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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-3322-21
A-3323-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

S.H. and J.H.,

Defendants-Appellants.

IN THE MATTER OF THE
GUARDIANSHIP OF A.H.,
a minor.

Submitted May 2, 2023 – Decided June 15, 2023

Before Judges Gilson and Rose.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex County,
Docket No. FG-12-0033-22.

Joseph E. Krakora, Public Defender, attorney for appellant S.H. (Lauren Derasmo, Designated Counsel, on the briefs).

Joseph E. Krakora, Public Defender, attorney for appellant J.H. (Bruce P. Lee, Designated Counsel, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Donna Arons, Assistant Attorney General, of counsel; Lisa J. Rusciano, Deputy Attorney General, on the brief).

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

PER CURIAM

In these consolidated appeals, a mother, S.H. (Sarah), and father, J.H. (James), appeal from a judgment terminating their parental rights to their daughter A.H. (Alice), and granting guardianship to the Division of Child Protection and Permanency (the Division) with the plan that Alice will be adopted by her resource parents.¹ Sarah and James argue the family court erred in finding the Division had proven by clear and convincing evidence the four prongs of the best-interests test necessary for the termination of parental rights.

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

See N.J.S.A. 30:4C-15.1(a). Sarah and James also argue the Division's expert witness rendered net opinions, and Sarah contends the family court impermissibly considered certain testimony presented by a Division caseworker at trial. The Division and the child's Law Guardian urge us to affirm the judgment and allow the adoption to proceed. Having reviewed the record, the parties' contentions, and the applicable law, we affirm the judgment because the family court correctly applied the law, and its findings are supported by substantial credible evidence.

I.

We summarize the facts from the record, including the evidence presented at the two-day guardianship trial held in April 2022. The Division has been involved with the family since the day after Alice's birth, and Alice has spent her young life in the care of foster parents.

A. The Division's Involvement with the Family.

Sarah and James are the biological parents of Alice, who was born in April 2020. Sarah is the mother of another child who is not in her custody. James is the father of three other children; none of those children are in his custody and his parental rights to two of those children were terminated.

Sarah had given birth to Alice at home, but shortly thereafter sought treatment at Saint Peter's University Hospital. The next day, April 11, 2020, the Division received a referral from the hospital after Alice had been admitted to the neonatal intensive care unit (NICU) due to hypoglycemia and possible withdrawal. Sarah tested positive for methadone, marijuana, and cocaine. She informed hospital staff that she had not known that she was pregnant until March 2020, and admitted she had used marijuana, cocaine, and alcohol during her pregnancy. She also reported a history of bipolar disorder and schizophrenia and explained she had discontinued her prescribed medications after learning of her pregnancy. Alice's meconium tested positive for cocaine, and she remained in the NICU until April 17, 2020.

While Alice was in the NICU, Division caseworkers spoke with Sarah and James. Sarah informed the caseworkers that she had a history of substance abuse, including heroin, marijuana, and cocaine use, but she denied needing substance abuse treatment. She explained James was aware of her substance abuse and, although he disapproved, he would give her money for marijuana.

Sarah also explained that she has mental health issues, including diagnoses of depression, anxiety, bipolar disorder, and schizophrenia. She disclosed that she had been psychiatrically hospitalized three times in the past

due to hallucinations. Since she began taking her current medications in 2018, however, she had not experienced a psychiatric episode. Sarah also informed the caseworkers that she was committed to Alice, was willing to do whatever was needed for Alice to remain in her care, and believed Alice would help with her anxiety and give her a new purpose.

James informed the caseworkers that he was willing to do whatever was needed for Alice to remain in his care. He claimed he had no history of substance abuse or mental health issues. He also claimed he did not know Sarah abused drugs but heard she had "used dope" in the past. He was aware of Sarah's mental health issues and believed she had them under control. James also claimed he did not know that Alice had tested positive for cocaine but acknowledged Sarah "had a couple pulls of marijuana before she found out she was pregnant."

After speaking with Sarah and James, the caseworkers toured their home. They observed large holes in the kitchen wall and smelled "a very strong odor of cigarette smoke." Sarah and James's bedroom was "dark," and their mattress sat on the floor and clothes were piled in each corner of the room. The caseworkers did not see any "signs of planning for the arrival of" a child.

On April 14, 2020, the Division received another referral from a relative of Sarah. That relative expressed concerns for Alice's safety, explaining Sarah and James's home was "deplorable and dirty" and "numerous drug addicts [would] congregate at [their] home." The relative further stated that Sarah had been "using drugs and drinking all throughout the pregnancy," and James had used drugs as well.

When Alice was discharged from the NICU three days later, the Division removed her from the care of Sarah and James on an emergent basis and placed her in an unrelated resource home. Shortly thereafter, the Division was granted custody, care, and supervision of Alice. The Division then began working with both parents to provide them with assistance.

Sarah was referred for a substance abuse evaluation and provided information regarding agencies that could assist with housing. Based on her substance abuse evaluation, Sarah was recommended for treatment, referred to a counseling center (the Counseling Center), and began receiving treatment. At that time, she tested positive for cocaine, marijuana, and alcohol. Sarah's attendance at the Counseling Center was inconsistent for over a year, and she continued to test positive for, among other things, cocaine, benzodiazepines, and opiates, throughout that time.

In September 2021, Sarah was recommended for a higher level of treatment. The Division then worked with Sarah to find a higher-level treatment program, but Sarah did not want to participate in the recommended treatment. At Sarah's request, the Division inquired about a "Mommy and Me" program for Sarah. The Division ultimately contacted three different "Mommy and Me" programs and provided them with Sarah's records. Each of those programs explained that, based on the records they had received, they wanted Sarah to complete a higher level of treatment before they would accept her.

In October 2021, Sarah again tested positive for various substances, including cocaine, and she had not yet enrolled in a new treatment program. Accordingly, the Division referred her to Dr. Samiris Sostre, for a psychiatric evaluation. Based on her psychological assessment of Sarah, Dr. Sostre determined Sarah had "mental illness and substance use disorder[s]" and would benefit from participating in a "dual diagnosis program at the highest level of care," where her disorders could be treated simultaneously. Dr. Sostre also recommended Sarah "demonstrate at least one year of sobriety and mental health symptom stabilization prior to reunification" with Alice.

In November 2021, Sarah tested positive for cocaine. She then enrolled in a new treatment program of her choice at Central Jersey Comprehensive

Treatment Center (Central Jersey Treatment), but not a dual diagnosis treatment program as recommended by Dr. Sostre. She tested positive for cocaine again in December 2021.

James was not recommended for substance abuse treatment until March 2021. He began receiving treatment in April 2021. Thereafter, James tested positive for cocaine in June 2021, but successfully completed a treatment program in September 2021. The following month, however, James tested positive for cocaine. He then reentered a treatment program and completed that program in April 2022.

The Division also referred both Sarah and James to Multicultural Community Services (MCS), which provides supervised visitations and parenting classes. Initially, Sarah's and James's visitations with Alice were conducted virtually because of the COVID-19 pandemic. In August 2020, the Division offered in-person visitation, but Sarah declined because she preferred the virtual visits. MCS reported that Sarah and James were inconsistent in attending their scheduled appointments during the first few months, noting they had missed all their appointments in August 2020 and only attended four of eleven scheduled visits in December 2020. MCS also reported some concerns regarding Sarah's visits, including that she appeared sleepy at times and at other

times asked to end visits early. Over time, however, Sarah and James became more consistent in attending their scheduled appointments, and MCS reported that they generally behaved appropriately with Alice.

Both MCS and the Division expressed concerns regarding housing for Sarah and James and referred them to resources for housing assistance. By February 2021, Sarah and James secured a four-bedroom apartment, which they shared with two roommates. The Division informed them that it needed to conduct background checks on the roommates if they intended to reside with Alice in the apartment. Ultimately, the Division was not able to contact one of the roommates and, therefore, could not conduct a background check of that roommate.

The Division also identified over ten paternal and maternal relatives of Alice as potential caregivers for Alice. All these individuals were ruled out, however, either because they did not respond to the Division's inquiries, were unwilling or unable to take care of Alice, or because they had unsuitable homes.

Meanwhile, Alice remained in foster care. In July 2021, Alice was placed with new, non-relative resource parents. That same month, the family court approved the Division's permanency plan for Alice, which involved the termination of the parental rights of Sarah and James followed by adoption of

Alice by her new resource parents. Thereafter, the Division filed a complaint for guardianship of Alice.

B. The Guardianship Trial.

The guardianship trial was conducted on April 27 and April 28, 2022. The court heard testimony from three witnesses: Division caseworker Melissa Cortes; the Division's expert witness, Dr. Alison Strasser Winston; and Sarah. James did not testify.

Cortes, an adoption caseworker with the Division, had been Alice's caseworker since August 2021. Cortes testified about the Division's involvement with Sarah, James, and Alice. She explained that the Division had provided services to Sarah and James in an effort to help them achieve sobriety and reunification with Alice. Those services included substance abuse referrals, housing assistance referrals, and supervised visitation and parenting classes.

Cortes explained that the Division's main concerns with Sarah were that she had not enrolled in or completed a treatment program that was at the appropriate level of care for her substance abuse and mental health issues. She also noted Sarah had been inconsistent in receiving treatment from the Counseling Center and Central Jersey Treatment. Regarding James, Cortes

testified that the Division's main concerns were his substance abuse issues, his relapse, and his lack of a realistic plan to care for Alice. She explained that James was not amenable to a parenting plan that did not involve Sarah as a primary caretaker for Alice. In that regard, she testified that the Division had "tried to plan with [James] for the care of [Alice], [but] there was no plan that we [could] do with him, it always included [Sarah]."

Cortes also testified that the Division had asked James and Sarah to identify potential relatives that could assist with supervising Alice, but they were unable to identify any relatives. She explained the Division had conducted a computerized search for relatives of James and Sarah as potential placements for Alice, and thirteen relatives were identified. Although Cortes did not speak to those relatives personally, she explained that another caseworker had spoken to some of them. Ultimately, all those individuals were ruled out because they did not respond to the Division's inquiries, were not able to take care of Alice, or because they had unsuitable homes.

Concerning Alice, Cortes testified that she had been with her current resource parents since July 2021, and that she had been doing well with them. She stated that the Division had twice discussed kinship legal guardianship with the resource parents and that they expressed a preference for adoption. The

Division had also discussed kinship legal guardianship with Sarah and James, but they were not interested in that option.

Finally, Cortes testified that housing had historically been an issue for Sarah and James. In that regard, she explained that Sarah and James were living in a four-bedroom apartment, with two roommates. She further explained, however, that the Division had not been able to conduct a background check on one roommate, and it had received a report that one of the roommates had overdosed in the apartment in the past.

Dr. Winston was certified as an expert in psychology without objection. She testified regarding psychological evaluations and bonding evaluations she had conducted in October 2021.

Based on her psychological evaluation of Sarah, Dr. Winston diagnosed Sarah with "schizoaffective disorder bipolar type," "unspecified trauma related disorder," "severe opioid use disorder," and "severe cocaine use disorder." She opined that Sarah was not capable of providing Alice with a safe and stable home and that she would be unable to do so anytime in the near future. She explained this was because of Sarah's history of substance abuse and mental health issues, Sarah's failure to engage in services to address those issues, and Sarah's ongoing substance abuse. Although Sarah had been sober for four months by the time of

trial, Dr. Winston testified that time was not enough to change her opinion of Sarah because of Sarah's history of relapses.

Dr. Winston testified that during her evaluation of James, he admitted to using marijuana and cocaine in the past. She testified that James explained he used cocaine when he was stressed, and he could not articulate any relapse prevention strategies. According to Dr. Winston, James preferred to deal with problems on his own and did not like reaching out to people for assistance. She pointed out that although James had expressed concerns regarding Sarah's substance abuse, he explained that he could not "control her" because "she was her own person." Nevertheless, James informed Dr. Winston that he "wasn't willing to consider raising [Alice] without [Sarah]."

Based on her evaluation of James, Dr. Winston diagnosed him with "unspecified personality disorder," and "cocaine use disorder moderate." Dr. Winston explained James had a "maladaptive way of interacting with the environment" and she noted James was likely more dependent on substances to treat stress and anxiety than he was willing to admit. She further explained that she was concerned that James had relapsed just after completing a substance abuse treatment program and was not able to provide any insight into why he relapsed. Thus, although James had completed a substance abuse program in

April 2022, Dr. Winston testified that she would like to see James maintain at least one year of sobriety. Ultimately, Dr. Winston opined that that James was not capable of providing Alice with a safe and stable home in the foreseeable future.

Regarding the bonding evaluations, Dr. Winston testified Sarah and James had acted appropriately with Alice and that Alice knew who they were. Dr. Winston explained, however, that Alice did not look to them to provide for her needs; rather, Alice looked to them as relatives but not as parental figures. Alice was subdued with both parents and not very verbal with them. Thus, Dr. Winston opined that Alice had an insecure emotional attachment to Sarah and James.

By contrast, Dr. Winston testified that Alice was much more active with the resource parents. Because Alice had only been with them for approximately three months at the time of the bonding evaluation, Dr. Winston was unable to conclude that Alice had a secure emotional attachment to the resource parents. Nevertheless, Dr. Winston explained that she expected Alice had developed a secure emotional attachment with her resource parents by the time of trial.

Ultimately, Dr. Winston testified that it would be in Alice's best interest for Sarah's and James's parental rights to be terminated so that Alice could be

adopted by her resource parents. In that regard, Dr. Winston explained Alice needed stability and permanency, the achievement of which should not be delayed. She further explained Sarah and James were unable to provide stability and permanency for Alice, and that they were unable to address their own needs let alone the needs of Alice. Accordingly, Dr. Winston testified Alice would suffer only minimal harm if Sarah's and James's parental rights were terminated.

Sarah testified about her history of mental health issues and substance abuse. She explained that she had been taking her medications "faithfully" and was receiving treatment from a new doctor that said she was not schizophrenic. In that regard, she testified that she had stopped treatment with her other doctor and started seeing a new doctor at Central Jersey Treatment, where she had been receiving substance abuse treatment. She explained that she made this change because she only spoke with her original doctor for about four minutes per session and did not think she was a good doctor. She also challenged the accuracy of records that showed she had missed treatment at Central Jersey Treatment. Sarah admitted using heroin "[e]very day for a couple of years" but claimed she had not used heroin in about six months and had not used cocaine in about four months. She acknowledged that she had not been sober for as long as she should have been but stated that she knew she would not use drugs

anymore. She also admitted that someone had overdosed at her apartment just a few weeks before trial but denied that person was one of her roommates.

C. The Family Court Decision.

On June 14, 2022, the family court rendered a decision on the record finding the Division had proven by clear and convincing evidence each of the four prongs of the best-interests test necessary for the termination of Sarah's and James's parental rights. The court considered "all competent and credible lay testimony, expert testimony, and documentary evidence admitted [but] . . . not . . . any admitted hearsay." The court found Cortes and Dr. Winston had testified credibly, but that Sarah had not. The court further noted Sarah had "acted inappropriately during the trial, twirling her hair, eating her hair, playing with her hair, shaking her head, crying, making faces, holding her hand up, burping, and putting on makeup."

Under prong one, the court found Alice would be at a continued risk of harm if she were reunited with Sarah or James. In that regard, the court found Sarah had not completed services recommended by the Division and that James had only recently completed a drug treatment program. The court further found that Sarah had unabated substance abuse issues and that James had supplied her with drugs in the past. Although James was a "hard working man," the court

found he was "content with placing [Alice] with [Sarah] when he is not around" and that plan was not in Alice's best interests. Ultimately, the court concluded Sarah's and James's "actions and inactions ha[d] contributed to [Alice's] prolonged stay in resource care with unrelated resource parents, and that their incapacity to provide adequate care in their inconclusive role is and of itself causing harm to [Alice] by delaying permanency."

Under prong two, the court found Sarah and James had "displayed indications of parental dereliction and irresponsibility such as continued or recurrent drug abuse and mental health issues and lack of a [parenting] plan" for Alice. The court found Sarah and James did not understand their parental roles and had rejected advice. In addition, the court found that Sarah's and James's capacity to parent Alice had not improved and that there was no realistic likelihood that they would be able to parent Alice in the near future. The court again acknowledged James's completion of a drug treatment program but found that he did not have a suitable parenting plan for Alice that did not involve Sarah.

Regarding prong three, the court found the Division had provided referrals and services to Sarah and James that directly addressed their issues, explored reasonable alternatives to termination, and considered and ruled out many relatives as potential placements for Alice.

Finally, under prong four, the court found termination of Sarah's and James's parental rights would not do more harm than good. In that regard, the court explained Alice had "waited long enough for permanency," and that James and Sarah had failed to provide Alice with a "safe and stable environment," despite being "given ample support and time" to do so. The court found it was "in [Alice's] best interest to be adopted into a loving home to resource parents who are willing to adopt her and with whom she has established a secure and stable bond."

II.

Sarah and James now appeal from the judgment terminating their parental rights to Alice. They challenge the family court's conclusions on each of the four prongs. Sarah argues there was no substantial credible evidence that she harmed Alice, she was unable or unwilling to eliminate any harm, and termination of her parental rights would not do more harm than good. Sarah also contends that the Division failed to provide her with adequate services because it provided her with unnecessary services and did not set up in-person visitations with Alice.

James argues that any harm to Alice had been mitigated because he had been sober for months by the time of trial; the Division failed to adequately

notify and consider relative placements for Alice; and the Division failed to prepare an adequate case plan facilitating his reunification with Alice. James also argues there was not substantial credible evidence that termination of his parental rights would not do more harm than good.

In addition, Sarah and James argue Dr. Winston's testimony was not reliable and consisted of net opinions that should not have been considered by the family court. Finally, Sarah contends the family court impermissibly considered Cortes's testimony regarding Sarah's inconsistent treatment at Central Jersey Treatment.

Having considered all these arguments, we reject them because they are not supported by the record and the governing law. Accordingly, we affirm the judgment.

A. The Standard of Review.

Our review of a family court's decision to terminate parental rights is limited. N.J. Div. of Child Prot. & Permanency v. C.J.R., 452 N.J. Super. 454, 468 (App. Div. 2017) (citing N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 278-79 (2007)). An appellate court will not reverse a trial court's "termination decision 'when there is substantial credible evidence in the record

to support the court's findings.'" Ibid. (quoting N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008)).

Moreover, appellate courts defer to the trial court's factual findings and credibility determinations. N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 552-53 (2014). Deference is accorded to the trial court's factual findings because "the Family Part 'possess[es] special expertise in the field of domestic relations.'" Id. at 553 (alteration in original) (quoting Cesare v. Cesare, 154 N.J. 394, 412-13 (1998)). Furthermore, deference is accorded to the trial court's credibility determinations because it had the "opportunity to make first-hand credibility judgments about the witnesses who appear on the stand; it has a 'feel of the case' that can never be realized by a review of the cold record." E.P., 196 N.J. at 104 (quoting M.M., 189 N.J. at 293). Consequently, "[o]nly 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." Ibid. (quoting N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007)). By contrast, no deference is given to the trial court's interpretation of the law, which appellate courts review de novo. D.W. v. R.W., 212 N.J. 232, 245-46 (2012).

B. The Four Prongs for Termination of Parental Rights.

To terminate parental rights, the Division must prove by clear and convincing evidence each element of the "best-interests-of-the-child [test]" codified by N.J.S.A. 30:4C-15.1(a). M.M., 189 N.J. at 280. The statutory test has four prongs:

(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 [D]ivision 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).]

These prongs "are not discrete and separate," but rather "relate to and overlap with one another to provide a comprehensive standard that identifies a child's best interests." In re Guardianship of K.H.O., 161 N.J. 337, 348 (1999).

Effective July 2021, various sections of statutes concerning child protective services were amended. See L. 2021, c. 154. Those amendments

included a change to prong two of the best-interests test. The Legislature removed from that prong the following 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." See L. 2021, c. 154, § 9; N.J.S.A. 30:4C-15.1(a)(2). Accordingly, any harm a child might suffer by removing him or her from the resource parent should no longer be considered by a court under prong two. Nevertheless, a court may still consider the child's bond with the resource parent, including harm resulting from the destruction of that bond, under prong four of the best-interests test. N.J. Div. of Child Prot. & Permanency v. D.C.A., 474 N.J. Super. 11, 26-29 (App. Div. 2022).

1. Prongs One and Two.

Under the first prong of the best-interests test, "the Division must prove harm that 'threatens the child's health and will likely have continuing deleterious effects on the child.'" N.J. Div. of Youth and Fam. Servs. v. A.L., 213 N.J. 1, 25 (2013) (quoting K.H.O., 161 N.J. at 352). The concern is not only with actual harm from the parent-child relationship but also the risk of harm to the child and the effect of harm over time on the child's health and development. See K.H.O., 161 N.J. at 348; In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999). In

that regard, "[c]ourts need not wait to act until a child is actually irreparably impaired by parental inattention or neglect." D.M.H., 161 N.J. at 383. "When the condition or behavior of a parent causes a risk of harm, . . . and the parent is unwilling or incapable of obtaining appropriate treatment for that condition, the first subpart of the [best-interests test] has been proven." N.J. Div. of Youth & Fam. Servs. v. H.R., 431 N.J. Super. 212, 223 (App. Div. 2013).

Prong two relates to parental unfitness. K.H.O., 161 N.J. at 352. "[T]he inquiry centers on whether the parent is able to remove the danger facing the child." N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 451 (2012) (citing K.H.O., 161 N.J. at 352). This prong "may be met by indications of parental dereliction and irresponsibility, such as the parent's continued or recurrent drug abuse, the inability to provide a stable and protective home, [and] the withholding of parental attention and care." K.H.O., 161 N.J. at 353.

One parent's conduct "can be relevant to an evaluation of the parental fitness of another parent." M.M., 189 N.J. at 288-89; see also F.M., 211 N.J. at 449 (explaining that "[a] parent has the obligation to protect a child from harms that can be inflicted by another parent"). Indeed, "[t]he determinative issue is whether the circumstances surrounding the parental relationship, including any relationships with [others], cause harm to the child." M.M. 189 N.J. at 289.

A court may consider elements that apply both to prongs one and two because these prongs "are related to one another, and evidence that supports one informs and may support the other as part of the comprehensive basis for determining the best interests of the child." D.M.H., 161 N.J. at 379.

The evidence at trial established that Sarah had abused drugs while pregnant with Alice, and Alice had been put at substantial risk of harm as confirmed by Alice's meconium having tested positive for cocaine and Alice receiving treatment for several days in the NICU. There was also clear and convincing evidence that James knew of Sarah's drug abuse during her pregnancy but failed to intervene to protect the developing child. Indeed, there was evidence that James facilitated Sarah's drug use by providing her with money to purchase drugs. Accordingly, there was clear and convincing evidence supporting the trial court's finding that both parents had put Alice at substantial risk of harm.

There was also clear and convincing evidence that Alice would be put at a continued risk of substantial harm if she were reunited with Sarah and James. Sarah failed to complete substance abuse treatment and continued to test positive for the use of illegal drugs. In addition, there was un rebutted evidence that Sarah

did not appropriately recognize her mental health issues and did not have a viable plan for addressing those issues.

Although James had made progress in addressing his substance abuse issues, there was substantial credible evidence that if he were reunited with Alice, Sarah would be the primary caregiver to Alice. Consequently, James had no viable plan for ensuring Alice's care and protection. In that regard, the evidence established that his plan to put Alice in Sarah's care would put Alice at substantial risk of harm.

Sarah argues that she had been sober for several months and had secured housing by the time of trial. She also contends that she sought an appropriate level of treatment at Central Jersey Treatment. None of Sarah's arguments undercut the clear and convincing evidence of her repeated relapses and her unwillingness to obtain treatment at the appropriate level. In short, Sarah never achieved sustained sobriety and there was clear and convincing evidence supporting the trial court's finding that Sarah had no prospect of becoming an adequate parent within a reasonable time.

James focuses his arguments concerning prongs one and two on his sobriety. He contends that he had been sober for months by the time of the trial and that he could parent Alice. James's contentions, however, ignore the

evidence that he had no viable plan to parent Alice independent of Sarah. Our Supreme Court has recognized that who a parent associates with can be an appropriate consideration "if those associations harm the child." M.M., 189 N.J. at 289. Thus, the Court has explained:

The crucial inquiries are whether the parent's association[s] with others causes harm to the child and whether the parent is unable or unwilling to provide a safe and stable home. That the threat to the child is created by the presence of another parent is irrelevant to the determination of whether the child is at risk.

[Id. at 289-90.]

At the time of trial, James had only recently completed a substance abuse treatment program and he was unwilling to consider parenting Alice without Sarah. Indeed, the testimony of Cortes and Dr. Winston reflect James's plan was to parent Alice with Sarah. Moreover, he was still living with Sarah in an apartment with other roommates, and there was evidence supporting the trial court's finding that the living environment was not appropriate for a young child. In short, there was substantial credible evidence in the record supporting the trial court's findings regarding James.

2. The Third Prong.

Under prong three, the "court must consider whether [the Division] has made 'reasonable efforts to provide services to help the parent[s] correct the

circumstances which led to the child's placement' and whether there are 'alternatives to termination of parental rights.'" Id. at 286 (quoting N.J.S.A. 30:4C-15.1(a)(3)). "Reasonable efforts depend on the facts and circumstances of [the] case." R.G., 217 N.J. at 557. Generally, "[r]easonable efforts include consulting with the parent[s], developing a reunification plan, providing services essential to realizing the reunification plan, informing the family of the child's progress, and facilitating visitation." Ibid. The Division must also "monitor the services, change them as needs arise, and identify and strive to overcome barriers to service provision or service utilization." Ibid. (quoting D.M.H., 161 N.J. at 387). Moreover, the Division should "encourage, foster and maintain" the parent-child bond, "promote and assist in visitation," and inform the parent of "appropriate measures he or she should pursue" to strengthen the relationship. D.M.H., 161 N.J. at 390.

The Division must also "perform a reasonable investigation of [alternative caretakers] that is fair, but also sensitive to the passage of time and the child's critical need for finality and permanency." N.J. Div. of Youth & Fam. Servs. v. J.S., 433 N.J. Super. 69, 87 (App. Div. 2013). Nevertheless, delay of permanency "based on the Division's noncompliance with its statutory obligations is warranted only when it is in the best interests of the child." N.J.

Div. of Youth & Fam. Servs. v. K.L.W., 419 N.J. Super. 568, 581 (App. Div. 2011).

The family court found that the Division had provided referrals and services to Sarah and James that directly addressed the barriers to reunification. The court also found that the Division had reasonably explored alternatives to termination and had considered, but ruled out, potential caregivers who were related to Alice. Those findings are supported by substantial credible evidence.

Sarah and James take issue with the type of services provided to them by the Division. They argue those services were inadequate. Sarah further argues the supervised virtual visitations provided by the Division were unreasonable. Those arguments are refuted by the record, and we reject them.

Cortes testified that the Division's main concerns with Sarah were her substance abuse and mental health issues. The Division referred Sarah to substance abuse evaluations and attempted to help her find a treatment program that provided the requisite level of care. Sarah, however, refused to participate in a treatment program that offered the recommended level of care. Cortes further testified that the Division was concerned about James's substance abuse and lack of an adequate parenting plan for Alice. The Division referred James to substance abuse evaluations and treatment programs. The Division also tried

to help James prepare a parenting plan for Alice, but he was unwilling to consider any plan that did not include Sarah as a primary caretaker of Alice. These services, among others provided by the Division, were all designed to "correct the circumstances" that led to Alice's "placement outside the home." N.J.S.A. 30:4C-15.1(a)(3).

Sarah's contention that the virtual visitations provided by the Division were unreasonable is similarly without merit. As Cortes explained, the Division initially provided virtual visitations because of the COVID-19 pandemic. Then, as early as August 2020, the Division offered in-person visitations, but Sarah declined that option because she preferred the virtual visitations. Under the circumstances, the services provided by the Division were reasonable. See R.G., 217 N.J. at 557.

James also faults the Division's efforts to find a related caregiver. His arguments ignore the unrebutted testimony of Cortes, who explained that Sarah and James had not been helpful in identifying relatives who could provide care to Alice and that the Division's independent efforts had not identified an appropriate caregiver. Indeed, the Division identified over ten relatives of Alice as potential caregivers. Some relatives did not respond to the Division's inquires, while others were ruled out for cause or due to Alice's best interests.

Further, Cortes explained that the Division had discussed kinship legal guardianship with Alice's resource parents, Sarah, and James, and none of them was interested in that option. In short, James's contention that the Division did not fairly consider relative placements for Alice is without merit; the record reflects the Division identified and considered relatives of Alice and explored reasonable alternatives to termination.

3. The Fourth Prong.

Prong four requires the court to determine that the "[t]ermination of parental rights will not do more harm than good." N.J.S.A. 30:4C-15.1(a)(4). This prong does not require a showing that no harm will come to the child "as a result of the severing of biological ties." K.H.O., 161 N.J. at 355. Instead, the issue is "whether a child's interest will best be served by completely terminating the child's relationship with that parent." E.P., 196 N.J. at 108. "The crux . . . is the child's need for a permanent and stable home, along with a defined parent-child relationship." H.R., 431 N.J. Super. at 226. This prong may be satisfied by "testimony of a 'well qualified expert who has had full opportunity to make a comprehensive, objective, and informed evaluation' of the child's relationship with both the natural parents and the foster parents." M.M., 189 N.J. at 281 (quoting In re Guardianship of J.C., 129 N.J. 1, 19 (1992)).

The trial court relied on the unrebutted testimony of Dr. Winston to find that the Division proved prong four by clear and convincing evidence. Dr. Winston had conducted psychological evaluations of Sarah and James, as well as bonding evaluations. In her testimony, Dr. Winston detailed her evaluations and the basis for her opinions. Based on her psychological evaluations, Dr. Winston opined that neither Sarah nor James was currently capable of parenting Alice and that neither parent demonstrated the ability to become an appropriate parent within the foreseeable future.

Based on the bonding evaluations, Dr. Winston opined that Alice had a limited bond with both Sarah and James and Alice's need for stability and permanency was a critical consideration. That unrebutted testimony supports the trial court's finding that neither Sarah nor James would be able to parent Alice in the foreseeable future and Alice would not suffer more harm than good if Sarah's and James's parental rights were terminated.

Although Sarah and James disagree with Dr. Winston's conclusions, the family court had the right to rely on the doctor's testimony and there is nothing in the evidence to suggest that we should second-guess that reliance. See id. at 281; J.S., 433 N.J. Super. at 93 (explaining that "[i]t was well within the

discretion of the trial court to accept the unrebutted and unequivocal opinion of the Division's expert").

C. Dr. Winston's Alleged Net Opinions.

"The net opinion rule is a 'corollary of [Rule 703]'" and "'forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data.'" Townsend v. Pierre, 221 N.J. 36, 53-54 (2015) (quoting Polzo v. County of Essex, 196 N.J. 569, 583 (2008)). Accordingly, an expert is required to "'give the why and wherefore' that supports the opinion, 'rather than a mere conclusion.'" Crispino v. Township of Sparta, 243 N.J. 234, 257 (2020) (quoting Townsend, 221 N.J. at 54). Experts must "be able to identify the factual bases for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are reliable." Townsend, 221 N.J. at 55 (quoting Landrigan v. Celotex Corp., 127 N.J. 404, 417 (1992)). In short, "[t]he net opinion rule is a 'prohibition against speculative testimony.'" Ehrlich v. Sorokin, 451 N.J. Super. 119, 134 (App. Div. 2017) (quoting Harte v. Hand, 433 N.J. Super. 457, 465 (App. Div. 2013)).

Sarah and James contend Dr. Winston's testimony was unreliable and consisted of impermissible net opinions, which the court should not have

considered. In that regard, Sarah argues Dr. Winston could not have adequately opined on the bond Alice had with her resource parents because the bonding evaluation was conducted months before trial. In addition, Sarah and James argue Dr. Winston was not certified as a substance abuse expert and, therefore, her testimony regarding Sarah's and James's substance abuse was unreliable and not based on up-to-date reporting. Finally, Sarah contends that Dr. Winston's psychiatric diagnoses were not credible because Dr. Winston was not certified as an expert in psychiatry.

Dr. Winston's testimony was based on her review of documents provided by the Division, her interviews of Sarah and James, their psychological testing, and the bonding evaluations she conducted of Alice, Sarah, James, and the resource parents. All of Dr. Winston's conclusions were supported by evidence and data relied upon by psychologists.

Neither Sarah nor James called an expert to rebut Dr. Winston's testimony and opinions. Dr. Winston arrived at her conclusions concerning the attachment Alice had formed with the resource parents based on a bonding evaluation and psychological literature regarding attachment. Neither Sarah nor James offered any evidence to suggest that another bonding evaluation would have produced a different result.

Sarah and James also did not introduce any expert testimony to rebut Dr. Winston's conclusions regarding their issues with substance abuse. Again, Dr. Winston's conclusions were based on her interviews of Sarah and James, their self-reporting, reports received from the Division, and psychological tests of Sarah and James. The doctor amply explained how she had arrived at her diagnoses and why she questioned the ability of Sarah and James to maintain sobriety without relapses. Although Dr. Winston candidly acknowledged that she was not a substance abuse expert, she was qualified as a psychologist and her opinions were based on her training as a psychologist.

Ultimately, it was the role of the trial court to assess the admissibility of Dr. Winston's testimony and opinions. See Townsend, 221 N.J. at 52 (explaining that "[t]he admission or exclusion of expert testimony is committed to the sound discretion of the trial court"). Moreover, it was within the court's discretion to accept and rely on the opinions offered by Dr. Winston. See J.S., 433 N.J. Super. at 93. We discern no reversible error in the trial court's decision to rely on Dr. Winston's testimony and opinions.

D. The Evidence Concerning Sarah's Treatment.

At trial, Cortes testified that Sarah had been inconsistent in receiving treatment at the Counseling Center and Central Jersey Treatment. In making

that point, Cortes relied on reports the Division had received from the Counseling Center and Central Jersey Treatment that detailed Sarah's absences. Cortes also testified that she had received an additional report from Central Jersey Treatment just days before trial, and that report also noted Sarah had missed treatment. That additional report was not, however, part of the Division's case against Sarah. Thus, the family court denied Sarah's counsel's request for the report to be produced as additional discovery but permitted counsel to ask Cortes questions about the report based on her recollection of it.

Sarah now contends the family court impermissibly considered the testimony by Cortes because she relied on the additional report from Central Jersey Treatment. Sarah further argues the court should have required the Division to turn over that report. We are not persuaded by these arguments. Cortes relied on more than just the additional report from Central Jersey Treatment in testifying that Sarah had been inconsistent in receiving treatment. Indeed, other reports from both the Counseling Center and Central Jersey Treatment detailed Sarah's repeated absences. Moreover, in rendering its decision, the family court explicitly stated it did not consider any admitted hearsay. Further, Sarah's contention that the court erred by not ordering the Division to produce a copy of the report disregards the fact that the report was

not part of the Division's case against her and that her counsel was permitted to question Cortes about the report based on her recollection of it. The disposition of discovery issues and the decision to admit or exclude evidence are left to the sound discretion of the trial court, and we do not discern an abuse of discretion by the family court. See Rodriguez v. Wal-Mart Stores, Inc., 237 N.J. 36, 57 (2019); Medford v. Duggan, 323 N.J. Super. 127, 133 (App. Div. 1999).

III.

In summary, the record establishes that there was clear and convincing evidence supporting the family court's findings that the Division had proven each of the four prongs of the best-interests test. We also reject Sarah's and James's other arguments because they are not supported by the facts developed at trial or the applicable law. To the extent that we have not addressed some of the arguments raised by Sarah and James it is because they lack sufficient merit to be discussed in a written opinion. See R. 2:11-3(e)(1)(E).

As is often the case, the decision to terminate parental rights involved a careful balancing of the rights of the parents and the best interests of the child. We are satisfied that the family court carefully and appropriately considered all the evidence related to that balancing and we discern no reversible error in the trial court's judgment.

Affirmed.

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

A handwritten signature in black ink, appearing to be 'AWD', is written over the printed text of the clerk's title.

CLERK OF THE APPELLATE DIVISION