

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2237-21

IN THE MATTER OF THE
ADOPTION OF A CHILD
BY C.M.

Submitted March 29, 2023 – Decided June 23, 2023

Before Judge Vernoia and Firko.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Union County, Docket
No. FA-20-0105-16.

A.A., appellant pro se.

Matthew J. Platkin, Attorney General, attorney for
respondent New Jersey Division of Child Protection
and Permanency (Donna Arons, Assistant Attorney
General, of counsel; Lisa J. Rusciano, Deputy Attorney
General, on the brief).

PER CURIAM

Petitioner A.A. (Ann)¹ appeals from a January 26, 2022 Family Part order entered following a plenary hearing, denying her verified petition to vacate a 2016 judgment of adoption of her biological son J.M. (Jason) in favor of the child's paternal grandmother C.M. (Carol).² Based on our review of the record, we are convinced the judge correctly determined Ann did not establish an entitlement to relief from the judgment of adoption under Rule 4:50-1(f) and affirm.

I.

Ann became involved with the Division of Child Protection and Permanency (Division) in June 2013, when the court granted custody, care, and supervision of Jason, who was born in June 2010, to the Division based on allegations that Ann and A.M. (Alan), Jason's biological father, were abusing drugs. Jason was placed with Carol in 2013 and remained with her thereafter. Carol was committed to adopting Jason.

In May 2015, when the protective services matter under docket number FN-7464-13 was pending, Ann left New Jersey and went to Virginia to care for

¹ We use initials and pseudonyms to protect the privacy interests of the child and individuals involved in this matter as the matter involves an adoption. R. 1:38-3(16).

² The judgment of adoption is not included in the record.

her mother, who allegedly attempted suicide. Ann called Division caseworker Kelly Hill and left a voicemail message stating she did not want Jason back, but also did not want Carol and Alan to raise him. Ann requested the Division place Jason with another family. Hill returned Ann's call, and they had a "long discussion about the message." Ann said she could not raise a child and "only wanted the best for [Jason] and he deserved a good life." Ann was represented by counsel at the time but claimed they "did not see eye to eye." Hill asked Ann to think about her decision and put it in writing before the next court date.

On July 16, 2015, the Division sent Ann a certified letter to her mother's home in Fairfax Station, Virginia, confirming the sum and substance of a voicemail from Ann to Hill. In the voicemail message, Ann told Hill she "no longer wanted to be reunified with [Jason] and wanted him to be adopted . . . before his fifth birthday." Ann went on to say it would be "really wonderful if Jason could spend his fifth birthday with his new family," and left her phone number. The Division also notified Ann of a July 23, 2015 court hearing date and advised she could appear by phone. Ann signed and returned the certified mail return receipt card.

Ann did not attend the July 23, 2015 hearing but was represented by private counsel. For reasons that are unclear in the record, her counsel moved

to be relieved. The motion was granted. The judge directed a 5A form for appointment of a public defender be mailed to Ann. The court scheduled mediation and a permanency hearing for September 22, 2015.

On July 28, 2015, the Division sent Ann another letter to her mother's home in Fairfax Station, Virginia advising she "no longer [had] an attorney to represent [her] interest in court." The letter provided the date for the mediation and a permanency hearing being held in Essex County, at which time the judge would determine if the goal of reunification with Jason should be changed. A 5A form was enclosed with the letter. Sometime in September 2015, Ann returned to New Jersey.

On September 21, 2015, Ann was noticed and participated in the mediation and permanency hearing by telephone as reflected in the court's order entered that day. She completed the 5A form, and the judge approved the "new 5A" application for appointment of counsel. The judge questioned Ann about her position. She responded that adoption seemed more permanent and "would end the case sooner." Therefore, she chose that option and considered a voluntary surrender. The judge advised Ann she needed to have an attorney appointed and further court hearings would be held. That day, the judge

approved the Division's plan of termination of parental rights followed by adoption.

In November 2015, Division caseworker Kenisha Jamison was assigned to the matter. Jamison attempted to contact Ann via telephone, text messages, and letters, without success. Jamison then contacted Ann's father, T.A. (Tom), for assistance in reaching Ann in order to serve her with the guardianship complaint. Eventually, Ann called Jamison back, who explained she was Ann's adoption caseworker, and the two met at Ann's home in West Orange.

On December 2, 2015, at 4:00 p.m., Jamison personally served Ann at her West Orange home with an order to show cause (OTSC), the guardianship complaint, and a 5A form. Ann accepted the documents. Jamison explained that the case goal had changed from reunification to adoption and described Ann's next steps in the process. Thereafter, Jamison tried to contact Ann to discuss the case to inform Ann she "needed to be aware" of the proceedings, but was unable to reach her. Ann sent Jamison a text message which advised, "never to contact her again." Jamison's continued attempts to reach Ann were futile.

Ann did not appear for the December 8, 2015 case management conference, but the judge left her a telephone message to call back. Despite being personally served with notice, Ann did not participate in any subsequent

guardianship hearings. On January 12, 2016, the judge entered default against Ann. On February 3, 2016, the Division sent a letter to Ann at her home address advising her as to: the entry of default; the risk that her parental rights to Jason might be terminated; how to potentially vacate the default; the judge's phone number; and the next court date, February 18, 2016. The letter advised Ann that because default was entered against her, she could not present any affirmative defenses; the court would proceed in her absence; and her attendance was mandatory. Ann did not appear for the February 18, 2016 court date. That same day, Alan executed an identified surrender to his mother Carol. The record indicates Alan continued to live at Carol's home with Jason up through the adoption and thereafter.

On February 26, 2016, the Division sent Ann a follow-up letter, which reiterated that default had been entered against her, and her parental rights may be terminated at the next court hearing. The Division also advised Ann that a proof hearing was scheduled for March 15, 2016, and that if she appeared, the default might be vacated. The February 26 letter included the name and address of the judge. Ann did not appear in court on March 15, 2016. Based on the Division's testimony, documentary evidence, and cross-examination by the Law Guardian, the judge terminated Ann's parental rights and entered a judgment of

guardianship that day. The record supports the determination that Ann had forsaken her parental obligations to Jason. In June 2016, Carol adopted Jason in Union County.

According to Ann, she continued to see Jason after Carol adopted him. Beginning in October 2017, Ann picked up Jason every other weekend from Carol's home and saw him on his birthday, Halloween, and Easter. In August 2018, Jason went to the beach with Ann and her father. A year later, the three of them went to the shore for a week. For the 2019-2020 school year, Ann went "back to school" shopping for Jason, sometimes with Carol. During the pandemic, Jason attended school virtually at Carol's home. In July 2020, Jason stayed with Ann's father, Tom, for a month at his home in New York, where Ann saw Jason along with his stepsister.

In October 2020, Ann was advised by Alan that his mother, Carol, suffered a stroke and was hospitalized. That month, Alan had a seizure requiring hospitalization and left Jason alone with Carol's elderly boyfriend. Due to concerns about Jason's care, Ann picked him up from Carol's house and claimed he was "sweaty and disheveled" with "glue stuck in his hair." Ann thought Jason appeared "as if he had not eaten, showered, or slept in days." Alan advised Ann that Carol's boyfriend left Jason alone to pick Alan up from the hospital after he

had a seizure. After spending the weekend together, Ann claimed Jason, who was staying with her, did not want to go back to Carol.

On October 18, 2020, Ann asked Alan if Carol was released from the hospital and Alan stated she was going to an inpatient rehabilitation clinic for a least ten days. Ann chose not to return Jason to Carol's house because Ann claimed he had not bathed, eaten, or slept for days while he was there. Alan called the police for assistance in returning Jason to his and Carol's home because Ann refused to do so. Ann stated the police retrieved Jason and told her that he had been adopted. According to Ann, she never saw the judgment of adoption until the police showed it to her that day. Ultimately, Ann returned Jason to Carol's daughter, who was acting on Carol's behalf pursuant to her power-of-attorney. Ann and her father have not seen or spoken to Jason since October 23, 2020.

On March 12, 2021, almost five years after the judgment of adoption was entered, Ann's new private counsel filed a petition to vacate the judgment of adoption under Rule 4:50-1(f) and reinstate her parental rights. In terms of factual history, Ann alleged she left Alan because "he" was using drugs in their home, and she was not. She later obtained a final restraining order against him.

Ann asserted she worked with the Division and "engaged in services, including counseling, a methadone clinic," and obtained employment.

Ann claimed to "produce clean drug tests." The petition alleged the Division failed to give Ann "notice regarding the termination of her parental rights and/or the adoption of [Jason]," either when she returned to New Jersey or when the Division's caseworker came to her house on December 2, 2015. She alleged her father, Tom, continued to see Jason regularly. Ann asserted she picked Jason up every other weekend in 2018. In addition, the petition averred Ann "did not hear anything from her lawyer or [the Division]," and her due process rights were violated.

In the prayer for relief, Ann sought to vacate the judgment of adoption, or in the alternative, to reinstate her parental rights, implement visitation with Jason, have a Guardian Ad Litem appointed, and schedule a hearing to adjudicate the merits of her petition. Ann claimed the adoption should be set aside as "fraudulent" and "illegal" and that Carol is abusing Jason.³

On December 20, 2021, and January 26, 2022, the judge conducted a plenary hearing to address the allegations set forth in Ann's petition, specifically

³ Ann's former counsel sought to change venue from Union County, where the adoption took place, to Essex County, where the Title 9 and 30 proceedings took place. The judge denied the application.

to determine whether Ann received proper notice in the Title 9 and 30 proceedings. Ann, her father Tom, and caseworkers Hill and Jamison testified at the hearing. Tom testified Ann went to Virginia to care for her mother and that the goal was reunification between Ann and Jason. According to Tom, no one ever mentioned Carol sought to adopt Jason.

Hill testified as to her discussions and contacts with Ann from May to September 2015. Hill described Ann as being "jumpy and disheveled" at the time. According to Hill, she recorded contact sheets and Division records simultaneously as she was dealing with Ann. Jamison testified as to her efforts in contacting Ann, serving her with the pleadings, and the 5A form at Ann's home. Jamison also testified she "specifically recalled" that she had an obligation to continue to "contact" and "work" with Ann.

Ann testified she learned for the first time that Carol had adopted Jason in October 2020. She had weekend visits with Jason at the time and was about to return him to Carol when she learned that Carol had been hospitalized and would not be released for at least a week. Ann did not return Jason to Carol's home and Alan, who lived with Carol at the time, called the police for assistance. Ann said the police came to her home to retrieve Jason and informed her that he had been adopted.

Ann also testified that she first became involved with the Division in June 2013 when she had separated from Alan and took Jason with her to New York. The Division reached out to Ann, stating it had received a call about the family and wanted to ensure that Jason was safe. When Ann returned to New Jersey, the Division removed Jason from her care. A court appearance followed within a few days of Jason's removal, at which time Ann appeared and was represented by private counsel, who continued in the protective services case for nearly a year. Ann then hired a different attorney who represented her until July 2015.

In February 2015, Ann testified she attended a family team meeting and a court appearance represented by counsel. Ann maintained at the family team meeting, the Division discussed Kinship Legal Guardianship (KLG) for Jason as an alternative to termination of parental rights, but Ann was opposed to KLG. Ann confirmed she went to Virginia in May 2015 to care for her mother and remained there until September 2015. Ann denied leaving Hill a voicemail message on May 26, 2015, or discussing the case with Hill. According to Ann, she never consented to terminate her parental rights and never wanted Jason to be adopted.

Ann denied ever receiving any mail from the Division while staying at her mother's home in Fairfax Station, Virginia. She testified she never received the

Division's July 16, 2015 certified letter and claimed that the signature on the return receipt card was not hers. Ann also denied receiving the July 28, 2015 Division letter. Ann testified that in September 2015, she returned to New Jersey. Ann claimed she had no notice of the permanency hearing that occurred on September 21, 2015, and denied being present at the mediation or the permanency hearing either in person or via telephone. Despite the permanency order and transcript of the hearing reflecting she was present, sworn in, and testified, Ann testified it was not her, but someone impersonating her, who appeared at the hearing.

Although Ann rejected KLG as an option for Jason, she testified that she thought "the Division just put it through without [her]," while she was in Virginia. Ann also testified that she believed Carol would have guardianship of Jason for "three to seven years." Ann assumed the court would notify her about returning for a hearing when the guardianship ended so Jason could be returned to her.

On January 26, 2022, in an oral decision, the judge denied Ann's petition to vacate the judgment of adoption. At the onset, the judge emphasized the July

2, 2021 statutory amendments to the KLG Act⁴ did not retroactively apply here because the subject termination of parental rights proceeding occurred in 2016. The judge found Jamison's testimony was consistent with the evidence; she had a specific recollection of serving Ann with the guardianship complaint; and that Ann responded with the "never contact me again" text message. The judge also determined that Hill contacted Ann regularly and accurately documented their interactions based on her "training and experience." In the judge's view, both Jamison's and Hill's testimony comported with the Division's records and the permanency hearing transcript.

Regarding Ann's testimony, the judge stressed she was "completely not credible pertaining to all the things that were occurring in court and with the Division" regarding Jason. The judge found Ann's claims that she never received multiple letters from the Division lacked credibility and that she was provided with proper notice of all court proceedings throughout, up to, and including the entry of the guardianship judgment. The judge found Ann's denial

⁴ On July 2, 2021, the Legislature enacted L. 2021, c. 154, deleting the last sentence of the statutory best interest test, N.J.S.A. 30:4C-15.1(a)(2), which read "[s]uch harm may include evidence that separating the child from [their] resource family parents would cause serious and enduring emotional or psychological harm to the child." However, the amendment took effect after the judgment of guardianship and judgment of adoption were entered in the matter under review.

about leaving Hill a voicemail message saying Ann hoped someone would adopt Jason was "simply not credible."

Even though Ann denied appearing telephonically at the September 21, 2015 permanency hearing, the judge explained the details of Ann's life and circumstances placed on the record at the time of that hearing undermined her claim that she was unaware of what was happening in her case and found her denials were "completely incredible." The transcript of the September 21, 2015 permanency hearing was admitted into evidence by the judge, who took judicial notice of the contents thereof.⁵ The judge further noted that the record reflected a discussion about Ann getting an attorney because her prior counsel was no longer representing her. The judge found Ann's testimony was "self-serving, buttressed by no corroborative evidence."

The judge concluded that the Division's evidence was "absolutely clear about the efforts that were being made" as well as Ann's position "during that critical period," and the "evidence [was] overwhelming" in favor of the Division. The judge observed Ann chose not to participate in the guardianship proceedings, and she otherwise stated at the time these proceedings were

⁵ N.J.R.E. 201 (a)(4) allows judicial notice to be taken of "records of the court in which the action is pending and of any other court of this [S]tate or federal court sitting for this [S]tate."

ongoing that she would not parent Jason. The judge emphasized that Jason had been in placement "for a long period of time" and needed permanency. In addition, the judge did not find that Carol, Alan, or the Division committed any fraud in connection with the prior proceedings, and Ann did not proffer any evidence on the fraud claim.

Thus, the judge determined that Ann failed to sustain her burden under Rule 4:50-1(f) to demonstrate "excusable neglect" or a "meritorious defense." The judge added Ann provided "no evidence" as to Jason's best interests or "her current level of parental fitness," or "lack of notice." The judge discounted Ann's testimony that the signature on the certified mail receipt was not hers because "she can't identify who that might have been." A memorializing order was entered. This appeal ensued.

II.

In her self-authored merits brief and response letter brief, Ann primarily argues the judgment of adoption should be vacated because her statutory and constitutional due process rights were violated regarding the parental termination proceedings; fraud was committed during the adoption process; Jason's rights are being violated; Jason's custody and care should be returned to her because he is being abused by Carol and Alan; she did not receive proper

notice of the adoption proceedings; and "changes in the law in July 2021" warrant relief.⁶ We disagree with all of these arguments and affirm the order under review.

Our scope of review is limited. Generally, findings by a trial court "are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998) (citation omitted). We reverse only when the trial court's findings were "so wide of the mark that a mistake must have been made." N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 279 (2007) (citations omitted).

A. Violation of Procedural and Substantive Due Process Rights

Ann contends her procedural and substantive due process rights were violated because she did not receive notice of the adoption hearing and did not have adequate time to prepare and respond, citing New Jersey Division of Youth & Family Services v. B.M., 413 N.J. Super. 118, 126-27 (App. Div. 2010). In support of her argument, Ann claims she was not properly advised that her parental rights were being terminated, and she was not advised of her statutory

⁶ Ann's merits brief, response letter brief, and appendix reference factual information and documents that are not part of the record below in violation of Rule 2:5-4(a). We do not consider this information or the documents in reaching our decision on appeal.

right to counsel, resulting in her not having representation during "critical stages" of the termination and adoption proceedings. We disagree.

While "[i]t is well[-]established as a matter of due process principles that procedural requirements are more demanding in parental termination cases than in ordinary civil actions," due process "is a flexible concept and calls for such procedural protections as the particular situation demands." N.J. Div. of Youth & Fam. Servs. v. M.Y.J.P., 360 N.J. Super. 426, 464-65 (App. Div. 2003).

An action for termination of parental rights is a civil action. The requirements of due process do not confer a constitutional right of confrontation or mandate a parent's presence at the trial. . . . The question to be answered is not whether particular procedures were used, but rather whether those procedures which were employed were appropriate and adequate to protect the interests at stake.

Procedural due process standards require the opportunity for meaningful participation by the person at risk of limitation in any trial in which important rights or interests are to be adjudicated.

[Id. at 467-68 (citations omitted).]

In determining whether a parent's due process requirements have been met, our courts have applied the three-prong test set forth in Mathews v. Eldridge, 424 U.S. 319, 335 (1976). This test requires the court to consider: (1) "the private interest that will be affected by the official action;" (2) "the risk of

an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Ibid. In balancing the third factor, we relied on a New York case, which held:

[T]he children's right to a prompt determination of their status is just as important as the interest of the father, and that an indefinite delay of the children's right is a more egregious deprivation than the father's loss of his right to be present at the hearing. This right of the father is only one part of his due process rights in these proceedings, and its loss will not necessarily deprive him of a fair hearing. The risk that his absence will lead to an erroneous decision can be reduced or eliminated by permitting him to give testimony by deposition, if possible, and by his representation at trial by his attorney. The loss by the children of their day in court will, on the other hand, deprive them completely of their right to a judicial determination of their status.

[M.Y.J.P., 360 N.J. Super. at 470-71 (quoting Matter of Raymond Dean L., 490 N.Y.S.2d 75, 78 (App. Div. 1985)).]

The Division argues that while Ann's petition seeks to vacate the judgment of adoption, the real issue is whether the default judgment of termination of her parental rights under N.J.S.A. 30:4C-15—the basis for the judgment of adoption—should be vacated. In addition, the Division contends the notice

provision set forth in N.J.S.A. 9:3-46 does not apply to the adoption proceedings here because the judgment of guardianship had terminated Ann's parental rights to Jason, and she was not required to consent to the adoption. We agree.

Based upon our careful review of the record, we are satisfied the Division duly served Ann with notice of the guardianship proceeding under N.J.S.A. 30:4C-17(b) because the judge found Jamison credibly testified that she personally served Ann with the guardianship complaint at her West Orange home and that Ann accepted service of the documents. The judge found Ann was not credible on this issue.

The relevant portion of the statute requires the notice to inform the parent of the purpose of the action and of the right to file written objections to the guardianship proceedings within "[twenty] days after notice is given in the case of a resident and [thirty-five] days after the filing in the case of a nonresident." Failure to object within that time period constitutes a waiver of the right to object. In sum, we concur with the judge that Ann was afforded procedural due process and given proper notice in the termination proceeding, from which she did not appeal. Therefore, Ann was not subject to the notice provision set forth in N.J.S.A. 9:3-46 because her parental rights were terminated under N.J.S.A.

30:4C-15. We also note that an order terminating parental rights ends any legal entitlement to visitation.

The evidence clearly supports the judge's determination that Ann was duly served personally with the guardianship complaint under N.J.S.A. 30:4C-17(b) for the reasons stated. There was no ambiguity as to whether the guardianship litigation had commenced and that the Division sought to terminate her parental rights. The record is bereft of any evidence to the contrary. We are convinced Ann's procedural due process rights were not infringed.

In her petition and on appeal, Ann argues that under N.J.S.A. 9:3-46(a),⁷ a biological parent is entitled to notice and has the right to object to the adoption of their child within twenty days of the filing of the complaint for adoption but concedes notice need not be given to a parent if their rights have been terminated. Since we have determined that the judge correctly found Jamison credibly testified that she personally served the guardianship complaint on Ann

⁷ N.J.S.A. 9:3-46(a) states:

A person who is entitled to notice pursuant to section 9 of P.L. 1977, c. 367 (C.9:3-45) shall have the right to object to the adoption of [the] child within [twenty] days after the filing of the complaint for adoption for a State resident and [thirty-five] days after the filing in the case of a nonresident. Failure to object within that time period constitutes a waiver of the right to object.

at her home and that Ann accepted the complaint, OTSC, and 5A form, her parental rights were properly terminated. Therefore, Ann was not required to be noticed under N.J.S.A. 9:3-46(a) relative to the adoption proceedings and she was not deprived of her procedural due process rights. We now address Ann's argument that she was deprived of substantive due process, which overlaps with her Rule 4:50-1(f) argument.

B. Rule 4:50-1(f)

The Supreme Court has sanctioned the use of Rule 4:50-1 to vacate a judgment terminating parental rights. In re Guardianship of J.N.H., 172 N.J. 440, 473-74 (2002). The Court adopted a two-part test. First, a parent's motion "'must be supported by evidence of changed circumstances' as the 'moving party bears the burden of proving that events have occurred subsequent to the entry of a judgment to justify vacating the judgment.'" N.J. Div. of Youth & Fam. Servs. v. T.G., 414 N.J. Super. 423, 434 (App. Div. 2010) (quoting J.N.H., 172 N.J. at 473).

Secondly, "[t]he focus of a termination proceeding is the 'best interests' of the child." J.N.H., 172 N.J. at 471; see also N.J. Div. of Youth & Fam. Servs. v. L.L., 201 N.J. 210, 228 (2010). The trial court must consider the child's best interests because it may affect the child's stability and permanency. "[T]he

primary issue is . . . what effect the grant of the motion would have on the child." J.N.H., 172 N.J. at 475. Having considered Ann's Rule 4:50-1(f) arguments on appeal, we affirm substantially for the reasons expressed by the judge. We add the following comments.

We leave undisturbed a trial court's decision on a Rule 4:50-1 motion "unless it represents a clear abuse of discretion." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994). An abuse of discretion occurs when a decision is "'made without a rational explanation, inexplicably depart[s] from established policies, or rest[s] on an impermissible basis.'" US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467-68 (2012) (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

Rule 4:50-1 "'is designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case.'" BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J. Super. 117, 123 (App. Div. 2021) (quoting Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120 (1977)).

Where, as here, a court has entered a default judgment pursuant to Rule 4:43-2, the party seeking to vacate the judgment must meet the standard of Rule 4:50-1, which permits a court to:

relieve a party . . . from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and for which by due diligence could not have been discovered in time to move for a new trial under [Rule] 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

[Guillaume, 209 N.J. at 467 (quoting R. 4:50-1).]

Guided by these principles, we conclude the judge did not exceed his discretion in denying Ann's petition under Rule 4:50-1(f). Default was properly entered against Ann, and the record supports the conclusion she was given proper notice of all the court proceedings through the entry of the guardianship judgment.

Here, the judge found Hill and Jamison were credible in advising Ann through several letters and conversations about the status of the termination of

parental rights case and encouraging her to obtain new counsel and participate. Given the judge's determination that Ann was not credible, it was appropriate to deny the Rule 4:50-1(f) relief sought in her petition. The judge found Hill and Jamison communicated with Ann and that Jamison personally served Ann with the OTSC, complaint for guardianship, and 5A forms at her home.

Jamison also credibly testified that Ann sent her the text message—"never to contact her again." Moreover, the judge took judicial notice of the court hearing transcript and order generated following the September 21, 2015 permanency hearing proceeding, which Ann denied participating in, but the record reflected to the contrary. Ann's petition was properly denied because it was based solely on facts on which the judge concluded there is no credible evidential support in the record.

C. Fraud

Ann also challenges the judge's decision denying her petition and claims the adoption must be vacated because of fraud committed by Carol and Hill. In support of her argument, Ann claims the fraudulent acts are as follows:

- (1) she never received the Division's July 28, 2015 letter while staying with her mother in Virginia and did not sign the certified mail, return receipt card;

(2) she never participated by phone in the September 21, 2015 mediation or permanency hearing and was never notified of this court hearing; and

(3) Hill misrepresented the alleged "heart to heart" conversation she had with Ann about not wanting Jason back and consenting to Carol adopting him. Ann claims Hill's testimony is contradicted by an earlier telephone record where Hill allegedly stated Ann called her out on her lies and refused to speak to her without a witness present or otherwise communicate in writing.

Ann contends Carol and Hill essentially conspired and committed fraud by allowing Carol to adopt Jason "so that she could continue to receive foster care money from the [S]tate," evidencing "motive." According to Ann, she would not have "given up" her son to Carol who "horribly abused" Alan.

Ann also claims Hill "never liked" her from the beginning because of her "youth and social status" and refusal to "just go along" with the allegations in the Division's narrative. Ann also contends Hill "did not like being told she was wrong" about her and seized the opportunity when Ann went to Virginia "to falsify documents" to state Hill was in contact with Ann and notified her about court dates. These contentions are devoid of merit.

Fraud is defined as "[a] knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment." Black's Law Dictionary (11th ed. 2019). From a procedural

standpoint, we note Ann's petition does not plead fraud with specificity as required by Rule 4:5-8(a). The Rule provides for "Pleading Special Matters." Subsection (a) addresses "Fraud; Mistake; Condition of Mind[;]" and provides:

In all allegations of misrepresentation, fraud, mistake, breach of trust, willful default or undue influence, particulars of the wrong, with dates and items if necessary, shall be stated insofar as practicable

Ann's petition is comprised of only one count—"Set Aside Adoption."

Notwithstanding this procedural issue, Ann's claims of fraud, as articulated in her petition, were tested during the hearing, and the judge determined the fraud claims were unsupported by evidence the judge found credible. We are satisfied the record supports the judge's factual findings and conclusions that fraud was not committed by the Division or anyone against Ann.

D. KLG Act Retroactivity

We reject Ann's argument that the July 2, 2021 amendment to the KLG Act, N.J.S.A. 3B:12A-1 to -7, should be applied retroactively. The amendment removed the language requiring the court to consider KLG as an option only when "adoption is neither feasible nor likely." L. 2021, c. 154 § 4. Under the recent amendment, KLG may be considered when adoption remains an option.

Laws are not applied retroactively unless such intention is clearly expressed in the legislation. See Pisack v. B & C Towing, Inc., 240 N.J. 360, 371 (2020) (quoting Cruz v. Cent. Jersey Landscaping, Inc., 195 N.J. 33, 49 (2008)) (explaining that an amended statute's immediate effect date "bespeak[s] an intent contrary to, and not supportive of, retroactive application"). The amendment to the KLG Act did not express a retroactive intent because the Legislature stated the amendment was to "take effect immediately." L. 2021, c. 154, § 10. Further, when the Legislature is silent on the matter of retroactivity, as in this case, it is a signal to the judiciary that the Legislature intended a prospective application of the amendment. See Olkusz v. Brown, 401 N.J. Super. 596, 501-02 (App. Div. 2008).

Thus, we are satisfied the judge appropriately concluded the July 2, 2021 amendment to the KLG Act was not to be applied retroactively, and he was not obliged to consider KLG as an alternative remedy to termination of parental rights or adoption here. Regardless of whether the amended statute should be applied retroactively, the judge found Ann's parental rights were properly terminated, and the adoption was final. We are convinced the judge's findings and conclusions are unaffected by the amendment to the KLG Act. Nothing in

the amendment changed the guiding principle that the focus is on the best interests of the child.

To the extent we have not discussed them, all other arguments raised on appeal lack sufficient merit to warrant discussion. 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