

# RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1270-20

NEW JERSEY DIVISION  
OF CHILD PROTECTION  
AND PERMANENCY,

Plaintiff-Respondent,

v.

J.A.S. (deceased),

Defendant,

and

A.R.F., Jr.,

Defendant-Appellant.

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IN THE MATTER OF THE  
GUARDIANSHIP OF  
A.R.F., III, minor.

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Submitted January 11, 2022 – Decided January 19, 2022

Before Judges Fisher and Currier.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FG-12-0016-20.

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

Andrew J. Bruck, Acting Attorney General, attorney for respondent (Jane C. Schuster, Assistant Attorney General, of counsel; Mary L. Harpster, 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

After a four-day trial, the trial judge rendered findings of fact and conclusions of law and entered a judgment on December 22, 2020, terminating defendant A.R.F., Jr.'s parental rights to one child, A.R.F., III (Andy),<sup>1</sup> who was born in May 2018.<sup>2</sup>

Defendant appeals, arguing:

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<sup>1</sup> The names used in this opinion are fictitious.

<sup>2</sup> Defendant has another child. His parental rights to that child were terminated in June 2019, and we later affirmed that judgment, N.J. Div. of Child Prot. & Permanency v. J.S., No. A-4992-18 (App. Div. Aug. 5, 2020). Defendant J.S., the mother of both children, died from a drug overdose in September 2019.

I. THE TRIAL COURT'S LEGAL CONCLUSION THAT [THE DIVISION] CLEARLY AND CONVINCINGLY PROVED PRONGS ONE [AND] TWO OF THE "BEST INTERESTS" TEST WAS IN ERROR: [THE DIVISION] FAILED TO DEMONSTRATE A CAUSAL CONNECTION BETWEEN [DEFENDANT'S] ACTIONS AND HARM OR IMMINENT RISK OF HARM TO [ANDY] AND THAT [DEFENDANT] WAS UNWILLING OR UNABLE TO ELIMINATE THAT HARM.

II. THE TRIAL COURT'S LEGAL CONCLUSION THAT [THE DIVISION] CLEARLY AND CONVINCINGLY PROVED PRONG THREE OF THE "BEST INTERESTS" TEST WAS IN ERROR: [THE DIVISION] DID NOT PROVIDE "REASONABLE EFFORTS."

III. THE TRIAL COURT'S LEGAL CONCLUSION THAT [THE DIVISION] CLEARLY AND CONVINCINGLY PROVED PRONG FOUR OF THE "BEST INTERESTS" TEST WAS IN ERROR: IT INCORRECTLY DETERMINED THAT TERMINATION OF [DEFENDANT'S] PARENTAL RIGHTS WILL NOT DO MORE HARM THAN GOOD.

We find insufficient merit in these arguments to warrant discussion in a written opinion, R. 2:11-3(e)(1)(E), adding only the following few comments.

Parents have a constitutionally protected right to the care, custody and control of their children. Santosky v. Kramer, 455 U.S. 745, 753 (1982); In re Guardianship of K.H.O., 161 N.J. 337, 346-47 (1999). "The rights to conceive and to raise one's children have been deemed 'essential,' 'basic civil rights . . .,'

[that are] 'far more precious . . . than property rights.'" Stanley v. Illinois, 405 U.S. 645, 651 (1972) (citations omitted). "[T]he preservation and strengthening of family life is a matter of public concern as being in the interests of the general welfare." N.J.S.A. 30:4C-1(a); see also K.H.O., 161 N.J. at 347.

But the constitutional right to the parental relationship is not absolute. N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 553 (2014); N.J. Div. of Youth & Fam. Servs. v. A.W., 103 N.J. 591, 599 (1986). At times, a parent's interest must yield to the State's obligation to protect children from harm. N.J. Div. of Youth & Fam. Servs. v. G.M., 198 N.J. 382, 397 (2009); In re Guardianship of J.C., 129 N.J. 1, 10 (1992). To effectuate these concerns, the Legislature created a test for determining when a parent's rights must be terminated in a child's best interests. N.J.S.A. 30:4C-15.1(a) requires that the Division prove by clear and convincing evidence the following 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.

See also A.W., 103 N.J. at 604-11.

In a thorough and well-reasoned fifty-four-page oral decision, the judge applied these legal principles to the found facts in concluding the Division provided clear and convincing evidence that all four prongs supported the termination of defendant's parental rights. We reject defendant's arguments that the evidence was inadequate.

To the contrary of defendant's assertions, there was an abundance of evidence to support all prongs of the statutory test, including the judge's findings about defendant's long-term substance abuse problem, which led to his engaging in criminal behavior. Of concern to the judge was that defendant's past periods of sobriety were followed by relapses, circumstances that demonstrated to the judge that Andy would be jeopardized if the parental relationship continued. The judge also found that defendant had not been compliant with treatment programs and his participation in illicit drug use with Andy's mother allowed for the child to be born addicted, for which a lengthy hospital stay resulted.

The judge's findings were supported by evidence found credible and are deserving of our deference. N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448-49 (2012); Cesare v. Cesare, 154 N.J. 394, 413 (1998). The judgment under review was the product of those findings and the sound application of correct legal principles.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION