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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2976-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

Y.P.T.,

Defendant,

and

J.R.W.,

Defendant-Appellant.

IN THE MATTER OF THE
GUARDIANSHIP OF
J.D.Y.W., a minor.

Submitted February 15, 2023 – Decided March 16, 2023

Before Judges Accurso, Vernoia and Firko.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, Docket No. FG-09-0126-21.

Joseph E. Krakora, Public Defender, attorney for appellant (Amy Vasquez, Designated Counsel, on the briefs).

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

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

PER CURIAM

Defendant J.R.W. (defendant)¹ appeals from a judgment of guardianship terminating his parental rights to J.D.Y.W. (Jack), who was born in October 2016. Based on our review of the record, the trial court's findings of fact and conclusions of law, and the parties' arguments, we are convinced the court correctly determined the New Jersey Division of Child Protection and Permanency (Division) proved by clear and convincing evidence termination of

¹ We employ initials and pseudonyms to identify the parties, the child, and others to protect the child's privacy and because records relating to Division proceedings held pursuant to Rule 5:12 are excluded from public access under Rule 1:38-3(d)(12).

defendant's parental rights is in Jack's best interests. Unpersuaded by defendant's arguments to the contrary, we affirm.

I.

Defendant and Y.P.T. (Yolanda) are Jack's biological parents. Prior to the trial in this matter, the court accepted Yolanda's identified surrender of her parental rights to Jack's resource parent, his maternal aunt Y.T. (Yvonne). Yolanda is therefore not a party to this appeal.

On the day following Jack's birth in 2016, the Division received a referral asserting Yolanda and Jack tested positive for phencyclidine (PCP), and Jack showed withdrawal symptoms. Yolanda later admitted using PCP.

That same day, a Division worker visited defendant at his mother's home to speak with him about Jack. The Division worker reported defendant was "not able to maintain his balance" or "stand[] without holding a chair or the kitchen table," and "was incoherent at times as he was barely able to maintain a meaningful conversation." Defendant denied any substance abuse issues but advised the Division worker he would not "attend a urine screen if the Division require[d] one." Defendant informed the Division worker "he [did] not want custody of" Jack and would not "attend[] court to file for custody." Defendant suggested custody of Jack be granted either to his mother or Yolanda's mother.

The Division worker further reported defendant "did not offer himself as a caretaker for his son and [he] stated . . . he is unwilling to undergo any drug testing and will not participate in any legal hearings on behalf of his son." Defendant advised the worker he was unable to care for Jack because "he was living from place to place." The worker reported defendant said he would visit Jack if the child was placed with Yolanda's mother and "that is the extent of his involvement."

The Division placed Jack with Yolanda's mother, who lived with Yvonne. Following a court proceeding that Yolanda and defendant attended, the court entered an October 26, 2016 order granting the Division custody, care, and supervision of Jack and requiring that Yolanda's mother "supervise[]" "all contact between" Yolanda and Jack. The order noted defendant had been provided with the name and phone number of the Division worker assigned to the matter and defendant should "comply with the Division's recommend[a]tions if he wishe[d] to be reunified with" Jack.

The Division subsequently referred defendant for an evaluation by a Clinical Alcohol and Drug Counselor (CADC) that defendant "failed to" attend. By contrast, Yolanda subsequently "compl[ied] with drug treatment and other

services." Accordingly, the Division "reunified" Jack with Yolanda in October 2017, and "closed its case" on January 23, 2018.

On September 26, 2018, the Division received a referral "reporting that [Yolanda] relapsed" and frequently used PCP while "leaving [Jack] alone for [two to three] hours." The Division implemented a safety protection plan requiring supervision of Yolanda's contact with Jack.²

Yolanda's mother advised the Division she could no longer supervise Yolanda's contact with Jack. On January 18, 2019, the Division attempted to visit defendant at his last known address but was advised defendant did not reside there. One week later, a Division worker spoke to defendant over the telephone and asked if he wanted "to be considered as a placement option for" Jack. Defendant responded that he preferred Jack "be placed" with his mother or Yvonne, and that he was living with his girlfriend at a Jersey City address he provided.

On January 29, 2019, the Division "executed a[n] emergency [Dodd] removal" of Jack, placing the child with his maternal aunt, Yvonne, who has

² Yolanda continued to test positive for PCP through January 2019.

thereafter remained his resource parent.³ The Division attempted to serve defendant with the removal papers, but the address he had provided to the Division did not exist.

The following day, defendant informed the Division he wanted what was best for Jack, and that "is why he wanted [Jack] placed with his mother . . . or [Yvonne]." He reported he "did not feel calm until he knew [Jack] was safe and placed with [Yvonne]," and he knew Jack "would be safe with [Yolanda's mother] and [Yvonne] so he felt okay about deciding to let them handle the case." Defendant also stated he had done "everything he could but felt as though it was best for him to stay out of the way and let [Yolanda's] family, including [Yvonne] and [Yolanda's mother], handle the logistics of the case." Defendant acknowledged starting to smoke marijuana "heavily once he found out the Division was involved once again with his son." A Division worker advised defendant he would be referred for an evaluation to determine if he needed substance abuse treatment.

³ A "Dodd removal" is an emergency removal of a child from the custody of a parent without a court order, as authorized by N.J.S.A. 9:6-8.29 of the Dodd Act, N.J.S.A. 9:6-8.21 to -8.82.

Defendant appeared for a January 31, 2019 court hearing, but "grew impatient and frustrated" because the hearing "start[ed] late." He spoke to someone on the phone, stating he was "about to leave" and "this is a waste of time." He was offered an opportunity to visit with Jack at the Division office that day, "but . . . indicated . . . he did not want anything to do with the Division." Following the court hearing, defendant "threw" the complaint the Division had served on him "in a trash can in the hallway."

The court entered a January 31, 2019 order to show cause for temporary custody, granting the Division custody, care, and supervision of Jack. The court order also directed defendant undergo a CADC substance abuse assessment.

Two weeks later, on the return date of the order to show cause, the court entered an order granting the Division continued custody, care, and supervision of Jack, as well as legal and physical custody of the child. The court ordered supervised visitation of Jack by his parents based on their substance abuse issues. The court further ordered defendant attend a substance abuse evaluation and treatment and submit to random alcohol and drug screenings.

The Division referred defendant for a substance abuse evaluation in February 2019. Defendant did not attend the first scheduled evaluation. The

Division rescheduled the evaluation twice, but defendant did not attend either of those evaluations.

During February and March 2019, Division caseworkers attempted to locate defendant at his mother's home on three separate occasions, but the caseworkers either could not gain access to the building or were informed defendant was not present. On April 2, 2019, a caseworker traveled to defendant's mother's home to follow up with defendant, encourage him to comply with the court's order and the services offered by the Division, and determine if defendant was visiting with Jack. No one answered at the home, and the caseworker called and spoke with defendant over the phone.

The caseworker asked if defendant was available to meet the following day, and defendant stated he could not meet because he had to attend a court proceeding concerning a "misdemeanor." Defendant then questioned the caseworker about the Division's need to know his "business" and "hung up the phone." The caseworker called defendant back and left a message, explaining the caseworker's interest in speaking to defendant in person about Jack. Defendant did not respond.

At a May 7, 2019 compliance review hearing, defendant's counsel appeared but defendant did not. The court ordered defendant attend a substance

abuse evaluation and submit to random drug screens. The record is bereft of evidence defendant complied.

In a May 24, 2019 Division report, a caseworker explained defendant "continues to be missing" and described the ongoing Division's efforts to locate him. The caseworker noted defendant's mother "refuses to inform the Division of her son's whereabouts."

In June and August 2019, the Division sent letters to defendant's last known address requesting defendant meet to discuss Jack, the court's orders, and the Division's services. In August 2019, the Division employed a police officer to locate defendant at multiple addresses he had previously provided, but the officer's efforts were unsuccessful.

The following month, a Division caseworker recognized defendant on a Jersey City street, approached him, and advised him the Division had been attempting to contact him to discuss Jack's case, visitation, and Division services. Defendant provided a Jersey City address as his residence. The caseworker later went to the address on two separate occasions, but no one answered. The worker left multiple phone messages for defendant at the number he had provided, but defendant never responded. Additionally, Division letters sent to the address defendant provided were unanswered. Between September

2019 and January 2020, defendant did not respond to any of the Division's efforts to contact him, and the evidence showed defendant failed to make any contact on his own with the Division.

On February 11, 2020, the Division concluded "a Permanency Plan of Kinship Legal Guardianship (KLG) was . . . appropriate" in light of Yolanda's "continued substance abuse" and defendant's "noncompliance" with the Division. Under the KLG plan, Yvonne cared for Jack while Yolanda and defendant retained their parental rights. Yvonne then favored the KLG arrangement because it gave Yolanda "a chance to abstain from PCP and to get her life together."

Defendant was consistently unresponsive to the Division's ongoing efforts to contact him during 2020. On occasion, he spoke to Division caseworkers, agreed to call the caseworkers and appear for requested meetings, but failed to do so in each instance. The Division continued to use various services to search for defendant's address without success.

By January 2021, Yvonne informed the Division she was no longer interested in KLG as a permanency plan due to Yolanda's ongoing substance abuse issues and lack of progress in treatment. The trial court approved "a revised plan of termination of parental rights followed by adoption by" Yvonne.

In March 2021, the Division filed a guardianship complaint. The court again ordered defendant to complete a substance abuse evaluation, psychological evaluation, and a parenting assessment. Arrangements were made with defendant's mother to effectuate service of the summons and complaint on defendant. During 2021, the Division continued its efforts to determine defendant's address and otherwise contact him, but defendant did not respond to the Division's efforts or comply with the court's orders.

A Division caseworker was first able to contact defendant directly on February 1, 2021. He advised he was living with an aunt, but he refused to provide the aunt's address. He also disclosed he was using marijuana daily. He informed the caseworker he would submit to substance abuse, psychological, and bonding evaluations, but despite numerous efforts by the Division to arrange those services, defendant failed to submit to any.

At the one-day guardianship trial, the Division presented the testimony of: Yvonne; Dr. Gerard Figurelli, who was qualified as an expert in the field of psychology; and Jason Swartwood, a Division adoption worker. The court also granted the Division's request to admit numerous records in evidence. Defendant testified on his own behalf and did not present any other witnesses. The Law Guardian did not present any witnesses.

Subsequent to the presentation of the evidence and closing arguments of counsel, the court issued a detailed and thorough written decision summarizing the matter's procedural history and making detailed factual findings as to each of the required elements of the best-interests-of-the-child standard set forth in N.J.S.A. 30:4C-15.1(a). Based on those findings, the court determined the Division sustained its burden of proving by clear and convincing evidence it was in Jack's best interests to terminate defendant's parental rights.

More particularly, the judge found defendant had engaged in a long term and consistent failure to: make himself available to provide Jack the care, secure home and parental attention the child deserves and needs; make himself available to participate in services offered by the Division; and provide Jack the permanency to which he is entitled. The court found those failures caused Jack harm and endangered Jack's safety, health, and development. The court also determined that although the Division attempted to provide reasonable services, defendant demonstrated disinterest and an unwillingness to address or remediate the harm that necessitated Jack's removal. The court further found the evidence established that termination of defendant's parental rights in favor of the permanent and secure home available through adoption by Yvonne will not do more harm than good.

The court entered a May 11, 2022 guardianship judgment from which this appeal is taken. On appeal, defendant presents the following arguments for our consideration:

[POINT I]

THE COURT ERRED IN HOLDING THAT [THE DIVISION] MET ITS BURDEN TO PROVE EACH ELEMENT OF N.J.S.A. 30:4C-15.1(a), AND THE JUDGMENT TERMINATING [DEFENDANT'S] PARENTAL RIGHTS TO [JACK] SHOULD BE REVERSED.

A. The court erred to hold in an incomplete decision that [the Division] met prong one and two because [the Division]'s evidence did not clearly and convincingly prove [Jack] was, or will continue to be, endangered by his parental relationship with [defendant] and [the Division] failed to demonstrate that [defendant] was unable to eliminate the harm facing the child or is unable or unwilling to provide a safe and stable home for the child and delay of permanent placement will add to the harm.

B. The court erred in holding that [the Division] met its burden to prove prong three as (1) the evidence overwhelmingly shows that [the Division] did not fulfill its statutory obligation to provide reasonable efforts to reunify the child with his parents once removed, and (2) the court failed to consider alternatives to termination followed by adoption.

C. The evidence was not clear and convincing that termination would not do more harm than good.

The Division and Jack's Law Guardian argue defendant's claims lack merit and therefore the guardianship judgment should be affirmed.

II.

Our review of a trial court order terminating parental rights is limited. N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007). "A Family Part's decision to terminate parental rights will not be disturbed when there is substantial credible evidence in the record to support the court's findings." N.J. Div. of Child Prot. & Permanency v. K.T.D., 439 N.J. Super. 363, 368 (App. Div. 2015) (citing N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448 (2012)). "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." F.M., 211 N.J. at 448. This enhanced deference is particularly appropriate where the court's findings are founded upon the credibility of the witnesses' testimony. N.J. Div. of Youth & Fam. Servs. v. H.B., 375 N.J. Super. 148, 172 (App. Div. 2005) (citing Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)); see also N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 293 (2007) (citation omitted) (explaining a reviewing court will defer to the trial

court's factual findings "because it observed the witnesses, weighed their credibility, and had the best 'feel' of the case").

"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 & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting G.L., 191 N.J. at 605). No deference is given to the trial court's "interpretation of the law," which we review de novo. D.W. v. R.W., 212 N.J. 232, 245-46 (2012).

A parent has a constitutionally protected right "to enjoy a relationship with his or her child." In re Guardianship of K.H.O., 161 N.J. 337, 346 (1999). That right, however, "is not absolute" and is limited "by the State's parens patriae responsibility to protect children whose vulnerable lives or psychological well-being may have been harmed or may be seriously endangered by a neglectful or abusive parent." F.M., 211 N.J. at 447 (emphasis in original). A parent's interest must, at times, yield to the State's obligation to protect children from harm. N.J. Div. of Youth & Fam. Servs. v. G.M., 198 N.J. 382, 397 (2009).

When terminating parental rights, the court must consider the "best interests of the child." K.H.O., 161 N.J. at 347. A petition to terminate parental

rights may only be granted if the following four prongs enumerated in N.J.S.A. 30:4C-15.1(a) are established by clear and convincing evidence:

- (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.

[N.J.S.A. 30:4C-15.1(a)(1)-(4).]

"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." K.H.O., 161 N.J. at 348. "[T]he cornerstone of the inquiry [under N.J.S.A. 30:4C-15.1(a)] is not whether the biological parents are fit but whether they can cease causing their child harm." In re Guardianship of J.C., 129 N.J. 1, 10 (1992).

We have carefully considered defendant's claims the court erred by finding the Division sustained its burden under N.J.S.A. 30:4C-15.1(a). The court conducted the required fact-sensitive analysis of all the statutory factors, see K.H.O., 161 N.J. at 348, and we affirm substantially for the reasons set forth in the court's detailed written opinion. We add the following comments.

III.

Defendant claims the court erred in finding the Division satisfied its burden under the first and second prongs of the statutory best-interests standard. Defendant argues the court's opinion includes incomplete findings on the first and second prongs, and the Division did not present clear and convincing evidence establishing that either Jack has been or will continue to be harmed by his parental relationship with defendant or defendant is unable or unwilling to provide a safe and secure home for the child.

Defendant's first contention — the court's opinion includes incomplete findings supporting its determination under the first and second prongs of the standard — is founded upon the court's inclusion of an incomplete sentence in its written decision. The incomplete sentence states, "Therefore, the Division has met its burden of proof by clear and convincing evidence on [p]rong [o]ne that the child has been harmed because." Defendant argues the absence of any

words following "because" establishes the court failed to provide findings supporting its finding of harm under prong one.

We reject the argument because it focuses on what is clearly a typographical error and it ignores the court's detailed findings of the harm caused to Jack by defendant's actions, inaction, and years of ceding the care of his son to others. In the paragraphs preceding the incomplete sentence, the court explained defendant caused Jack harm by: failing to present himself as a full-time caretaker "despite that there was a failed reunification with" Yolanda; failing to keep in contact with the Division; "readily admit[ing] that he stayed in the background" until Yolanda's surrender of her parental rights in February 2022; failing to meet with the caseworker to discuss Jack's future; refusing to comply with the Division's requests he undergo a CADC substance abuse evaluation and a psychological evaluation; and failing to do anything suggesting he has the capacity to parent Jack or provide Jack a safe and secure home.

The court further noted defendant never requested or had custody of Jack and any further delay in providing Jack with the permanency he otherwise deserves from a parent will result in ongoing harm to the child. Thus, contrary to defendant's claim concerning the incomplete sentence in the court's opinion, the court made numerous and detailed findings concerning the harm that has

been, and will continue to be, visited on Jack as result of the parental relationship.

We also reject defendant's claim the court erred by finding the Division presented clear and convincing evidence satisfying its burden under the first and second prong of the best-interests standard. "The first two prongs[of] N.J.S.A. 30:4C-15.1(a)" are related, and together constitute "the two components of the harm requirement." N.J. Div. of Child Prot. & Permanency v. T.D., 454 N.J. Super. 353, 380 (App. Div. 2018) (quoting In re Guardianship of D.M.H., 161 N.J. 365, 379 (1999)). "Therefore, 'evidence that supports one informs and may support the other'" Ibid.

Under the first prong, "the Division must prove harm that 'threatens the child's health and will likely have continuing deleterious effects on the child.'" N.J. Dep't of Child. & Fams. v. A.L., 213 N.J. 1, 25 (2013) (quoting K.H.O., 161 N.J. at 352). The Division need not "wait 'until a child is actually irreparably impaired by parental inattention or neglect.'" F.M., 211 N.J. at 449 (quoting D.M.H., 161 N.J. at 383). "A parent's withdrawal of [their] solicitude, nurture, and care for an extended period of time is in itself a harm that endangers the health and development of [a] child," D.M.H., 161 N.J. at 379, and "[a] delay

caused by [the parent's] failure to assume a responsible parental role in securing [a] permanent placement" of the child constitutes harm, K.H.O., 161 N.J. at 354.

Under the second prong of the best-interests standard, the Division must present clear and convincing evidence a parent is unwilling or unable either to eliminate the harm facing the child, or to provide a safe and stable home for the child, and the delay in permanent placement will add to the harm. Id. at 348-49. The question is not only "whether the parent is fit, but also whether he or she can become fit within time to assume the parental role necessary to meet the child's needs." N.J. Div. of Youth & Fam. Servs. v. R.L., 388 N.J. Super. 81, 87 (App. Div. 2006) (citing J.C., 129 N.J. at 10). The second prong "may also be satisfied if 'the child will suffer substantially from a lack of . . . a permanent placement.'" F.M., 211 N.J. at 451 (quoting K.H.O., 161 N.J. at 363). Evidence supporting a finding under the first prong may also support the Division's satisfaction of the best-interests standard under the second prong. See D.M.H., 161 N.J. at 379.

The court's determination the Division satisfied its burden under the first and second prong of the best-interests standard is supported by clear and convincing evidence the court found credible. Defendant not only failed to offer Jack a safe and secure home in the three years following the child's placement

with Yvonne; he also made an express decision not to assume any responsibility for providing Jack with a safe and secure home, consistently advising the Division it was in Jack's best interests to be cared for by others — including Yolanda's mother, his mother, and Yvonne — and, for three years prior to the guardianship trial, avoiding all the Division's efforts to contact him, involve him in Jack's life, and provide services.

As the trial court correctly determined, defendant's actions and inactions resulted in harm to Jack, and would otherwise continue to cause Jack harm, by further delaying the permanency to which the child is entitled. See F.M., 211 N.J. at 451; see also N.J. Div. of Youth & Fam. Servs. v. B.G.S., 291 N.J. Super. 582, 591-92 (App. Div. 1996) (explaining a child is harmed by their unfulfilled "need for a permanent home"). Moreover, the same evidence establishing Jack suffered and will continue to suffer harm under the first prong supports the court's determination defendant was unwilling or unable over the three-year period prior to the guardianship trial to provide Jack with either a permanent safe and secure home or the prospect of providing Jack with such a home in the foreseeable future. In sum, the Division satisfied its burden under the first and second prongs of the statutory best-interests standard.

We reject defendant's argument the Division did not satisfy its burden under the first and second prongs in the absence of evidence he abused or neglected Jack under Title 9. N.J.S.A. 9:6-1 to 9:6-8.73; see also N.J.S.A. 9:6-8.21(c) (defining an "abused or neglected child" under Title 9). The argument ignores that a finding of abuse or neglect is not essential to establishing the grounds for termination of parental rights under N.J.S.A. 30:4C-15. F.M., 211 N.J. at 443-44.

We are also unconvinced by defendant's claim the court improperly relied on defendant's housing instability as the basis for its determination the Division satisfied its burden under the first and second prongs of the best-interests standard. The argument is undermined by the evidence and the court's findings defendant caused and continues to cause harm to Jack, and is unable and unwilling to remedy the harm, because he: failed over a three-year period to offer Jack any hope of permanency in a safe and secure home; willingly yielded all caretaking and parental responsibilities for Jack to others, including Yvonne; failed to interact with the Division in its efforts to arrange services and facilitate visitation; and evinced no apparent effort to parent Jack in any meaningful manner.

As the Law Guardian accurately argues, the court's findings under the second prong are not founded on any improper reliance on defendant's housing instability or his admitted substance abuse issues. See K.H.O., 161 N.J. at 353 (explaining prong two may be satisfied by "indications of parental dereliction and irresponsibility, such as the parent's continued or recurrent drug use, [and] the inability to provide a stable and protective home"). The court properly found defendant is unwilling to address any issues resulting in Jack's placement because defendant never offered himself as Jack's caretaker and instead purposely stayed in the background in anticipation Yolanda would address her substance abuse issues and obtain reunification with Jack. In other words, defendant chose not to take any action to place himself in a position to parent Jack because at all times he wanted others — most preferably Yolanda — to shoulder that responsibility. That evidence supports the court's findings under the second prong of the standard.

Defendant also claims the Division did not satisfy the third prong. Under N.J.S.A. 30:4C-15.1(a), the Division must establish it "made reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home." N.J.S.A. 30:4C-15.1(a)(3). The Division

must also prove it "considered alternatives to termination of parental rights."

Ibid.

N.J.S.A. 30:4C-15.1(c) defines reasonable efforts to provide services under N.J.S.A. 30:4C-15(a)(3) as "attempts by an agency authorized by the [D]ivision to assist the parents in remedying the circumstances and conditions that led to the placement of the child and in reinforcing the family structure."⁴

The focus is on the Division's efforts toward "reunification of the parent with the child and assistance to the parent to correct and overcome those circumstances that necessitated the placement of the child into [resource parent] care." K.H.O., 161 N.J. at 354. However, the Division's "diligence . . . is not

⁴ Examples of "reasonable attempts" at reunification include but are not limited to:

- (1) consultation and cooperation with the parent in developing a plan for appropriate services;
- (2) providing services that have been agreed upon, to the family, in order to further the goal of family reunification;
- (3) informing the parent at appropriate intervals of the child's progress, development, and health; and
- (4) facilitating appropriate visitation.

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

measured by [its] success." D.M.H., 161 N.J. at 393. Rather, it is measured "against the standard of adequacy in light of all the circumstances," ibid., including whether the parent has "active[ly] participat[ed] in the reunification effort," id. at 390.

Defendant argues the Division did not meet its obligation to provide reasonable services because it failed to provide housing assistance and did not make sufficient efforts to contact or communicate directly with him. The argument lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We observe only that the record is replete with evidence of the Division's efforts to contact and communicate with defendant for the purposes of meeting to discuss Jack, arrange for numerous services for defendant, and address any pertinent issues necessary for reunification. Each of those efforts were met with defendant's admitted, intended, and ongoing recalcitrance. The record supports the court's determination the Division provided the reasonable efforts to provide services required under the third prong. See D.M.H., 161 N.J. at 393.

We are also unpersuaded by defendant's claim the Division failed to consider alternatives to adoption as required under N.J.S.A. 30:4C-15.1(a)(3). More particularly, he argues the court erroneously determined adoption was

appropriate based on Yvonne's preference and without regard to Jack's best interest, and because the 2021 amendment to the KLG statute, N.J.S.A. 30:4C-12.1, L. 2021, c. 154, "omit[s] from consideration" in the termination of parental rights analysis "whether adoption of the child is feasible or likely." Defendant further claims the court did not otherwise consider alternatives to adoption.

Defendant's claims lack merit. The court did not consider any other individuals as caretaker alternatives to the adoption offered by Yvonne because the undisputed evidence was that there were no other relatives willing to assume Jack's care. Additionally, defendant's claims concerning KLG as an alternative to adoption here is a legal theory in search of facts. There is no evidence there was any KLG alternative to adoption here, and Yvonne made a wholly independent decision — founded on Jack's best interests — she was unwilling to care for Jack in a KLG. Defendant points to nothing in the 2021 amendments to the KLG statute that prohibits a court from determining adoption is appropriate in the absence of any KLG alternative under the circumstances presented here.

Defendant last argues the court erred by concluding the Division satisfied its burden of establishing termination of parental rights will not do more harm than good. N.J.S.A. 30:14C-15.1(a)(4). He claims termination will do more

harm than good because "final separation from a biological parent is a harm in itself," and adoption jeopardizes Jack's relationships with defendant and defendant's mother. Defendant also argues the trial court cannot indulge Yvonne's desire to "achieve 'greater rights than those contemplated by the legislative system.'"

The fourth prong of the best-interests standard "serves as a fail-safe against termination even where the remaining standards have been met." E.P., 196 N.J. at 108 (quoting G.L., 191 N.J. at 609). This prong usually prevents termination of parental rights only when the child is unlikely to achieve permanency in the future. See id. at 111. Under the fourth prong, "[t]he question ultimately is not whether a biological mother or father is a worthy parent, but whether a child's interest will best be served by completely terminating the child's relationship with that parent." Id. at 108; see also K.H.O., 161 N.J. at 357 (explaining a "child's need for permanency and stability emerges as a central factor" "[i]n all our guardianship and adoption cases").

We are satisfied the Division presented clear and convincing evidence terminating defendant's parental rights will not do more harm than good. Dr. Figurelli testified Jack enjoys a secure relationship with Yvonne. And there is no evidence Jack will suffer any harm from a termination of his parental rights

to defendant, who opted not to play any role in Jack's life as a caretaker or as a parent willing or able to provide the child with permanency in the past or foreseeable future. Because the evidence established Jack will not suffer any harm through a termination of parental rights, and Jack's only opportunity for permanency in a safe and secure home now and in the foreseeable future is with Yvonne, the court correctly determined the Division satisfied its burden under N.J.S.A. 30:14C-15.1(a)(4).

Having considered the court's findings and conclusion the Division satisfied its burden under each prong of the best-interests standard, we affirm the guardianship judgment. We have considered each argument presented on defendant's behalf and, to the extent we have not expressly addressed an argument, we find it is without sufficient merit to warrant 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