# RECORD IMPOUNDED



SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3558-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

T.V.T., [1]

Defendant,

and

J.V.C., SR.,

Defendant-Appellant.

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IN THE MATTER OF THE
GUARDIANSHIP OF J.V.C., JR.,
a minor.

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Submitted June 1, 2023 – Decided June 13, 2023

[1] We use initials and pseudonyms to protect the parties' identities. R. 1:38-3(d)(12).

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FG-13-0027-20.

Joseph E. Krakora, Public Defender, attorney for appellant (Dianne Glenn, Designated Counsel, on the brief).

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

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

PER CURIAM

Defendant J.V.C., Sr. (Jon) appeals from a June 21, 2022 judgment terminating his parental rights to J.V.C., Jr. (Junior), born in October 2017. Jon and T.T. (Tina)[2] are Junior's biological parents. Jon contends the trial judge erred in finding the Division of Child Protection and Permanency (Division) proved by clear and convincing evidence all four prongs of the best interests tests under N.J.S.A. 30:4C-15.1(a). We affirm for the comprehensive and

[2] On March 4, 20212, Tina completed an identified surrender of her parental rights. She is not a party to this appeal.

thoughtful reasons expressed in a July 21, 2022 written decision by Judge Teresa A. Krondrup Coyle.

We incorporate the judge's detailed factual findings and legal conclusions based on the testimony over the course of the six-day guardianship trial. We briefly summarize the facts.

The Division has been involved with the family since Junior's birth.[3] On October 10, 2017, the Division received a referral from a hospital social worker, reporting both Tina and Junior tested positive for opiates. On November 8, 2017, the judge granted care and supervision of Junior to the Division.

In May 2018, Junior was placed with a non-relative resource family. At that time, the Division also assessed Jon's sister, S.C., as a potential resource parent. In December 2018, S.C. removed herself from consideration as Junior's resource parent.

On February 26, 2019, the judge denied the Division's plan to terminate Jon's parental rights and granted a three-month extension to finalize a permanency plan. At that time, the judge found Jon was actively participating in a treatment program and working toward sobriety.

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[3] Junior was diagnosed with autism spectrum disorder. He is non-verbal and developmentally delayed.

Around the same time, several relatives were ruled out as possible placements for Junior due to ongoing substance abuse or criminal charges against them.

On June 3, 2019, the judge approved the Division's permanency plan of adoption by Junior's maternal relatives, A.T. (Ann)[4] and P.K. (Pete). On July 29, 2019, the Division filed a guardianship complaint seeking termination of Jon's parental rights. On October 15, 2019, Junior was placed with Ann and Pete at their home in Virginia, where he remains.

During the guardianship trial, Judge Kondrup Coyle heard testimony from Alexandra Ucal, a Division permanency worker; Kyle Higgins, a Division adoption worker; Ann, Junior's resource parent; and Dr. David Brandwein, a psychological and bonding evaluation expert. Jon did not testify and did not present any witnesses. Nor did the Law Guardian, who supported termination of Jon's parental rights, call any witnesses.

On June 21, 2022, the judge signed a judgment of guardianship and issued a comprehensive written decision terminating Jon's parental rights.

The judge found Jon struggled to address issues with substance abuse, mental health, and anger management. She noted he attended drug treatment

[4] Ann is Junior's maternal aunt.

programs sporadically and did not complete any drug treatment programs. Further, the judge found Jon was not compliant with his prescribed psychotropic medication or recommended therapies. Additionally, Jon either missed or refused court-ordered drug screens. When Jon submitted to drug screens, he tested positive. Also, the judge found Jon lacked consistent employment and stable housing.

Regarding Jon's sporadic visits with Junior, relying on the testimony of the Division's witnesses, the judge found he cursed at Division caseworkers, made inappropriate comments, ended visits early, and threatened to take Junior from the visitation location. The judge explained the Division made efforts to facilitate visits between Jon and Junior, including arranging transportation and scheduling visits for Saturdays to accommodate Jon's work schedule. Despite the Division's efforts, the judge noted Jon frequently missed visits.

The judge also found the testimony of the Division's expert witness to be credible. Based on Jon's psychological evaluation, Dr. Brandwein determined Jon could not be a primary caretaker for Junior because he lacked emotional and behavioral stability and the ability to provide a safe, nurturing, and stable environment.

In his bonding evaluation, Dr. Brandwein found Junior had a strong physical and emotional bond with his resource parents. He explained that Junior considered Jon a "familiar playmate" and, therefore, severing the bond between father and son would not cause serious harm to Junior.

Based on the unrefuted testimony, the judge concluded the Division presented clear and convincing evidence under all four prongs of the best interests test, warranting termination of Jon's parental rights.

Regarding prong one, N.J.S.A. 30:4C-15.1(a)(1), the judge found Jon "continue[d] to endanger [Junior]'s health, safety, and development by his continued instability in housing and employment, volatile behavior in his daily life, poor treatment of service providers, and inability to successfully engage in drug treatment programs." She further explained "[Jon]'s failure to successfully engage in his own services, . . . raise[d] doubt that [Jon] can successfully engage with [Junior]'s service providers for the remainder of [Junior]'s childhood." Moreover, the judge agreed with the expert's testimony "that [Jon]'s decision to use cocaine while denying treatment services during the pendency of this guardianship litigation exemplifie[d] [Jon]'s continuous poor judgment." The judge further noted Jon's arrest for assault just before the guardianship trial evidenced his failure to address "aggressive behaviors" and "make appropriate

lifestyle and behavioral changes needed to provide [Junior] a safe and nurturing home." Moreover, because Junior is developmentally delayed and on the autism spectrum, the judge found Junior required a parent who was "willingly and actively" engaged with Junior's service providers to ensure Junior received support and proper care, and Jon was unable to be that parent. The judge concluded Jon's inability to meet Junior's basic needs constituted harm under prong one.

Regarding prong two, N.J.S.A. 30:4C-15.1(a)(2), based on the trial evidence, the judge determined Jon was "unwilling and unable to remedy the issues that pose a harm to [Junior] because of his inability to remain in treatment programs and follow the Division plans for services." As the judge explained, Junior's special needs required a "greater level of care," and Jon was unable to comply with his own services let alone participate in the services necessary to help his son. Additionally, the judge found Jon was "unable and unwilling to remedy the issues he has faced for four years," including the following: "inconsistent engagement in services, poor treatment of service providers, unstable housing and employment, aggressive behavior, poor decision[-]making skills, and a continued relationship with [Tina], who ha[d] unaddressed substance abuse issues."

Regarding prong three, N.J.S.A. 30:4C-15.1(a)(3), the judge determined the Division "made reasonable efforts to provide services to [Jon] to help correct the biological parents' circumstances, and consider[ed] alternatives to termination." The judge described the Division's multiple efforts to provide services to Jon only to have Jon not attend the programs or fail to complete the programs he did attend.

Regarding the Division's search for alternatives to termination of Jon's parental rights, the judge concluded the Division explored other relative placements and those relatives were either ruled out or declined to serve as resource parents. The judge also determined the resource parents, Ann and Pete, understood the difference between kinship legal guardianship (KLG) and adoption, and were committed to adopting Junior. Even Jon acknowledged Ann and Pete provided the care required to address Junior's special needs.

Regarding prong four, N.J.S.A. 30:4C-15.1(a)(4), the judge found termination of Jon's parental rights would not do more harm than good given Junior's "age, overall health, development, and the capability of [Jon] to care for the minor child in the future." The judge concluded it was "in the best interest of the minor child to not delay his permanency further and allow him to reside under the stable and safe care of the resource family, where his emotional and

physical needs [were] met." Although the judge recognized Jon loved his son and had a bond with the child, she determined "[t]hat bond . . . [would] not sustain the minor child throughout the rest of his childhood and support him in all facets of his development." Based on the evidence, the judge found Jon incapable of caring for Junior at the time of trial and into the future.

On appeal, Jon contends the judge erred in finding the Division met its burden of providing clear and convincing evidence that termination of his parental rights was in Junior's best interests. We disagree.

Our review of a Family Part judge's decision is limited. We defer to the expertise of Family Part judges because they are in a "superior position to judge the credibility of witnesses and weigh the evidence." N.J. Div. of Youth & Fam. Servs. v. J.R.-R, 248 N.J. 353, 368 (2021). We are bound by the judge's factual findings so long as they are supported by sufficient credible evidence. N.J. Div. of Child Prot. & Permanency v. A.D., 455 N.J. Super. 144, 155 (App. Div. 2018). However, we owe no deference to the judge's legal conclusions, which we review de novo. N.J. Div. of Child Prot. & Permanency v. A.B., 231 N.J. 354, 369 (2017).

A review of the record establishes that each of Judge Kondrup Coyle's findings regarding the four prongs under the best interests test is supported by

substantial credible evidence. Additionally, the judge correctly summarized the law and properly applied her factual findings to the law. N.J. Div. of Child Prot. & Permanency v. P.O., 456 N.J. Super. 399, 407 (App. Div. 2018) (finding trial court's legal conclusion "unassailable" as its factual finding were fully supported by the record). The judge appropriately relied on the unrebutted testimony of Dr. Brandwein, who evaluated Jon and the resource parents, as well as other trial testimony presented by the Division to support her conclusions. N.J. Div. of Child Prot. & Permanency v. R.L.M., 236 N.J. 123, 146 (2018) (finding "[i]n a termination of parental rights trial, the evidence often takes the form of expert opinion testimony by psychiatrists, psychologists, and other mental health professionals").

Jon also argues the judge misapplied the 2021 amendments to the KLG Act, N.J.S.A. 3B:12A-1 to -7, and N.J.S.A. 30:4C-15.1(a)(2), warranting reversal of the judgment terminating his parental rights. We disagree.

In considering the KLG option, courts are no longer required to find that adoption is "neither feasible nor likely." As amended, the KLG Act ensures a resource parent's willingness to adopt no longer forecloses KLG. However, the amendments to the KLG Act do not impact the application of the best interests test in a parental termination case.

N.J.S.A. 30:4C-15.1(a)(2), as amended, "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." N.J. Div. of Child Prot. & Permanency v. D.C.A., 474 N.J. Super. 11, 29 (App. Div. 2022) (finding "[t]he Legislature did not alter the other components" of the best interests test in amending the second prong). Nothing in these amendments implies that KLG is the preferred outcome over adoption.

Here, Judge Kondrup Coyle's analysis of the second and fourth prongs of the best interests test comported with the statutory amendments. The judge found Jon was unable or unwilling to eliminate the harm to Junior caused by his recurrent substance abuse, lack of employment, and housing instability. On the other hand, the judge concluded Ann and Pete were willing and able to provide Junior with the stability and permanency he required as a special needs child. The judge found the resource parents understood the KLG alternative, rejected KLG, and wished to adopt Junior. We are satisfied that the judge's findings and conclusions are unaffected by the amendment to the KLG Act and N.J.S.A.

30:4C-15.1(a). Nothing in these amendments altered the guiding principle that judges in guardianship cases must focus on the best interests of the child.

In light of the uncontradicted evidence presented during the guardianship trial, we are satisfied Judge Kondrup Coyle correctly concluded the Division presented clear and convincing evidence in support of termination of Jon's parental rights to Junior under all four prongs of N.J.S.A. 30:4C-15.1(a).

To the extent we have not addressed other arguments raised by Jon, we find they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.