

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2071-22

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

M.K.S.J., SR.,¹

Defendant-Appellant.

IN THE MATTER OF THE
GUARDIANSHIP OF M.J.J.
and M.K.S.J., JR., minors.

Submitted September 18, 2023 – Decided October 18, 2023

Before Judges Gilson, DeAlmeida and Bishop-
Thompson.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Camden County,
Docket No. FG-04-0070-22.

¹ We use initials to identify the parties and the children that are the subject of this appeal in accordance with R. 1:38-3(d)(12).

Joseph E. Krakora, Public Defender, attorney for appellant (Christine Olexa Sainor, Designated Counsel, on the briefs).

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Meredith Alexis Pollick, Deputy Public Defender, of counsel; Jennifer M. Sullivan, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant M.K.S.J., Sr. (Father) appeals from the February 23, 2023 judgment entered by the Family Part terminating his parental rights to his children, M.K.S.J., Jr. (Son) and M.J.J. (Daughter). We affirm.

I.

The trial court set forth extensive findings of fact which we recount in summary form here. The Division of Child Protection and Permanency (DCPP) became involved with this family in 2018 after Son and his mother (Mother) tested positive for cocaine, methadone, and opiates at Son's birth. Son was admitted to the neonatal intensive care unit suffering from withdrawal.

Son was discharged to the custody of Father, who was unemployed, and Mother under a safety protection plan that required Father to supervise Mother's contact with Son. The trial court granted DCPD care and supervision of Son, incorporating the terms of the safety plan.

A month later, Father was arrested for domestic violence. He "wrestled" Mother to the ground, kicked, and punched her. Son was sleeping nearby. Mother, who was bruised, reported prior instances of domestic violence by Father, including when she was pregnant with Son. DCPD removed Son, placing him with a non-relative resource family. Mother ultimately obtained a final restraining order against Father.

Son was subsequently placed in kinship care with his aunt, who supervised the parents' separate visitations with the child. However, the aunt raised concerns that both parents were using drugs and ultimately requested that the child be removed from her care. Son was returned to the non-relative resource family. Father's visitation with Son was inconsistent and he refused to submit to drug screens.

During a psychological evaluation, Father admitted that he hit and punched Mother during the domestic violence incident. He completed a domestic violence program. Over a period of months, he tested positive for

cocaine and other illicit substances and, on occasion, refused drug testing. He was habitually late for, or missed, visitations with Son arranged by DCPD. When Father did attend visitation, he appeared unaware of Son's delayed development and had difficulty soothing the child. Father often expressed frustration with Son's crying. At Father's request, his mother was evaluated as a placement for Son. She withdrew from consideration, however, stating that DCPD's licensing process was "too intrusive" and, after a few visits with Son, stopped visiting the child.

Mother gave birth to Daughter in 2019. Daughter tested positive for methadone at birth and experienced withdrawal. DCPD placed Daughter with Mother in her in-patient drug treatment program, which was equipped for child placement. Son was reunified with Mother a few months later, after she successfully completed the program. Father, however, failed to visit the children or remain in contact with DCPD.

In 2020, Mother and the children were involved in a car accident. Mother, who had relapsed on heroin a week earlier, was discovered by police "passed out" at the steering wheel. The children were not injured. Son and Daughter were removed from Mother and placed with the same resource family.

The court granted DCPD custody of the children and ordered Father to comply with drug screens, hair follicle testing, and a substance abuse evaluation. He resumed supervised visitation with the children and attended on a somewhat consistent basis. Although Father tested positive for cocaine, DCPD instituted a plan for him to continue drug screening and, ultimately to reunify with the children once he obtained appropriate housing and full-time employment.

Father, who was staying in a rooming house with his cousins, refused to submit to court-ordered drug screening and hair follicle tests. He also failed to complete a substance abuse evaluation. Father admitted to marijuana and alcohol use "every other day." However, because he was showing improvement with maintaining consistent visitation and attempting to obtain suitable housing, DCPD made repeated attempts to assist him in stabilizing his life to a point that he could responsibly have custody of the children.

Despite numerous court-ordered extensions and multiple attempts at providing services, Father failed to secure suitable housing for the children, obtain full-time employment, and refrain from using drugs. He repeatedly tested positive for cocaine, including after having "decided" to have one "last hurrah" getting high. He was discharged from a treatment program for noncompliance and failed to complete another.

In 2022, DCPD filed a complaint to terminate Father's parental rights. This change in DCPD's position did not alter Father's behavior. He missed drug screens and submitted diluted urine samples. He failed to secure a full-time job or permanent housing suitable for the children. Although Father's mother again expressed interest in placement of the children, she was ruled out because she was consumed with caring for her sick husband and could not move out of her one-bedroom apartment. Father demanded DCPD either pay for his mother to move or pay his rent at a home suitable for the children. When a DCPD caseworker explained that, other than providing a security deposit and first month's rent upon proof of income, DCPD does not pay rent, Father responded "we shall see."

The court repeatedly adjourned the guardianship trial to give Father opportunities to obtain full-time employment and suitable housing for the children. He failed to accomplish either goal. At the time of trial, Father had completed a drug treatment program. Because he waited so long to accept treatment, however, he was in early remission and at high risk for relapse. Meanwhile, the couple with whom the children had been placed, and who provided them with a stable home for years, were dedicated to adoption. They demonstrated their commitment to providing Son with the services he needed as

a result of his developmental delays. They also expressed a desire to allow the children to visit with Father in the event they were permitted to adopt after termination of his parental rights.

After trial, Judge Francine I. Axelrad issued a comprehensive oral opinion in which she found that DCPD established all four prongs of N.J.S.A. 30:4C-15.1 by clear and convincing evidence and that termination of Father's parental rights would not do more harm than good. Judge Axelrad painstakingly explained that her decision was "not based on finances" or "poverty," but on the many obstacles to providing a stable home and support for the children that Father failed to overcome despite extensive offers of assistance from DCPD.

The judge found that Father acted with "dereliction and irresponsibility" and "withheld parental attention and care" from the children by failing to secure a stable home for them. Judge Axelrad found that Father had a "flippant" approach to the services offered him and made constant excuses for his failure to obtain full-time employment and housing. The judge also found Father's attitude toward services to be "lackadaisical" and "nonchalant" and that he wanted to "pick and choose" services, despite some being court ordered.

The judge found the "most significant barrier to reunification" was Father's substance abuse. Father, however, failed to seriously partake in

substance abuse treatment, repeatedly testing positive for cocaine, refusing hair follicle tests, and submitting diluted urine samples. The judge also found that Father made an insufficient effort to obtain housing, despite having been provided housing vouchers, which he allowed to expire without obtaining a home for the children.

In addition, Judge Axelrad found that Father's substance abuse and lack of suitable housing put the children at risk of homelessness and removal were he to have custody. The judge found that Father offered only "vague" plans for the children based on "unrealistic expectations." For example, the judge found that Father was "hold[ing] out" for full-time employment at specific employers, which had not been forthcoming for years, and accepted part-time employment that produced insufficient income to support the children and provide them with suitable housing. Judge Axelrad credited the uncontroverted testimony of an expert that Father was not able to provide safe parenting to the children "now or in the foreseeable future" and was in no better position in February 2023 than he had been in October 2022.

The judge found that DCPD provided a "litany of services" to Father, including DCPD-supervised visitation, therapeutic visitation with three agencies, bus passes, family team meetings, options for drug testing and

treatment, psychological and bonding evaluations, assistance with housing and employment searches, and offers to pay a security deposit and first month's rent for an apartment if he could secure stable employment. The judge found that "short of grabbing him by the hand and taking him to every apartment," job, and service, DCPD had done "everything humanly possible" to assist Father "from the outset" of its involvement with the family.

Judge Axelrad found that alternatives to termination were considered by DCPD, but no viable option existed. Two relatives were considered for placement, but removed themselves from consideration. The judge found that Father made no convincing argument that kinship legal guardianship was a viable option for the children.

The judge, following the holding in N.J. Div. of Child Protection & Permanency v. D.C.A., 474 N.J. Super. 11, 26-27 (App. Div.), certif. granted, 253 N.J. 599 (2022), considered the children's status in placement to determine whether they are likely to suffer worse harm from continuing in foster care than from termination of the biological parent's bond. The judge found that the children had "positive attachments" with both Father and the resource parents, for whom they expressed a clear preference. The judge found that the resource parents are the children's "most central and critical parental figures," and Father

was more akin to their "playmate" than a parent. The judge found that the children would be at a "low risk of harm" if the court terminated Father's parental rights, but "at a significant risk of harm" if separated from their resource parents. The judge found that Father has never provided a home for Daughter and provided a home for Son for only the first three months of the child's life.

Balancing the children's need for permanency against the Father's parental rights, the judge found that termination of the Father's rights was warranted, given the limited harm that would befall the children from a severing of their relationship with Father compared to the benefits they would enjoy from the permanency and stability offered to them by their resource parents. A February 23, 2023 judgment memorializes the court's decision.

This appeal follows. Father argues: (1) the record does not support the trial court's conclusion that the children's safety, health, or development were endangered by their parental relationship with Father; (2) the trial court "turned a blind eye towards the impact poverty" had on Father's ability to follow through on obtaining full-time employment and housing, and underestimated the impact that the COVID-19 pandemic had on his ability to address those issues; (3) the trial court erred when it concluded Father was unwilling or unable to remediate the harm he posed to the children; (4) the record does not support the trial court's

conclusion that DCPD adequately considered alternatives to termination of Father's parental rights; and (5) the trial court gave undue weight to the expert testimony and did not prioritize Father's parental relationship over adoption. The Law Guardian argues that the trial court's decision is amply supported by the record.

II.

Our scope of review on appeal from an order terminating parental rights is limited. N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007). We will uphold a trial judge's factfindings if they are "supported by adequate, substantial, and credible evidence." N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014). "We accord deference to factfindings of the family court because it has the superior ability to gauge the credibility of the witnesses who testify before it and because it possesses special expertise in matters related to the family." N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012); see Cesare v. Cesare, 154 N.J. 394, 413 (1998). "Only when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' should an appellate court intervene and make its own findings to ensure that there is not a denial of justice." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting G.L., 191 N.J. at 605). We also accord deference to the judge's

credibility determinations "based upon his or her opportunity to see and hear the witnesses." N.J. Div. of Youth & Family Servs. v. R.L., 388 N.J. Super. 81, 88 (App. Div. 2006). No deference is given to the court's "interpretation of the law" which is reviewed de novo. D.W. v. R.W., 212 N.J. 232, 245 (2012).

When terminating parental rights, the court focuses on the "best interests of the child standard" and may grant a petition when the four prongs set forth in N.J.S.A. 30:4C-15.1(a) are established by clear and convincing evidence. In re Guardianship of K.H.O., 161 N.J. 337, 347-48 (1999). "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." Id. at 348.

N.J.S.A. 30:4C-15.1(a) requires DCPD to prove:

- (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 division 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.

After carefully reviewing Father's arguments in light of the record and applicable legal principles, we are convinced that there is no basis for us to disturb Judge Axelrad's well-reasoned decision that DCPD has established by clear and convincing evidence that termination of Father's parental rights was warranted. We see no support in the record for Father's argument that the trial court based its decision on his limited income or that the court overlooked the effects of the COVID-19 pandemic on his ability to secure full-time employment and suitable housing. The record demonstrates that Father was given ample opportunity, including the provision of services by DCPD, to address his substance abuse issues and secure the employment and housing necessary to provide his children with the stable home and support to which they are entitled. We, therefore, affirm the February 23, 2023 judgment for the reasons stated in Judge Axelrad's comprehensive oral opinion. Father's arguments are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION