RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2288-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

A.P.,

Defendant-Appellant,

and

M.J.,

Defendant.

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IN THE MATTER OF THE
GUARDIANSHIP OF
K.L.P., a minor.[1]

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Argued December 19, 2022 – Decided January 3, 2023

[1] We use initials to protect the parties' privacy and the confidentiality of these proceedings. See Rule 1:38-3(d)(12).

Before Judges DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Ocean County, Docket No. FG-15-0025-21.

Victor E. Ramos, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Victor E. Ramos, of counsel and on the briefs).

Julie B. Colonna, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Donna Arons, Assistant Attorney General, of counsel; Julie B. Colonna, on the brief).

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

PER CURIAM

Defendant A.P. appeals from a March 10, 2022 judgment terminating her parental rights to her biological daughter, K.L.P. Defendant contends that the Division of Child Protection and Permanency (the "Division") failed to prove each prong of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence. The Law Guardian supports the termination on appeal, as she did before the trial court.

Based on our review of the record and applicable law, we are satisfied that the evidence in favor of the guardianship petition overwhelmingly supports the decision to terminate defendant's parental rights. Accordingly, we affirm, substantially for the reasons set forth by Judge Deborah S. Hanlon-Schron in her thorough oral opinion rendered on March 10, 2022.

We will not recite in detail the history of the Division's interactions with defendant and K.L.P. Instead, we incorporate by reference the factual findings and legal conclusions contained in Judge Hanlon-Schron's decision. We write only to add the following brief comments.

The guardianship petition was tried before the family judge over the course of three days. The Division presented overwhelming evidence of defendant's parental unfitness and established, by clear and convincing evidence, all four statutory prongs outlined in N.J.S.A. 30:4C-15.1(a).[2] In her

[2] As amended by the July 2, 2021 amendments, the statute provides that parental rights may be severed only when:

> (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

thoughtful opinion, Judge Hanlon-Schron concluded that termination of defendant's parental rights was in K.L.P.'s best interests and fully explained the basis for each of her determinations.

Our scope of review from orders terminating parental rights, such as here, is limited. See Cesare v. Cesare, 154 N.J. 394, 411 (1998). In such cases, we will uphold the trial judge's factual findings, so long as they are "supported by adequate, substantial, and credible evidence." New Jersey Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 552 (2014) (citing New Jersey Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008)). Indeed, we must give substantial deference to Family Part judges' special expertise and opportunity to have observed the witnesses firsthand and evaluate their credibility. Id. at 553; Pascale v. Pascale, 113 N.J. 20, 33 (1988). Thus, a termination decision should

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> 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.
>
> [N.J.S.A. 30:4C-15.1(a).]

only be reversed or altered on appeal if the trial judge's findings are "'so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice[.]'" Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)). However, "[a] trial [judge's] interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Guided by these principles, we conclude that Judge Hanlon-Schron's factual findings are fully supported by the record, and in light of those facts, her legal conclusions are unassailable.

The relationship between a biological parent and their child is protected under the United States Constitution and New Jersey's Constitution. Stanley v. Illinois, 405 U.S. 645, 651 (1972); In re of Guardianship of K.H.O., 161 N.J. 337, 347 (1999). Our Supreme Court, however, has recognized that "the right of parents to be free from governmental intrusion is not absolute. 'The State as parens patriae may act to protect minor children from serious physical or emotional harm. In some instances, this may require a partial or complete severance of the parent-child relationship.'" N.J. Div. of Youth & Fam. Servs.

v. A.W., 103 N.J. 591, 599 (1986) (quoting In re Dep't of Pub. Welfare, 421 N.E.2d 28, 36 (Mass. 1981)).

In guardianship and adoption cases, such as here, it is well-established that "[c]hildren have their own rights, including the right to a permanent, safe, and stable placement." New Jersey Div. of Youth and Fam. Servs. v. C.S., 367 N.J. Super. 76, 111 (App. Div. 2004). We acknowledge "the need for permanency of placements by placing limits on the time for a birth parent to correct conditions in anticipation of reuniting with the child." Ibid. As public policy increasingly focuses on a child's need for permanency, "the emphasis has shifted from protracted efforts for reunification with a birth parent to an expeditious, permanent placement to promote the child's well-being." Ibid.

The question then is "whether the parent can become fit in time to meet the needs of their child." N.J. Div. of Youth & Fam. Servs. v. F.M., 375 N.J. Super. 235, 263 (App. Div. 2005); see also N.J. Div. of Youth & Fam. Servs. v. P.P., 180 N.J. 494, 512 (2004) (indicating that even if a parent is trying to change, a child cannot wait indefinitely). After carefully considering the evidence, Judge Hanlon-Schron reasonably determined that defendant was unable to parent K.L.P. and would not be able to do so for the foreseeable future.

Under these circumstances, we agree with the judge that any further delay of permanent placement would not be in the child's best interests.

We reject defendant's argument that the July 2, 2021 statutory amendments to the Kinship Legal Guardianship (KLG) Act, N.J.S.A. 3B:12A-1 to -7, and Title 30, L. 2021, c. 154, §§ 1 to 10, warrant reversal. First, the July 2, 2021 amendments to the KLG statute at N.J.S.A. 3B:12A-6(d)(3) merely relieved courts from having to find that adoption was "neither likely nor feasible" before granting KLG, which is a factor in the determination as to whether KLG is the appropriate permanency plan. As amended, the KLG statute simply ensures that a resource parent's willingness to adopt no longer forecloses KLG; however, the amendment to N.J.S.A. 3B:12A-6(d)(3) does not affect the court's application of the best interest test for parental termination cases as codified in N.J.S.A. 30:4C-15.1(a)(1) to (4).

Next, we reject defendant's argument that the judge improperly considered evidence of K.L.P.'s relationship with her caregiver in violation of the second prong of the best interest test. Effective July 2, 2021, N.J.S.A. 30:4C-15.1(a)(2) was amended to remove the sentence: "[s]uch 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." The Legislature,

however, "did not alter the other components of the best interest standard." N.J. Div. of Child Prot. & Permanency v. D.C.A., ___ N.J. Super. ___ (App. Div. 2022) (slip op. at 20).

Here, the family judge's analysis of the second prong comported with the new standard, as embodied in the recent amendment. Specifically, the judge found that defendant was unable or unwilling to eliminate the harm to K.L.P., which was caused by defendant's unabated substance abuse, mental health issues, and housing instability. In fact, the judge's only mention of the resource parent in her prong two analysis was to indicate that she was willing and able to provide K.L.P. with the permanency the child required.

Defendant goes a step further, however, arguing that the statutory removal of such language from the second prong also renders comparative bonding evaluations irrelevant under prong four. We reject defendant's contention, finding that "[n]either the legislative history nor the plain text necessitates such a sweeping conclusion." Ibid.

> We construe the deletion from prong two more narrowly than defendant urges, in a way that gives greater effect to the alteration, in a manner that remains coherent with prong four. The amended statute . . . requires a court to make a finding under prong two that does not include considerations of caregiver bonding, and then weigh that finding against all the evidence that may be considered under prong four—including the

> harm that would result from disrupting whatever bonds the child has formed.
>
> [Id. at 25.]

Therefore, we determine that the family judge did not misapply the best interest analysis under either prong two or four.

We next turn to defendant's argument that the caregiver's decision in favor of adoption in this matter was neither unequivocal nor properly informed. We have held that "[t]he decision of a resource parent to choose adoption over KLG must be an informed one." New Jersey Div. of Child Protection and Permanency v. M.M., 459 N.J. Super. 246, 260 (App. Div. 2019). Not only should the caregiver's consent be informed, "but also unconditional, unambiguous, and unqualified." Id. at 264.

To accomplish this objective, the legislature enacted the KLG Notification Act, N.J.S.A. 30:4C-89 to -92, which requires the Division to fully inform caregivers "of the potential benefits and burdens of KLG before deciding whether he or she wishes to adopt." Id. at 263. Once informed, "the caregiver's preference between the two alternatives should matter . . . ." Ibid.

Here, the caregiver testified that the Division explained to her the differences between KLG and adoption and provided her with a written form discussing those differences. Armed with the requisite knowledge, the caregiver

did not feel that KLG was the best option for her and her family, noting that she did "not want to be at the mercy of the biological parents and the [c]ourt for how they function their lives." The caregiver further testified as to her understanding of KLG, which she believed would require defendant's consent for various significant life decisions, including to enable K.L.P. to get surgery or to move the child out of state. The caregiver's concerns in this regard are not wholly incorrect, as we have held that KLG caregivers cannot take actions that impact parents' visitation rights without court approval. New Jersey Div. of Youth & Fam. Servs. v. T.M., 399 N.J. Super. 453, 465 (App. Div. 2008).

In addition, the caregiver testified that she preferred adoption as a means of providing the child with "stability," which establishes that the caregiver understood that defendant could seek to vacate a KLG arrangement and thus undermine the permanency she sought to provide. That she did not understand the precise legal process for vacating such an arrangement is insufficient to establish that the caregiver was uninformed.

Finally, we reject defendant's contention that N.J.S.A. 30:4C-15.1(a) necessitates that courts ensure children are fully informed of the nuances of all permanency options before rendering a guardianship determination. In termination cases, the court's over-arching duty is to protect the welfare of the

child. See E.P., 196 N.J. at 113. In deciding what is in the best interests of the child, "a child's wishes should be but one factor." Ibid. (holding that courts should allow children over the age of ten to express an opinion if the child requests the opportunity to do so). However, "[w]e are mindful that children's wishes may often not be in their own best interests." Ibid. Thus, although a child's preferences may be relevant, the responsibility to determine the best interest of the child ultimately rests in the sole discretion of the court. See ibid. ("Ultimately, the family court is charged with making decisions that will protect the health, safety, and welfare of the children who come before it.").

Here, K.L.P.'s wishes were adequately presented by the Law Guardian and the credible testimony of the Division's experts. Children "are statutorily entitled to an attorney to represent their interests" in parental termination cases. Ibid. (citing N.J.S.A. 30:4C-15.4(b) (requiring that "[a] child who is the subject of an application for the termination of parental rights . . . shall be represented by a law guardian[.]")). "'Law guardians are obliged to make the wishes of their clients known[.]'" Ibid. (quoting N.J. Div. of Youth & Fam. Servs. v. Robert M., 347 N.J. Super. 44, 70 (App. Div. 2002)). It is therefore important to note that, in the instant matter, the Law Guardian supports the termination on appeal, as it did before the trial court.

Additionally, despite the defense expert's testimony to the contrary—which the court afforded "little weight"—the Division's expert's testimony adequately represented K.L.P.'s wishes at trial. The Division's expert testified as to a private interview with K.L.P., where she stated that she wished to remain with her resource parent so that she would not have to move again. It is important to note that permanency was a central theme of the trial court's decision, as the child had already moved four times in the three years leading up to trial. Moreover, the court relied on the Division expert's testimony "in good part" in reaching its determination.

To the extent that we have not addressed defendant's remaining arguments, including defendant's ineffective assistance of counsel claim, we find that they lack insufficient merit to warrant discussion in a written opinion. Rule 2:11-3(e)(1)(E).

Affirmed.