

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-0396-16T1
A-0397-16T1

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

H.I. and M.D.,

Defendant-Appellants.

IN THE MATTER OF THE GUARDIANSHIP
OF M.D., a minor.

Submitted September 12, 2017 - Decided October 12, 2017

Before Judges Reisner, Hoffman, and Gilson.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FG-02-0062-15.

Joseph E. Krakora, Public Defender, attorney
for appellant H.I. (Meghan K. Gulczynski,
Designated Counsel, on the briefs).

Joseph E. Krakora, Public Defender, attorney
for appellant M.D. (Laura Orriols, Designated
Counsel, on the briefs).

Christopher S. Porrino, Attorney General,
attorney for respondent (Andrea M. Silkowitz,

Assistant Attorney General, of counsel;
Monique D'Errico, Deputy Attorney General, on
the brief).

Joseph E. Krakora, Public Defender, Law
Guardian, attorney for minor M.D. (Joseph H.
Ruiz, Designated Counsel, on the brief).

PER CURIAM

The parents of a child appeal from a September 9, 2016 judgment terminating their parental rights to their daughter and granting guardianship of the child to the Division of Child Protection and Permanency (Division). Following a trial, Judge William R. DeLorenzo, Jr. issued a thorough, seventy-four-page written opinion finding that the Division had proven by clear and convincing evidence each of the four prongs of the best interests test set forth in N.J.S.A. 30:4C-15.1(a). Judge DeLorenzo also found that it would be in the child's best interests to terminate defendants' parental rights so the child could be adopted. We affirm the judgment in these consolidated appeals.

I.

H.I. (Helen), the mother, and M.D. (Matt), the father, are the parents of M.J.D. (Mary), born in 2013.¹ The Division has been involved with the family since the child was five months old. Initially, the Division had concerns related to domestic violence

¹ To protect privacy interests and for ease of reading, we use initials and fictitious names for the parents and child.

by Matt against Helen. In June 2013, Helen reported a history of verbal and physical abuse by Matt, and Matt admitted to two prior instances of domestic violence against Helen.

Thereafter, the Division received reports of Helen abusing drugs. In March 2014, the child was removed from the parents' care. Helen admitted that she had been on a four-day cocaine binge just before the removal. She also acknowledged using cocaine and smoking marijuana while Mary was under her care. Helen also admitted to using heroin. At the time the Division took custody of Mary, Matt was incarcerated on assault and burglary charges.

Mary has been in the care of the Division since March 2014, and for the majority of her young life she has been with a resource family who wants to adopt her.

In 2014 and 2015, the Division provided both parents with various services, including substance abuse treatment, parenting classes, alternatives to domestic violence (ADV) training, and psychological and psychiatric evaluations. While both Helen and Matt attended certain treatment and received certain services, neither parent made progress in treating their substance abuse, their tendencies to engage in domestic violence, or their inability to consistently and safely parent their child.

Both parents attended substance abuse treatment, but failed to successfully complete such treatment. Helen admitted to using

various drugs, including cocaine, heroin, and marijuana. She also repeatedly tested positive for use of various illegal drugs. Matt admitted to using marijuana on a regular basis, and tested positive for use of marijuana on a number of occasions.

The parents also continued to engage in domestic violence. Matt has a lengthy and serious criminal history, and he admitted to engaging in domestic violence against Helen, including an incident where their child Mary was present. Helen reported a number of instances where Matt physically assaulted her, including a time when he punched her, and another time when he put a knife to her throat.

A psychological evaluation of Helen disclosed that she suffered from bipolar disorder type II and depression. Matt was also evaluated and he met the criteria for antisocial personality disorder, which gave him poor insight into the risks of neglectful parenting behavior.

A four-day guardianship trial took place between March and June 2016. The Division presented testimony from two of its workers and Dr. Robert Miller, Ph.D., an expert. Both parents attended and were represented at trial. Dr. James Reynolds presented expert testimony on behalf of Helen.

Based on the evidence at trial, Judge DeLorenzo found that the Division had presented clear and convincing evidence of the

four prongs necessary to terminate both Helen's and Matt's parental rights. N.J.S.A. 30:4C-15.1(a). In his written opinion, Judge DeLorenzo made detailed findings concerning the parents' abuse and neglect of Mary that placed her at risk of harm. He found that Helen and Matt were unwilling or unable to eliminate the harm facing Mary despite the Division providing them with a number of services designed to help them achieve reunification. Judge DeLorenzo also found that the Division had made reasonable efforts to reunify Helen and Matt with Mary, and the Division had explored, but properly ruled out, family members as potential caregivers of Mary. Finally, relying on the expert testimony of Dr. Miller, Judge DeLorenzo found that Mary would suffer harm if she were removed from her resource parents, and it would not do more harm than good to terminate both Helen's and Matt's parental rights with the plan that Mary be adopted by her resource family.

II.

Helen and Matt each appeal from the September 9, 2016 judgment. Helen argues that (1) the Division failed to provide her with the services she needed; (2) the Division failed to timely and properly evaluate the paternal grandmother as a caretaker for Mary; and (3) the court erred in concluding that terminating Helen's parental rights would not do more harm than good. Matt contends that (1) the proofs at trial did not establish prongs one

and two of the best interests standard; (2) the court erred in finding that the Division had thoroughly explored alternative placements as required by prong three; (3) the Division violated his constitutional rights to due process and fundamental fairness; and (4) the court erred in relying on the Division's expert.

The scope of our review of an appeal from an order terminating parental rights is limited. N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014). We uphold a trial judge's fact-findings if they are "supported by adequate, substantial, and credible evidence." Ibid. "We accord deference to fact findings of the family court because it has the superior ability to gauge the credibility of the witnesses who testify before it and because it possesses special expertise in matters related to the family." N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012). We will not overturn a family court's fact-findings unless the findings "went so wide of the mark that the judge was clearly mistaken." N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007). We do not, however, give "special deference" to the court's "interpretation of the law." D.W. v. R.W., 212 N.J. 232, 245 (2012).

A parent has a constitutionally protected right "to enjoy a relationship with his or her child." In re Guardianship of K.H.O., 161 N.J. 337, 346 (1999). That right, however, "is not absolute"

and is limited "by the State's parens patriae responsibility to protect children whose vulnerable lives or psychological well-being may have been harmed or may be seriously endangered by a neglectful or abusive parent." F.M., supra, 211 N.J. at 447. A parent's interest must, at times, yield to the State's obligation to protect children from harm. See N.J. Div. of Youth & Family Servs. v. G.M., 198 N.J. 382, 397 (2009).

When considering termination of parental rights, the court focuses on the "best interests" of the children. K.H.O., supra, 161 N.J. at 347. Those interests are evaluated by application of the four standards contained in N.J.S.A. 30:4C-15.1(a), which require clear and convincing evidence that:

- (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. Such harm may include evidence that separating the child from his [or her] resource family parents would cause serious and enduring emotional or psychological harm to the child;
- (3) The division 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.

These four criteria "are neither discrete nor separate, but are interrelated and overlap." N.J. Div. of Youth & Family Servs. v. L.J.D., 428 N.J. Super. 451, 479 (App. Div. 2012). Together they "provide a comprehensive standard that identifies a child's best interests." K.H.O., supra, 161 N.J. at 348.

Having reviewed all of the arguments presented by Helen and Matt in light of the record and law, we affirm substantially for the reasons set forth in Judge DeLorenzo's thorough and well-reasoned written opinion. We add a few additional comments.

Both Helen and Matt contend that the Division failed to timely and properly evaluate family members as potential caregivers for Mary. The record amply supports Judge DeLorenzo's finding that the Division clearly and convincingly showed that it had explored a number of family members as caregivers, but properly ruled out those relatives. The Division considered Helen's sister, her mother, and Matt's grandmother. Each of these relatives were ruled out for well-founded reasons. In particular, Matt's grandmother was ruled out because she had another grandson living with her who had a substance abuse problem, and the grandmother had a heavy work schedule. Moreover, the grandmother was psychologically evaluated by Dr. Miller, who opined that she had

poor parental judgment and was unlikely to protect Mary. Judge DeLorenzo credited Dr. Miller's testimony, and we have no reason to disturb that reliance.

Matt argues that he was not afforded the same opportunities towards reunification with Mary that were given to Helen. Thus, he contends that he was denied equal and fair treatment in violation of his constitutional rights. Matt did not raise this argument before the trial court. Consequently, this argument was waived and need not be considered on appeal. State v. Robinson, 200 N.J. 1, 20 (2009).

Even if considered, however, Matt's constitutional due process and fairness argument lacks merit. The record establishes that the Division's efforts to assist and provide services to Matt were undercut by Matt's repeated incarcerations. At the time of Mary's removal in 2014, and thereafter for several years, Matt was in and out of jail based on his own independent actions. Nevertheless, the Division offered a number of services to Matt, which included substance abuse treatment, domestic violence counseling, and parenting classes. The Division also provided Matt with visitations with Mary, even when he was incarcerated. Matt, however, did not comply with the services offered to him, failed to maintain consistent contact with the Division, and did not consistently visit Mary.

Matt's and Helen's remaining arguments all challenge certain factual findings of the four prongs necessary for terminating their parental rights under N.J.S.A. 30:4C-15.1(a). As previously summarized, Judge DeLorenzo found clear and convincing evidence of all four prongs. All of those factual findings are supported by substantial credible evidence. See F.M., supra, 211 N.J. at 448-49. Judge DeLorenzo also correctly analyzed the relevant law and concluded that the Division had met the legal requirements for a judgment of guardianship. See N.J.S.A. 30:4C-15.1(a); K.H.O., supra, 161 N.J. at 347-48. We discern no basis to disturb Judge DeLorenzo's factual findings, and we agree with his legal conclusions.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION