Div. 1980).

The Division chose not to question Dr. Loving regarding his bonding evaluations. Therefore, defendants were not entitled to cross-examine the expert about them. Defendants were free of course to obtain their own expert bonding evaluations.

D.

We turn to Cathy's argument that the court erred in conducting the trial in a virtual mode while she was sitting with Maurice in a car. We do not find this situation ideal. However, the parties and counsel agreed to a virtual trial. There was no objection at trial. Cathy and Maurice were living together and had lived together for a long period of time prior to trial. They requested to sit in the car because they were staying in a hotel, quarantining from COVID-19, and did not want other people to hear their business. During the trial, there was no restraining order in place. In addition, counsel advised in the briefs that defendants went into the hotel room during the first witness's testimony. The

judge thoroughly questioned the parties about their comfort and all agreed to proceed. Furthermore, the parties were always on camera and the court was watching them at all times.

The transcript does not reflect Cathy had any hesitation about the trial proceedings nor did she ever ask to speak to her counsel privately. Moreover, Cathy spoke with her attorney in a private break out room prior to testifying and Maurice was instructed to leave the physical room while she testified. We see no abuse of discretion in the court's decision to conduct the trial in this manner under these circumstances. See State v. Pinkston, 233 N.J. 495, 511 (2018) (stating trial court judges enjoy broad discretion in controlling the proceedings in their courtrooms).

We also note Cathy's counsel used defendants' actions of sitting together in the car to her advantage, commenting to the court in his opening statement that defendants were sitting together, demonstrating they could "harmoniously" parent. Cathy may not now challenge a strategy that did not work out as she hoped. See State v. Williams, 219 N.J. 89, 101 (2014).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION