

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2088-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

C.F.,

Defendant-Appellant,

and

J.N. (deceased),

Defendant.

IN THE MATTER OF THE
GUARDIANSHIP OF J.N.,
a minor.

Submitted December 13, 2022 – Decided February 23, 2023

Before Judges Gilson, Rose, and Gummer.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Warren County,
Docket No. FG-21-0101-22.

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

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

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

PER CURIAM

C.F. (Cara) appeals from a judgment terminating her parental rights to her son, J.N. (Jack), and granting guardianship to the Division of Child Protection and Permanency (Division) with the plan that Jack be adopted by his paternal aunt, M.W. (Mia).¹ Cara argues that the Division failed to prove the four prongs of the child's best interests standard necessary for termination of parental rights. See N.J.S.A. 30:4C-15.1(a). Cara also contends that the family court misapplied the recent amendments to the law governing alternatives to termination of

¹ We use initials and fictitious names to protect privacy interests of the parties and the confidentiality of the record. See R. 1:38-3(d)(12).

parental rights, including consideration of kinship legal guardianship. The Division and the child's Law Guardian urge that we affirm the judgment and allow the adoption to proceed. Having reviewed the record in light of the parties' contentions and the applicable law, we affirm substantially for the reasons explained by Judge Haekyoung Suh in her thorough, thirty-nine-page written opinion dated February 22, 2022.²

The facts and evidence were detailed in Judge Suh's opinion, which she rendered after a three-day trial. Accordingly, we need only summarize some of the more relevant facts. Cara and J.N. (Joe) are the biological parents of Jack, who was born in December 2019. Joe, who struggled with drug addiction, tragically died in November 2021, approximately two weeks before the guardianship trial.

Cara suffers from mental-health issues and has been diagnosed with post-traumatic stress disorder, bipolar disorder, anxiety, and depression. Cara also abuses drugs; she has a long history of misusing heroin, cocaine, benzodiazepines, and methamphetamines.

² In a separate opinion, we affirm the order finding that Cara abused or neglected Jack. See N.J. Div. of Child Prot. & Permanency v. C.F., No. A-0419-21.

Jack was removed from Cara's care in June 2020, when Jack was six months old. The family court found that Cara had been using heroin, cocaine, and other unprescribed drugs while Jack was in her care. The court also found that Cara had not arranged to have a competent adult care for Jack when Cara was under the influence of drugs.

The Division arranged for numerous substance abuse evaluations and treatment programs for Cara. Cara, however, did not attend most of the evaluations and she failed to comply with treatment. Indeed, she repeatedly relapsed by using drugs. Between July 2020 and August 2021, Cara was hospitalized on six different occasions either for mental-health reasons or admitted drug use. Two of those hospital admissions were the result of Cara having overdosed on various drugs. She also had overdosed during a separate hospital stay, after having been admitted for reasons unrelated to her mental health and drug use. During that same year, Cara repeatedly tested positive for illegal drugs.

In the meantime, Jack was placed in the care of Mia, who is committed to adopting Jack. Before Mia made her decision to adopt, the Division advised her of the option of kinship legal guardianship, which she rejected. During the period that Jack was with Mia, Cara had the right to regularly visit Jack. Cara,

however, missed most of those visits and attended only about a quarter of the over eighty scheduled visits.

The guardianship trial was conducted on November 30, 2021, January 28, 2022, and February 3, 2022. Judge Suh heard testimony from six witnesses: three Division workers; Mia; Dr. Mark Singer, an expert called by the Division; and Dr. Susan Blackwell-Nehlig, an expert called by the Law Guardian.

The Division workers testified about their involvement with Cara and Jack, including Cara's drug abuse and the Division's efforts to help Cara achieve and maintain sobriety. They also detailed the services made available to Cara and the Division's efforts to find kinship care for Jack.

Mia testified about her involvement with Jack and her desire to adopt him. She explained that she has been caring for Jack since June 2020. She also explained that the Division had spoken to her about kinship legal guardianship, she understood the difference between guardianship and adoption, and she believed adoption was in Jack's best interest.

Dr. Singer and Dr. Blackwell-Nehlig testified about the psychological and bonding evaluations they had conducted of Cara and her relationship with Jack, as well as the bonding evaluations they had conducted of Jack and Mia. Both doctors were qualified as experts in psychology, parental fitness, and bonding.

Both doctors opined that Cara was not ready to parent Jack and would not be ready to parent the child anytime in the foreseeable future. The doctors opined that Jack would suffer only minor harm if Cara's parental rights were terminated and that he had a secure bond with Mia. In addition, the doctors explained that Jack needed permanency and neither doctor thought that kinship legal guardianship was a good option.

Based on that evidence, Judge Suh made extensive findings of facts and conclusions of law. She found that each of the witnesses was credible in varying degrees. In particular, the judge found Mia was a strong witness. Judge Suh then found that the Division had proven each of the four prongs of the child's best interests standard by clear and convincing evidence.

Addressing prong one, the judge found that Cara's parental relationship had and would continue to have a deleterious effect on Jack's health and development. Relying on Cara's "longstanding and well-documented" history of drug abuse and her lack of engagement with mental-health services, the judge found that Cara could not care for herself or Jack. The judge also noted Cara's lack of engagement with Jack as reflected in her repeated failure to regularly visit him.

Turning to the second prong, Judge Suh found Cara was unwilling or unable to eliminate the harm facing Jack because she repeatedly failed to address her addictions. In making that determination, the judge relied on Dr. Singer's testimony that Cara was unlikely to become a minimally adequate parent in the foreseeable future and that Cara had not yet entered recovery due to her inability to maintain a drug-free lifestyle. The judge noted the various substance abuse evaluations and treatment programs made available to Cara but found that Cara had not attended most of the evaluations and had not completed or did not comply with treatment.

Concerning prong three, the judge found that the Division had made reasonable efforts to provide services to Cara. The judge detailed the various referrals the Division had made for substance abuse evaluations and treatment programs. Based on the evidence presented at trial, however, the judge found that Cara did not avail herself of many of these evaluations or treatment programs. Judge Suh also found that the Division had explored alternatives to termination of parental rights, including kinship legal guardianship. The judge recognized that both Dr. Singer and Dr. Blackwell-Nehlig had opined that kinship legal guardianship was not appropriate in this case and that Dr.

Blackwell-Nehlig had opined that Cara's continued contact with Jack would cause Jack harm.

Finally, addressing prong four, Judge Suh found that termination of Cara's parental rights would not do more harm than good. In reaching that conclusion, the judge again relied on the unrebutted testimonies of Dr. Singer and Dr. Blackwell-Nehlig. Both doctors testified that Jack would not suffer any significant harm if Cara's parental rights were terminated because Jack did not have a strong relationship with Cara. Judge Suh also relied on Dr. Singer's testimony that Cara was unlikely to become a viable parent and that adoption by Mia was the best plan for providing Jack with permanency.

On appeal, Cara contends that the family court erred in terminating her parental rights, and she challenges the court's conclusions on each of the four prongs. Cara also argues that the family court failed to apply the amended law concerning alternatives to termination of parental rights and the reasonable efforts aimed at preserving family unity under prong three. See N.J.S.A. 30:4C-15.1(a)(3).

A review of the record establishes that all of Judge Suh's findings concerning the four prongs are supported by substantial and credible evidence. N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448 (2012). Moreover,

Judge Suh correctly summarized the law and correctly applied her factual findings to the law. See N.J. Div. of Child Prot. & Permanency v. D.C.A., 474 N.J. Super. 11, 29-30 (App. Div. 2022); N.J. Div. of Child Prot. & Permanency v. P.O., 456 N.J. Super. 399, 407 (App. Div. 2018). In that regard, our Supreme Court has recognized: "In a termination of parental rights trial, the evidence often takes the form of expert opinion testimony by psychiatrists, psychologists, and other mental health professionals." N.J. Div. of Child Prot. & Permanency v. R.L.M., 236 N.J. 123, 146 (2018). Judge Suh properly relied, in part, on the un rebutted testimonies of Dr. Singer and Dr. Blackwell-Nehlig, both of whom conducted several evaluations and had factual bases for their opinions. Judge Suh also found that other evidence supported and collaborated the testimonies of the two experts.

We also address Cara's arguments that Judge Suh misinterpreted and misapplied recent amendments to the law concerning kinship legal guardianship and a child's relationship with a foster parent or parents. Cara contends that she should have been given more time to achieve sobriety and that her parental rights should not have been terminated because Mia could have cared for Jack as a kinship legal guardian.

Effective July 2021, various sections of statutes concerning child protective services were amended. See L. 2021, c. 154. The Legislature declared "[k]inship care is the preferred resource for children who must be removed from their birth parents" and amended several statutes "to strengthen support for kinship caregivers[] and ensure focus on parents' fitness and the benefits of preserving the birth parent-child relationship, as opposed to considering the impact of severing the child's relationship with the resource family parents."³ L. 2021, c. 154, § 1. Consistent with that intent, the Legislature made several amendments to the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-1 to -7, including elimination of the requirement that adoption of the child be "neither feasible nor likely" before a court may appoint a guardian. L. 2021, c. 154, § 4; N.J.S.A. 3B:12A-6(d)(3). The Legislature also amended prong two of the child's best interests standard to remove the sentence: "Such harm may include evidence that separating the child from his resource family parents would cause serious and enduring emotional or psychological harm to the child." L. 2021, c. 154, § 9; N.J.S.A. 30:4C-15.1(a)(2).

³ The Legislature's findings and declarations appear as a note to N.J.S.A. 30:4C-83.

Cara argues that Judge Suh misinterpreted these amendments by (1) giving too much consideration to Mia's desire to adopt Jack; and (2) improperly allowing the experts to testify about the bond between Jack and Mia. We reject these arguments as misinterpretations of Judge Suh's findings.

Judge Suh properly considered that Mia had been informed of the option of kinship legal guardianship, but that Mia did not believe that guardianship was appropriate because it was not in Jack's best interests. In amending the Kinship Legal Guardianship Act and prong two of the child's best interests standard, the Legislature was not foreclosing adoption. Instead, it was emphasizing the need for consideration of kinship caregiving. In Cara's situation, both the Division and Judge Suh properly considered Mia's role in providing kinship care to Jack. The evidence presented at the guardianship trial, however, supported Judge Suh's finding that termination of Cara's parental rights was in Jack's best interest.

Dr. Singer and Dr. Blackwell-Nehlig both testified about the harm Jack would experience if his relationship with Mia was terminated. Judge Suh properly permitted that testimony explaining that she would only consider the testimony in connection with prong four of the child's best interests standard. We have held that the amendment to prong two does not foreclose family courts from considering the bond between a child and a foster parent under prong four.

See D.C.A., 474 N.J. Super at 26-29. We explained that courts can still "make an evidentiary inquiry into the status of children in placement, to determine whether the child is likely to suffer worse harm in foster or adoptive care than from termination of the biological parental bond." Id. at 26. Accordingly, Judge Suh properly allowed the experts to testify about the bond between Jack and Mia and properly circumscribed how she used that testimony by not considering it under prong two but giving it some consideration under prong four.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION