RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3694-21

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

S.M.F.,

Defendant-Appellant,

and

R.J.W.,

Defendant.

———————————————

IN THE MATTER OF THE GUARDIANSHIP OF D.R.-J.W., minor.

———————————————

Submitted March 6, 2023 – Decided April 4, 2023

Before Judges Whipple, Smith and Marczyk.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FG-20-0016-21.

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

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

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

PER CURIAM

Defendant S.M.F. (Sherry or defendant) appeals from the Family Part's July 13, 2022 judgment terminating her parental rights to D.R.-J.W. (Danny).[1] Appellant argues none of the four prongs of N.J.S.A. 30:4C-15.1 were satisfied. The Division and Danny's law guardian contend the judgment is supported by substantial, credible evidence in the record. Having considered the arguments in light of the record and applicable legal standards, we affirm.

[1] We refer to the parties and the child involved in this case, and defendant's other children, using either initials or pseudonyms to protect their privacy and the confidentiality of these proceedings. R. 1:38-3(d)(12).

I.

Danny was born in July 2019. Sherry and R.J.W. (Richard) are the biological parents of Danny.[2] While in the hospital, the Division of Child Protection and Permanency (Division) received a referral with concerns about Sherry and Richard's[3] mental health. Sherry was diagnosed over time with bipolar disorder and other mental health issues but was generally unmedicated. In fact, Sherry denied any mental health diagnoses. The Division also learned Sherry had been involuntarily committed to Summit Oaks Hospital in 2018, and she had not complied with discharge instructions for further treatment. The Division emergently removed Danny because of Sherry's untreated mental illness.[4] Danny has lived with his resource parents, Ellen and Seth, since August

[2] Richard's parental rights were also terminated, but he did not appeal.

[3] Richard, who was diagnosed with schizoaffective disorder, had been repeatedly hospitalized and was discharged from the Carrier Clinic shortly before Danny's birth.

[4] Sherry's involvement with the Division predates its involvement with Danny in this case. In February 2010, law enforcement responded to a domestic violence incident involving her children G.A.F. and D.B., which resulted in a substantiation for neglect. G.A.F, D.B., and a third child, W.W.—born after Danny—are also not in her care. These children are not involved in this appeal.

2020.[5] The Division subsequently referred Sherry for numerous services and evaluations. Her attendance at therapeutic supervised visits through Grace Abounds Counseling with Danny were inconsistent. In the months approaching trial, Sherry rarely attended, despite being provided with transportation.

Sherry attended a psychiatric evaluation in July 2019, where she stated she had been voluntarily and involuntarily hospitalized on multiple occasions and diagnosed with numerous mental illnesses, including bipolar disorder. She was noted to be "scattered" and "impulsive" with "no insight" into her mental illness. She related she was against medications and indicated she discarded the medications from Summit Oaks in the toilet. The evaluating psychiatrist recommended individual therapy.

On August 27, 2019, Sherry completed a psychological evaluation with Dr. Danielle Graddick, who noted the records reflected Sherry had been diagnosed at least twice with schizoaffective disorder, bipolar type. She refused to discuss her legal and medical history. She further declined to complete a

[5] Danny lived for a brief time with another resource family. The Division was unable to find any viable relative caretakers. Danny has never resided with Sherry or Richard.

psychological test. Dr. Graddick noted that if Sherry's mental illness remained untreated, it would impact her ability to parent Danny.[6]

Sherry was hospitalized for psychiatric issues at Trinitas Hospital in October 2019. Sherry indicated at discharge she did not need any medication. Sherry was also referred to Center Path Wellness (Center Path) for medication monitoring and counseling, and Integrated Case Management (ICMS) for intensive case management services. She refused to cooperate with ICMS. She only briefly attended Center Path, claiming she had only been diagnosed with mental health disorders because she expressed certain opinions about the Division.

Sherry was again involuntarily committed July 10, 2020, after she became physically aggressive, pushed a police officer, and tried to attack an ICMS caseworker.[7] On November 30, 2020 the court approved the Division's plan for termination of parental rights (TPR) followed by adoption. Sherry would later accuse the Division of kidnapping Danny.

---

[6] In August 2019, Richard obtained a temporary restraining order against Sherry. She was later arrested for violating the order. The restraining order was subsequently dismissed.

[7] She later advised Grace Abounds' supervised visitation social worker Heiki Fischbach that most psychiatrists were quacks and that she had to tell psychiatrists what medication she should take.

Sherry was also referred for psychiatric treatment and counseling at Center Path, which she initially attended but eventually discontinued, because she did not believe she needed it. She began to see Dr. Jorge Quintana, a psychiatrist, in June 2020, where she was treated for bipolar disorder and prescribed medication but was not receiving any counseling or therapy. Even after the Division was ordered to provide individual counseling in Sherry's home county, Sherry failed to attend, even though it was offered virtually.

Dr. Graddick conducted a second psychological evaluation of Sherry in September 2020. Sherry refused to sign a release for her records from Summit Oaks outpatient program. She also refused to complete two psychological tests Dr. Graddick sought to administer. Sherry agreed she had depression but denied any other mental health issue. Dr. Graddick found Sherry's thought content to be "unusual and possibly delusional." She also lacked insight into her symptoms. Dr. Graddick noted Sherry was not stable and lacked insight to recognize early warning signs of her symptoms and would struggle to "parent independently particularly with children who are vulnerable and young."

Sherry did not attend the initial bonding evaluation with Dr. Allison Winston, arranged by Danny's law guardian. She arrived late for her rescheduled evaluation. Dr. Winston discussed Sherry's long history of mental

illness and that Sherry often denied having such challenges and denied the need for treatment. She noted Sherry was "very appropriate" with Danny during the evaluation, but that when she was asked to leave the room, Danny was "fine" and continued his activities. He did not react when Sherry returned to the room. She also testified Sherry refused to attend another rescheduled evaluation, so Dr. Winston was unable to complete a full psychological evaluation. She concluded Danny had an "insecure and ambivalent attachment" to Sherry, and he would suffer minimal, if any, emotional harm if the relationship was severed.

Dr. Winston noted the resource parents were also "very appropriate" with Danny, and he became extremely upset when they left the room. When they returned to the room, Danny ran up, hugged them, and reengaged. She noted he had a strong and secure emotional attachment to them and that he would suffer "serious and enduring emotional harm" if removed from their care.

The guardianship trial took place over six days beginning in May 2022 and ending in July the same year. Several witnesses testified over the course of the trial, including: Division supervisor Angela Peterson, Division permanency worker Yaxira Decandia, Division adoption worker Stacy Jones, the Division's clinical psychology expert Dr. Graddick, the law guardian's psychology expert Dr. Winston, Danny's resource parents, and Grace Abounds' supervised

visitation social worker Fischbach. Sherry did not call Dr. Quintana as an expert but submitted a letter indicating Sherry had been diagnosed with bipolar disorder and was being seen every month.[8]

Division workers Decandia and Jones testified. Decandia testified Sherry often denied having a mental illness and indicated she did not need medication. Decandia noted Sherry would send her incoherent text messages, and she and Richard were "erratic" during supervised visitations. She testified Richard made numerous attempts to remove Sherry from his lease due to her behavior. Decandia also conducted monthly visits with the resource parents and found Danny well cared for. Jones testified Sherry and Richard did not complete their psychological and bonding evaluations. She further noted Sherry refused to sign release forms so the Division could not verify she was attending therapy. Jones further recounted Sherry's scheduled visitation was inconsistent and "extremely poor" in the months before trial.

Fischbach was the social worker assigned to supervise Sherry at Grace Abounds. He testified the vast majority of Sherry's interactions with Danny were positive and appropriate. However, he also noted Sherry was at times

[8] Despite defendant's own psychiatrist indicating Sherry suffers from bipolar disorder, she denied same and therefore failed to pursue appropriate treatment.

"hostile" and "somewhat belligerent" with her caseworker. She also verbally assailed the Division and the mental health field as being "conspiratorial." Fischbach further reported Sherry did not want to take any medication. Fischbach considered discontinuing his role as a supervisor because Sherry failed to consistently attend sessions with Fischbach even after he began travelling to her home county. He similarly indicated Sherry's visits with Danny were infrequent after March 2022.

Danny's resource parents have two other children, aged sixteen and seven. Seth is a chemist and Ellen an attorney for a federal government agency. They recognized early on Danny was delayed in reaching his developmental milestones and arranged for Early Intervention services. The Division spoke with the resource parents about the differences between adoption and kinship legal guardianship (KLG). Both parents expressed they wanted to adopt Danny and did not feel KLG would be in his best interest. Seth testified he completed an online course on adoption and KLG. Seth stated he wanted Danny to have the best childhood possible. He and his wife were met with hostility from Sherry and Richard. Ellen testified as to an affectionate relationship between Danny and her two children. She further testified about her understanding of the differences between adoption and KLG. Ellen also expressed her desire for

Danny to be a full member of their family and to "hold ourselves out [as] his mother and father."

Dr. Graddick testified regarding Sherry's diagnosis of schizoaffective disorder and bipolar disorder. She noted these conditions present parenting risks because they involve a compromised view of reality and emotional stability. They also require insight and consistent treatment to remain stable.

Dr. Winston testified—essentially as set forth above—regarding why she did not recommend KLG for Danny under the circumstances of this case. She explained Sherry's history of making disparaging comments about the resource parents, coupled with her claims that Danny was "kidnapped," negatively impacted the ability of the resource parents to communicate about Danny regarding potential KLG visitation. She further opined Sherry would likely constantly go to court to vacate the KLG which would be disruptive to Danny and subject him to ongoing interviews and investigations. Lastly, because Danny has a high risk of developing his own mental health issues, Sherry's continued presence presented a risk, as she has so far been unable to acknowledge her own mental health concerns.

In an oral opinion, discussed more fully below, the trial court found the Division's witnesses to be credible and ultimately determined the Division met

its burden of proof as to all four prongs under N.J.S.A. 30:4C-15.1 by clear and convincing evidence. The court entered a judgment of guardianship.

S.M.F. raises the following points on appeal:

> POINT I
>
> THE TRIAL COURT ERRED IN CONCLUDING THAT THE DIVISION DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE THAT THE CHILD'S HEALTH AND DEVELOPMENT HAD BEEN OR WILL CONTINUE TO BE ENDANGERED BY THE PARENTAL RELATIONSHIP UNDER THE FIRST PRONG OF THE "BEST INTEREST" TEST, N.J.S.A. 30:4C-15.1(a)(1).
>
> POINT II
>
> THE TRIAL COURT ERRED IN CONCLUDING THAT THE DIVISION DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE THAT [SHERRY] WAS 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 UNDER THE SECOND PRONG OF THE BEST INTEREST TEST, N.J.S.A. 30:4C-15.1(a)(2).
>
> POINT III
>
> THE TRIAL COURT FAILED TO PROPERLY CONSIDER KINSHIP LEGAL GUARDIANSHIP AS AN ALTERNATIVE TO TERMINATION OF [SHERRY]'S PARENTAL RIGHTS UNDER THE

THIRD PRONG OF THE "BEST INTEREST" TEST, N.J.S.A. 30:4C-15.1(a)(3).

POINT IV

THE TRIAL COURT ERRED IN FINDING THAT [THE DIVISION] DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE THAT TERMINATION OF [SHERRY]'S PARENTAL RIGHTS WILL NOT DO MORE HARM THAN GOOD UNDER THE FOURTH PRONG OF THE "BEST INTEREST" TEST, N.J.S.A. 30:4C-15.1(a)(4).

II.

Our review of family court decisions is "strictly limited." N.J. Div. of Youth & Fam. Servs. v. I.H.C., 415 N.J. Super. 551, 577 (App. Div. 2010); see also N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007) (finding our review of a "trial [court's] decision to terminate parental rights" to be "limited"). "[W]e apply a deferential standard in reviewing the family court's findings of fact because of its superior position to judge the credibility of witnesses and weigh the evidence," New Jersey Division of Child Protection & Permanency v. J.R.-R., 248 N.J. 353, 368 (2021), and "because it possesses special expertise in matters related to the family." N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448 (2012). "Particular deference is afforded to decisions on issues of credibility." G.L., 191 N.J. at 605. Thus, we are bound to accept the trial court's factual findings as 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); see also G.L., 191 N.J. at 605 (holding a trial court's findings are entitled to deference "unless it is determined that they went so wide of the mark that the judge was clearly mistaken"). We review de novo a judge's legal conclusions and statutory interpretations. In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020); N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 552 (2014).

When the State seeks to terminate parental rights, the Division must prove by clear and convincing evidence each of the following:

> (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 fact-sensitive factors "overlap with one another to provide a comprehensive standard that identifies a child's best interests." G.L., 191 N.J. at 606-07 (quoting In re Guardianship of K.H.O., 161 N.J. 337, 348 (1999)).

A.

"The first two prongs [of] N.J.S.A. 30:4C-15.1(a) . . . are 'the two components of the harm requirement' and 'are related to one another.'" N.J. Div. of Child Prot. & Permanency v. T.D., 454 N.J. Super. 353, 380 (App. Div. 2018) (quoting In re Guardianship of DMH, 161 N.J. 365, 379 (1999)). "Therefore, 'evidence that supports one informs and may support the other as part of the comprehensive basis for determining the best interests of the child.'" Ibid. (quoting DMH, 161 N.J. at 379). 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., Div. of Youth & Fam. Servs. 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 DMH, 161 N.J. at 383).

Under prong two, "the inquiry centers on whether the parent is able to remove the danger facing the child." Id. at 451. Prong two may be proven by "indications of parental dereliction and irresponsibility, such as the parent's

continued or recurrent drug abuse, [and] the inability to provide a stable and protective home . . . ." K.H.O., 161 N.J. at 353; N.J. Div. of Youth & Fam. Servs. v. B.G.S., 291 N.J. Super. 582, 592 (App. Div. 1996) (finding the "inability or unwillingness to resolve the problems with respect to . . . mental health and substance abuse" satisfies the second prong).

Defendant argues the court's determination was "grounded explicitly on its conclusion [Sherry was] incapable of safely raising [Danny] due to the persistent mental health issues from which [she suffers] through no fault of [her] own."[9] Defendant further notes there has never been an allegation of abuse or neglect against her concerning Danny. Defendant emphasizes Fischbach reported both parents had very positive interactions with Danny. Additionally, defendant submits both parents were attentive with Danny, and it is clear "they both have much affection" for him. Defendant asserts the Division failed to establish a nexus between Sherry's mental health issues and her ability to care for Danny and that the Division offered no competent evidence regarding her schizoaffective disorder because no psychiatrist testified.

[9] Defendant further argues the court's evaluation of the best interested test was based on the "mental health [history] alone."

Defendant further contends the trial judge failed to correlate the testimony he found to be credible to support a finding for harm under the first prong. Relatedly, defendant asserts the court did not comply with Rule 1:7-4 because it initially stated its conclusion and then summarized the testimony and made credibility findings. Lastly, as to prong two, defendant contends the Division failed to proffer sufficient evidence she was unable, or unwilling, to offer a stable home for Danny. Defendant relies heavily on Fischbach's testimony for both prongs, arguing her interaction with Danny was "exemplary."

As to the first prong, we initially observe that although defendant asserts there is no evidence she ever harmed Danny, that is not the central inquiry.[10]

---

[10] We are unpersuaded by defendant's argument the court did not provide adequate findings on the record. A trial court is required to make specific findings of fact and state its conclusions of law. R. 1:7-4(a) (requiring the court in non-jury trials "by an opinion or memorandum decision, either written or oral" to "find the facts and state its conclusions of law"); see also Elrom v. Elrom, 439 N.J. Super. 424, 443 (App. Div. 2015). As our Supreme Court has long recognized, the lack of sufficient findings of fact and conclusions of law does a disservice to this court's informed review of any matter. See Curtis v. Finneran, 83 N.J. 563, 570 (1980) (observing "[n]aked conclusions do not satisfy the purpose of R. 1:7-4."). As the Court stated in R.M. v. Supreme Court of New Jersey, 190 N.J. 1, 12 (2007), factual findings are "fundamental to the fairness of the proceedings and serve[] as a necessary predicate to meaningful review . . . ." See also Ducey v. Ducey, 424 N.J. Super. 68, 74 (App. Div. 2012). "The absence of adequate findings . . . necessitates a reversal . . . ." Heinl v. Heinl, 287 N.J. Super. 337, 347 (App. Div. 1996). Here, the court provided detailed findings of fact. Although the court provided its conclusion at the beginning of

Rather, we must focus on whether Danny's health and welfare "will continue to be endangered by the parental relationship." N.J.S.A. 30:4C-15.1(a)(1). Here the record is replete with such evidence. Moreover, while defendant suggests the court improperly based its decision on the fact that she had a mental illness, the testimony in this case did not focus solely on her mental illness. Rather, the testimony centered on defendant's failure to acknowledge her condition and her corresponding failure to engage in meaningful treatment. Defendant's lack of insight into her condition impacted her ability to obtain treatment, despite many options being provided by the Division.

The trial judge recognized defendant's mental health issues were "no fault" of her own. However, her failure or inability to acknowledge her condition affected her ability to effectively and safely parent. For example, the court noted defendant did not believe Danny needed intervention, which is a sign of her inability to care for him. The trial court further referenced defendant's refusal to sign consents for her mental health records, which it found was an "acknowledgement" she recognized the significance of these records but

---

its oral findings, the subsequent summary of the testimony and credibility findings were sufficiently tied to the court's analysis of the four-prong best interest test.

did not want to give access to the Division. The court referenced defendant's history of psychiatric hospitalizations between 2018 and 2020, coupled with the more concerning issue that she "denies mental health issues" and, therefore, would not seek appropriate treatment. She further believed her son was "stolen" from her. The court found defendant had disorganized thought processes. The court further noted defendant would not share any information regarding her employment.

Concerning the second prong, the court recounted the services offered to defendant, and despite being aware of the plan to terminate her parental rights, defendant failed to take advantage of the various opportunities designed to put her in a position to effectively parent Danny. Although she initially attended therapeutic visitation with Danny where she would, generally, positively interact with him, she eventually failed to regularly attend these sessions.

The court noted defendant did not cooperate in her psychological evaluation which it considered an admission regarding the significant nature of her health struggles and an inability to safely raise Danny. The court referenced the testimony of Fischbach and noted that although defendant was appropriate and affectionate with Danny during supervised visitations, she was often "cross" with staff. Moreover, the court noted defendant went on "at length . . . with

conspiratorial claims which indicates a level of paranoia." The court also noted defendant appeared at visitations with Danny about seventy-five percent of the time. The court disagreed with Fischbach's testimony this rate was "pretty good." It noted defendant had one significant obligation—to see her child—and determined this was not a good record of visitation. The court further noted defendant refused to discuss her medical history and whether she was taking appropriate medication. Defendant also refused to sign medical releases. The court further indicated defendant had a deep distrust of mental health services.

The court found Dr. Graddick to be credible. Importantly, the trial court gave weight to Dr. Graddick's opinion that "a person with mental health problems needs to . . . have self-awareness of the problems in order to be in a position to become more stable and to safely parent a child." Defendant displayed no such self-awareness. To the contrary, she denied any mental illness beyond depression, despite her own expert noting she had bipolar disorder.

Defendant submitted a one-page report from Dr. Quintana, but he did not testify. The court noted, "this letter is so much more revealing for what it does not say than for what it does say." It simply stated defendant was being seen every month and that she had a diagnosis of bipolar disorder. The court observed, "[s]o this is a doctor that could well have come into court to say [he]

believe[s defendant could] safely parent a child." Rather, all the report says is that she is in treatment. Furthermore, the court noted there was nothing to suggest that she does not continue to be plagued with problems, being conspiratorial, and not seeing things realistically.

We do not know if defendant was unwilling to eliminate the harm facing Danny. However, at the very least, she has been unable to eliminate the harm. There was sufficient, credible evidence in the record to support the court's findings as to prong one and two.

B.

The first part of the third prong requires the Division to make "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). That provision of the statute "contemplates efforts that focus on 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[.]" K.H.O, 161 N.J. at 354. Here, defendant does not challenge the Division's efforts to provide

appropriate services.[11] Accordingly, we direct our attention to the second part of prong three.

The second part of prong three requires the court to "consider[] alternatives to [TPR.]" N.J.S.A. 30:4C-15.1(a)(3). Those alternatives may include placement of the child with a relative caretaker, N.J.S.A. 30:4C-12.1(a), or the establishment of a KLG. N.J. Div. of Youth & Fam. Servs. v. L.L., 201 N.J. 210, 222 (2010).

The Legislature amended N.J.S.A. 30:4C-15.1(a)(2) on July 2, 2021. In doing so, the Legislature deleted what had been the second sentence of that section, which read: "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[.]" L. 2021, c. 154, § 9. With that amendment, the Legislature confirmed the Division cannot prove the harm referenced in the second prong based on the effects of terminating the child's bond with a resource parent. See N.J. Div. of Youth & Fam. Servs. v. I.S., 202 N.J. 145, 169-70 (2010) (acknowledging "[i]t is well-established that the period of time a child

[11] The court determined the Division made "sincere and reasonable" efforts to provide supportive services for Sherry.

has spent in foster care is not determinative of whether parental rights to that child should be terminated . . . .").

The Legislature also amended N.J.S.A 3B:12A-6(d)(3), which is part of the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-1 to -7. See L. 2021, c. 154, § 4. N.J.S.A. 3B:12A-6 is captioned "[a]ppointment of caregiver as kinship legal guardian." Paragraph (d) of that statute provides:

> d. The court shall appoint the caregiver as a kinship legal guardian if, based upon clear and convincing evidence, the court finds that:
>
> > (1) [E]ach parent's incapacity is of such a serious nature as to demonstrate that the parents are unable, unavailable or unwilling to perform the regular and expected functions of care and support of the child;
> >
> > (2) the parents' inability to perform those functions is unlikely to change in the foreseeable future;
> >
> > (3) in cases in which the [D]ivision is involved with the child as provided in [N.J.S.A. 30:4C-85(a)], the [D]ivision exercised reasonable efforts to reunify the child with the birth parents and these reunification efforts have proven unsuccessful or unnecessary; and
> >
> > (4) awarding kinship legal guardianship is in the child's best interests.

Before the July 2, 2021 amendment, N.J.S.A. 3B:12A-6(d)(3) included the phrase "and (b) adoption of the child is neither feasible nor likely[.]" N.J.S.A. 3B:12A-6(d)(3) (2006). Thus, the July 2, 2021 amendment removed from KLG appointments the requirement that adoption be "neither feasible nor likely[,]" thereby permitting KLG appointments when adoption is also an option.

These statutory amendments did not change the guiding principle of child-guardianship cases—courts must decide cases based on the best interests of the child. See F.M., 211 N.J. at 447 (finding "[t]he focus of a termination-of-parental-rights hearing is the best interests of the child"). The Legislature did not delete (d)(4) of the KLG statute, which requires a court, before granting a KLG, to find that "awarding [KLG] is in the child's best interest." N.J.S.A. 3B:12A-6(d)(4). Although the appointment of a KLG no longer requires that "adoption of the child is neither feasible nor likely[,]" it still must be in the best interests of the child.[12]

Defendant asserts—based on the amendments to the KLG statute—the court here, by terminating defendant's parental rights, discarded a viable

[12] The trial court was aware of the recent amendments. In fact, at the November 16, 2021 permanency hearing, the court rejected the Division's termination plan and requested and analysis of KLG in light of the July 2021 amendments to the statute.

alternative that would have allowed Danny to remain safely with his resource parents while leaving intact her legal relationship with Danny.

As a threshold matter, the court found the Division attempted but was not successful in placing the children with family members despite appropriate efforts. Defendant has not challenged the Division's efforts in this regard. Rather, defendant argues KLG "will essentially be the default solution when warranted by the facts" based on the recent amendments to the statute. The law guardian counters that defendant conflates the preference for kinship care with KLG, and the recent amendments do not prioritize KLG over adoption.

The court ultimately found adoption was in Danny's best interest. The court recognized the importance of KLG and referenced the recent amendments to the statutes noted above. The court commented, "[t]hat declaration is in the context of a dramatic reorientation of the law to emphasize [KLG] as a permanent placement. The principle of avoiding termination of parental rights whenever possible must be adhered to." Nevertheless, the court stated, "[u]nfortunately, for the best interest of [Danny] . . . I do find that in this instance there is no possible alternative to the termination of the parental rights of the biological parents." Moreover, although the court did not believe the resource parents were eligible to be KLGs because they were strangers to the biological

parents, the court noted in the alternative that even if they were candidates, "the relationship between the resource parents and the biological parents is a strained one due to the inconsistency and hostility coming from [Sherry]. Thus, the alternative [KLG] is not an alternative in this case."

The Division correctly notes the resource parents both testified they preferred adoption over KLG for a variety of reasons above and beyond defendant's "hostility." Defendant's open animosity towards the resource parents, coupled with the expert testimony, informed the court's decision that KLG was not in Danny's best interest. KLG was not a viable alternative to TPR because the court determined there was ample evidence that adoption was in the best interest for Danny.

Defendant's diagnosis of schizoaffective disorder and bipolar disorder present parenting risks because these conditions compromise defendant's view of reality and emotional stability. The conditions also require insight and consistent treatment to remain stable. It is because defendant either refused or was unable to recognize her mental illness and its corresponding impact on her ability to safely parent, which formed the basis of the trial court's decision to terminate defendant's rights and reject KLG—not the mere fact defendant suffered from a mental illness.

C.

The fourth prong of the statute requires the court to determine termination "will not do more harm than good." N.J.S.A. 30:4C-15.1(a)(4). It serves as a "'fail-safe' inquiry guarding against an inappropriate or premature termination of parental rights." F.M., 211 N.J. at 453 (quoting G.L., 191 N.J. at 609). "The 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 th[e] parent." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 108 (2008). "The crux of the fourth statutory subpart is the child's need for a permanent and stable home, along with a defined parent-child relationship." N.J. Div. of Youth & Fam. Servs. v. H.R., 431 N.J. Super. 212, 226 (App. Div. 2013) (citing N.J. Div. of Youth & Fam. Servs. v. C.S., 367 N.J. Super. 76, 119 (App. Div. 2004)). "Overall, the court's focus should be on the child's need for permanency." Id. at 227 (citing N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 281 (2007)).

"Keeping . . . child[ren] in limbo, hoping for some long[-]term unification plan, would be a misapplication of the law." N.J. Div. of Youth & Fam. Servs. v. A.G., 344 N.J. Super. 418, 438 (App. Div. 2001) (citing In re P.S., 315 N.J. Super. 91, 121 (App. Div. 1998)); see also N.J. Div. of Child Prot. &

Permanency v. S.D., 453 N.J. Super. 511, 524 (App. Div. 2018) (finding "[p]arents do not have the right to extend litigation indefinitely until they are able to safely care for their children . . . ."). We have noted permanency is favored over protracted efforts for reunification. C.S., 367 N.J. Super. at 111.

Defendant contends the court erred in giving more weight to Dr. Winston's bonding evaluation as opposed to Fischbach's observations over a two-year period. Fischbach testified Danny "clearly had a connection . . . with his mother."

The Division counters Danny has been with his resource parents in a stable environment since shortly after birth. The resource parents have been characterized as psychological parents, and the overwhelming evidence supported the court's decision to terminate defendant's parental rights because it was in Danny's best interest. Despite defendant's positive interactions with Danny during supervised visitations, defendant has not improved as a result of her unwillingness to address her mental health issues. Danny on the other hand has thrived in his resource home. The law guardian adds Fischbach was not qualified to offer a bonding opinion and did not address the impact of disrupting Danny's relationship with his resource parents, nor did Fischbach ever observe Danny with his resource parents, unlike Dr. Winston.

The court found Dr. Winston's testimony—that defendant had an insecure attachment with Danny—to be credible. It follows that termination of defendant's parental rights would therefore not have a negative impact on Danny. Additionally, the court gave great weight to Dr. Winston's testimony that the resource parents were psychological parents with a secure attachment. The court accepted Dr. Winston's testimony regarding the negative impact on Danny being separated from his resource parents, but independently found by clear and convincing evidence that termination will do no more harm than good under the facts of this case.

We agree there was ample evidence in the record to support the trial judge's conclusion. We do not question defendant had a positive relationship during her supervised parenting time, even if it was inconsistent. That is not, however, dispositive for the purposes of the best interest analysis. Defendant's affectionate interactions with Danny during supervised visitations does not equate with the ability to safely parent.

Defendant's relationship with Danny does not counter the significant evidence regarding defendant's failures to utilize the various services provided to assist in correcting the circumstances which led to Danny being removed from her custody. The limited evidence in favor of defendant was not sufficient to

refute the evidence that supported a finding that termination would not do more harm than good.

Finally, to the extent we have not otherwise addressed any of defendant's other arguments, we determine they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.