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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2742-15T1
A-2743-15T1
A-3881-15T1

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

S.D.E. and J.A.A.,

Defendants-Appellants.

IN THE MATTER OF THE GUARDIANSHIP
OF J.I.E., M.T.E.-A. and M.A.E.-A.,
minors.

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

J.A.A.,

Defendant-Appellant,

and

A.R.M.,

Defendant.

IN THE MATTER OF THE GUARDIANSHIP
OF A.L.A., minor

Submitted January 19, 2017 - Decided February 22, 2017

Before Judges Lihotz, Hoffman and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Essex County,
Docket Nos. FG-07-186-15 and FG-07-137-16.

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PER CURIAM

This matter includes three appeals awarding guardianship of four children to the Division of Child Protection and Permanency (the Division). Judge Wayne J. Forrest, J.S.C., presided over two separate trials: the first, regarded the termination of parental rights of J.A.A. (Father) and S.D.E. (Mother) to three children, M.T.E.-A, M.A.E.-A., and J.I.E. The parents separately appealed from the final judgment under Docket Nos. A-2742-15 and A-2743-15. The second, ordered the termination of Father's parental rights freeing A.L.A. for adoption. The child's mother, A.R.M. was a named defendant in the Family Part proceeding; however, she has not challenged the judgment of guardianship. This appeal is docketed under No. A-3881-15. We have listed all three cases back-to-back and will address the challenges to the Family Part determinations in one opinion.

Our consideration of each parent's challenges to the sufficiency of the evidence presented by the Division included review of the records of the proceedings in light of the applicable law. We affirm the final judgments in all respects.

I.

We present a recital of the facts in each record. Mother and Father have three children: twins, who were removed from their parent's care and placed by the Division when they were four days old, and their youngest child, born during the pendency of this

proceeding, was removed at birth, as Mother was incarcerated and Father declined to assume his care.

The Division has been working with Mother since 2004. Mother, who is now age thirty-one, has two older children born during prior relationships. Following a trial, the Division removed the two children from Mother's care and secured a judgment of guardianship and an order terminating her parental rights. In this matter, the record evidence shows Mother's untreated mental illness contributes to her violent outbursts, and she suffers from learning disabilities and unabated substance abuse.

On appeal, Mother maintains she made strides to remediate the conditions causing the children's removal. She asserts the evidence demonstrates her love and dedication to the three children and, with time, contends she will achieve the ability to provide for their care. Accordingly, Mother urges reversal, arguing she never harmed her children and challenges the judge's conclusions, stating she was willing and able to eliminate barriers to reunification, the Division's efforts for reunification were not reasonable, and termination would do more harm than good.

Father is thirty-six years old and the biological parent of the three children in this matter.¹ Father ceased contact with the Division in March 2014, and did not attend the first day of trial in this matter. On June 26, 2014, Father suffered an assault causing a traumatic brain injury, which required surgery and extensive physical therapy. Unfortunately, his cognition and memory remained impaired, making him unable to independently care for himself.

On appeal, Father argues the children were never in his care; therefore, he has never caused them harm. Further, he insists, "socio-economic factors and mental health issues are insufficient to support termination of parental rights," and the Division's evidence did not support a finding the children would suffer harm in his care.

In his forty-six page written opinion, Judge Forrest recited Mother's history of non-compliance with her mental health medications, physically violent outbursts, an inability to complete substance abuse treatment and sustain abstinence, refusal to attend counselling services, reoccurring incarcerations, and

¹ In addition, Father is the biological parent of A.L.A., who was removed from her mother's care and placed in the care and custody of the Division at birth. Issues surrounding the Division's interaction and efforts regarding A.L.A. are discussed below.

erratic visitation efforts. The judge itemized each service extended to assist Mother's parenting efforts and the extent of her participation in these programs with respect to Father. The judge's opinion lists Father's interactions with the children, the services extended by the Division, and details results from psychological and neurological evaluations and assessments, conducted after his injury. The judge discusses the Division's unsuccessful efforts to locate a family member who could safely provide for the children's care. Further, his opinion recites the credible expert and fact evidence supporting the effect on the children of severing the parental relationships.

The scope of our review of a trial court's decision to terminate parental rights is limited. In re Guardianship of J.N.H., 172 N.J. 440, 472 (2002). We are obliged to accord deference to the trial judge's factual findings and credibility determinations respecting the judge's "feel of the case" based upon the opportunity to see and hear the witnesses. See e.g., Cesare v. Cesare, 154 N.J. 394, 411-12 (1998); N.J. Div. of Youth & Family Servs. v. F.M., 375 N.J. Super. 235, 259 (App. Div. 2005). Reversal is required only in those circumstances when the stated findings are "so wide of the mark that a mistake must have been made." N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (citations omitted).

We have considered the arguments presented and affirm substantially for the reasons expressed in the written opinion authored by Judge Forrest. R. 2:11-3(e)(1)(A). We add these limited comments.

Although we agree no physical harm to the children was caused by Mother or Father, the reality is the children were all removed at birth so neither Mother nor Father ever provided primary caretaking. The evidence sufficiently supported the risk of harm each child faced were he or she left in the care of either parent. Contrary to the arguments advanced, the children were not removed because the parents faced poverty or because each suffered a mental impairment. Rather, Mother's insistence medication is unnecessary to treat her diagnosed mental illness, her unwillingness to address her substance abuse, her volatile, threatening, and violent conduct clearly and convincingly crystalized the significant harm she posed to these young children. Father lived with his mother and required her assistance for his care. His mother declined to aid him with the children, stating she was overwhelmed caring for Father's needs. The evidence clearly and convincingly showed Father was unable to provide for the needs and safety of his three young children.

The law is well-settled: "injury to children need not be physical to give rise to State termination of biological parent-

child relationships." In re Guardianship of K.L.F., 129 N.J. 32, 44 (1992) (citing In re Guardianship of J.C., 129 N.J. 1, 18 (1992)). "Serious and lasting emotional or psychological harm to children as the result of the action or inaction of their biological parents can constitute injury sufficient to authorize the termination of parental rights." Ibid. (citing J.C., supra, 129 N.J. at 18). The court's examination "focuses upon what course serves the 'best interests' of the child." Ibid. See also N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 612 (1986) (requiring the State to satisfy the "best interests of the child" test by clear and convincing evidence before termination of parental rights can be ordered).

While the litigation was pending, Mother made limited advances. For example, in March 2014 she successfully completed twenty-eight parenting classes, twelve sessions of anger management, and was compliant with medication to treat her mental illness. However, by May, she ceased treatment and counseling and the Division suspended visitation because she violently confronted a security guard and was arrested. This rollercoaster-type behavior – vacillation between compliance and abandonment of treatment – was repeated throughout the decade the Division worked with Mother. She never successfully completed programs to sustain abstinence, mental health treatment, and psychological counseling.

As the expert testimony stated her "mood liability and exercise of poor judgment places her young children at risk for future neglect and possible abuse," and she "has never shown the capacity to parent a child safely."

Further, the judge enumerated Father's parenting deficits, citing the credible, unrefuted expert opinion. Father declined the opportunity to care for the older children when removed from Mother's home, citing his limitations and obligations to another child. He lost contact with the Division and the children for months. Thereafter, it became clear his difficulties precluded him from providing adequate parenting. He was diagnosed with impulsivity, an inability to control his anger, substance abuse, and narcissism, all of which aggravated his dysfunction and made him incapable of providing basic needs for the children. This was supported by the neurological assessment, which revealed Father suffered "brain damage superimposed on his emotional and characterological problems, heighten[ing] the risk factor for [a] child left in his care." The expert further stated, "[i]n my opinion [he] is not able to manage his own life independently, let alone, provide a nurturing and secure environment for any child." Father remained noncompliant with treatment, including counseling directed to mitigate his cognitive deficits.

Based on Mother and Father's actions and omissions, each remained unwilling and unable to remediate the harm presented to provide the children with a safe, stable, and permanent home. The emphasis of the federal Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amendments in sections of 42 U.S.C.A.) "has shifted from protracted efforts for reunification with a birth parent to an expeditious, permanent placement to promote the child's well-being." N.J. Div. of Youth & Family Servs. v. C.S., 367 N.J. Super. 76, 111 (App. Div.), certif. denied, 180 N.J. 456 (2004).

We reject Mother and Father's contention the Division should have done more to effect reunification. The Division's efforts with Mother exceeded ten years. At trial, Mother remained unable to provide independently for the children; waiting longer was no guarantee things would improve. Father's limitations posed difficulties for him to care for himself and his limited involvement with treatment would not improve his capabilities.

Finally, no expert opined Mother or Father could, in the near future, resolve these issues and become a stable caretaker. The bonding evaluations revealed strong ties between the two older children and their resource parents, but "not much of a bond" with their biological parents. The third child was too young to demonstrate a bond, but evinced reliance on his resource parent

for his needs. The substantial, credible evidence supported the conclusion that the best interests of the children was served by severing their ties with Mother and Father, and termination of parental rights would not do more harm than good. The parental love and affection expressed by Mother and Father demonstrated during sporadic supervised visitations does not overcome these proofs.

The judge's findings as to each parent, regarding each prong of the statutory requirements set forth in N.J.S.A. 30:4C-15.1(a)(1)-(4), are amply supported by the substantial credible evidence in the record. The judge correctly concluded the Division's proofs clearly and convincingly require termination of parental rights in the best interests of the children.

II.

We turn to Father's arguments regarding the judgment of guardianship freeing A.L.A. for adoption. The Division became involved following an anonymous referral stating Father and the child's mother A.R.M. daily abused alcohol and marijuana, and were involved in an instance of domestic violence while A.R.M. was eight months pregnant. The Division learned A.R.M. suffered from mental illness, which included suicidal ideations. When she was arrested and incarcerated on an outstanding warrant for robbery and weapons possession, A.L.A. was placed in Father's care. The

Division took emergency custody of A.L.A. on June 13, 2014, when she was four months old. After a hearing, Judge Forrest ordered the child placed in the custody of Father's mother, and the Division retained care and supervision. A.L.A.'s caretaker changed by December 2014, when the paternal grandmother requested the child be removed as she was unable to care for both her son, as he continued to recover from his injury, and A.L.A.

Following trial, the judge ordered the termination of parental rights of A.R.M. and Father. A.R.M. failed to attend trial and does not challenge the order on appeal. Father argues the conclusion was not supported by clear and convincing evidence, highlighting the limited proofs supporting the first and second prongs, asserting he never harmed the child, who was briefly in his care.

We have previously addressed and rejected this argument, which was also raised in the companion matter. We affirm the order substantially for the reasons stated in Judge Forrest's thirty-six-page written opinion. We add these limited remarks.

The Division referred Father to substance abuse treatment and parenting classes, but he did not attend. Once A.L.A. was placed in the Division's custody, Father visited once and did not attend the bonding evaluations. Father was repeatedly arrested on January 12, 2015, for contempt; April 16, 2015, for aggravated assault and

weapons charges; and August 15, 2015, for domestic violence, and incarcerated from May 9 to July 2, 2015.

Relying on the unrefuted expert and factual evidence presented, Judge Forrest found Father refused to consistently treat his mental illness, which posed a real threat to the safety and security of this young child. He concluded the Division satisfied, by clear and convincing evidence, each prong of the statute justifying the termination of Father's parental rights. As we have previously discussed, the proofs supporting the judge's conclusion show Father was "simply unable or unwilling to eliminate the harm facing [A.L.A.], and . . . unable or unwilling to provide a safe and stable home for her."

"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 that parent." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 108 (2008) (quoting A.W., supra, 103 N.J. at 610). Following our review, we conclude the evidence supports the order terminating Father's parental rights, as concern for the best interests of the children surpasses the desires of a parent who has forsaken his parental duties. See N.J. Div. of Youth & Family Servs. v. P.P., 180 N.J. 494, 505 (2004).

We affirm the orders in each appeal.

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