

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3269-14T3

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

K.A.H.,

Defendant-Appellant.

IN THE MATTER OF THE GUARDIANSHIP OF
S.M.-N.H. and S.K.U.C.,

Minors.

Argued May 23, 2017 — Decided June 1, 2017

Before Judges Yannotti, Fasciale and
Sapp-Peterson.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Essex County,
Docket No. FG-07-0131-13.

Anastasia P. Winslow, Designated Counsel,
argued the cause for appellant (Joseph E.
Krakora, Public Defender, attorney; Ms.
Winslow, on the briefs).

Joseph Maccarone, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Andrea M. Silkowitz, Assistant Attorney General, of counsel; Mr. Maccarone, on the brief).

Olivia Belfatto Crisp, Assistant Deputy Public Defender, argued the cause for minors (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Ms. Belfatto Crisp, on the brief).

PER CURIAM

K.A.H. appeals from an order of the Family Part dated March 3, 2015, which terminated her parental rights to two minor children, S.M.-N.H. (Sarah) and S.K.U.C. (Sydney).¹ K.A.H. also appeals from an order dated August 12, 2014, which suspended visitation, and an order dated May 11, 2015, which dismissed this guardianship action. We affirm.

I.

This appeal arises from the following facts. K.A.H. was born in September 1990, and thereafter placed in the custody of the Division of Child Protection and Permanency (Division) because K.A.H.'s mother left her with her maternal aunt, Ms. S. K.A.H. was later placed in a group home, but she left the home without permission. The Division again placed K.A.H. with Ms. S. and provided financial assistance. In August 2006, K.A.H. gave birth

¹ In this opinion, we use initials to identify certain persons, and fictitious names for the children, in order to protect their privacy.

to Sarah. K.A.H. and Sarah remained with Ms. S. until December 31, 2006, when K.A.H. left the home with the child.

Ms. S. informed the Division that she did not know where K.A.H. and Sarah were, but the Division located them and removed them from Ms. S.'s home. The Division placed K.A.H. and Sarah in separate resource homes, and provided K.A.H. with weekly, supervised visitation. In April 2007, K.A.H. ran away from her resource home and left the child behind. At the time, K.A.H. was pregnant.

In June 2007, the Division placed K.A.H. at Isaiah House, a residential program for women, children, and adolescents. The Division also provided K.A.H. with various services. In October 2007, K.A.H. gave birth to a boy, Sydney. K.A.H. and Sydney were placed in a resource home, and Sarah remained in a separate resource home. Thereafter, K.A.H. began therapy at Family Connections. In December 2007, the Division ruled out Ms. S. as a placement.

In January 2008, the trial court determined that K.A.H. would not be able to meet Sydney's basic needs without the Division's intervention. In February 2008, K.A.H. left the resource home with Sydney. In the months that followed, K.A.H. tested positive twice for marijuana, and in July 2008, she terminated her therapy at

Family Connections. Several months later, K.A.H.'s resource parent informed the Division that K.A.H. smelled of alcohol.

In January 2009, the Division removed Sarah from Ms. S.'s home and placed her in a resource home with K.A.H. and Sydney. In April 2009, after an argument with her resource parent, K.A.H. took the children and left the home. They returned the following day, but the resource parent asked the Division to remove them. The Division then placed K.A.H. with her sister, and returned the children to the resource home. In August 2009, the resource parent expressed an interest in adopting Sarah, but she was not committed to adopting Sydney because of certain behavioral problems.

In August 2009, the trial court approved the Division's permanency plan for termination of K.A.H.'s parental rights because she had not complied with any of the services provided to assist her in becoming a functioning parent. The following month, K.A.H. advised the Division that she was planning to move with her sister to Pennsylvania. She asked the Division to refer her for services in that state. In October 2009, K.A.H. visited Sarah and Sydney. She had not seen them since May 2009.

The Division arranged additional visits and provided additional services to K.A.H. In December 2009, K.A.H. participated in a drug and alcohol evaluation at Catholic Charities. K.A.H. reported using marijuana twenty-five days that

month. K.A.H. also reported that she had been drinking alcohol. The Division referred K.A.H. for substance abuse treatment. She tested positive for marijuana in February, August, and October 2010.

In March 2010, K.A.H. relocated to Pennsylvania. The Division terminated her substance abuse treatment in New Jersey, but continued to arrange for K.A.H. to visit the children each month. In October and November 2010, the Division located services for K.A.H. in Pennsylvania. The services included parenting skills classes, individual therapy, and substance abuse counseling. K.A.H. did not, however, participate in the services.

In December 2010, the Division again placed the children with Ms. S. In January 2011, K.A.H. surrendered her parental rights to Sarah and Sydney so that Ms. S. could adopt them. Sarah's biological father also executed an identified surrender of his parental rights. In addition, the court terminated the parental rights of Sydney's biological father following a default and proof hearing.

Thereafter, Ms. S. was arrested as a result of a domestic-violence incident. In April 2011, the Division removed the children from her care and placed them in a new resource home. Several months later, the new resource parent reported that the children

were "tearing up her home." The resource parent said that Sydney was difficult to manage and he had become violent with Sarah.

In July 2011, the court granted the Division's motion and vacated the judgment of guardianship entered previously. At that time, Ms. S. expressed a desire to regain custody of the children, and the Division referred her for therapy. In August 2011, K.A.H. gave birth to a third child.

The Division then had concurrent goals: reunification or termination of K.A.H.'s parental rights. The Division informed K.A.H. that if she wanted to be reunited with Sarah and Sydney, she would have to comply with the recommended services. From October to December 2011, the Division reached out to K.A.H. to arrange for services in Pennsylvania, but she did not contact the Division.

In November 2011, the Division removed Sarah and Sydney from the resource home and placed them in another resource home. The following month, the resource parent asked the Division to remove Sydney because he had engaged in inappropriate behavior. Sarah and Sydney were later moved to a new resource home. In December 2011, the Division ruled out Ms. S. as a possible caretaker because she had not completed therapy. The children were moved to separate resource homes after they engaged in inappropriate sexual behavior with each other.

The Division continued to provide services to K.A.H., but she did not visit the children between September 2011 and mid-February 2012. In March 2012, Ms. S. successfully appealed the Division's decision ruling her out as a resource placement. The following month, the Division moved Sydney to another resource home, while Sarah's placement continued. The Division had psychological and bonding evaluations performed. The Division's goal at this time was reunification. The Division informed K.A.H. she would have to complete services within six months.

In May 2012, Sarah's resource parent asked the Division to remove Sarah from her home and the Division placed her in another resource home. In August 2012, K.A.H. informed the Division she was no longer interested in reunification, and she named T.L. as a possible relative placement for Sarah and Sydney. Thereafter, K.A.H. did not maintain regular contact with the children. In December 2012, Sarah's resource parent reported that Sarah had been hitting her, and she requested that the Division remove Sarah from her home. In February 2013, the Division placed Sarah in another resource home.

In January 2013, the court approved the Division's permanency plan for termination of K.A.H.'s parental rights, and in March 2013, the Division filed its guardianship complaint. On August 11, 2014, the court entered an order requiring the Division to provide

K.A.H. with visitation; however, on August 12, 2014, the court suspended visitation.

In January and February 2015, the court conducted a trial on the Division's guardianship complaint. At the trial, the Division presented testimony from its caseworkers and expert witness, Dr. Mark Singer. K.A.H. and the Law Guardian did not call any witnesses.

On March 3, 2015, the court filed a written opinion finding that the Division had established the statutory criteria for terminating K.A.H.'s parental rights with clear and convincing evidence. The court entered an order dated March 3, 2015, terminating K.A.H.'s parental rights to the children. K.A.H. thereafter filed a notice of appeal.

After the trial court entered its order terminating K.A.H.'s parental rights, the court conducted further hearings on visitation and the Division's efforts to license Ms. S.'s home. The court ordered the Division to provide it with documents from the children's therapists with their views on whether the children should have a final visit with K.A.H., and how such a visit would proceed.

On May 11, 2015, the court dismissed the guardianship action, but allowed the matter to continue under the Family Part's child-in-placement docket. Thereafter, K.A.H. filed a motion in this

court to supplement and clarify the record, and to amend the notice of appeal to include additional orders.

We granted the motion to amend the notice of appeal as to the order of August 12, 2014, which suspended visitation, and the May 11, 2015 order, which dismissed the guardianship action. We also remanded the matter to the trial court, which thereafter entered an order clarifying the evidence that it relied upon in reaching its decision. K.A.H. filed an amended notice of appeal on September 18, 2015.

On appeal, K.A.H. argues that: (1) the Division failed to establish by clear and convincing evidence the statutory criteria for terminating parental rights; (2) the court erred by suspending visitation, which unduly prejudiced her at the guardianship trial; (3) the court erred by dismissing the guardianship action without addressing all of the issues raised; and (4) she was denied her constitutional right to effective assistance of counsel.

II.

We turn first to K.A.H.'s argument that the Division failed to establish all of the statutory criteria for termination of her parental rights to Sarah and Sydney.

We note initially that parents have a fundamental constitutional right to raise their children. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 447 (2012). That right is

not, however, absolute and is "tempered 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." Ibid.

"The focus of a termination-of-parental-rights hearing is the best interests of the child." Ibid. The statutory best-interests-of-the-child standard, which is set forth in N.J.S.A. 30:4C-15.1(a), "aims to achieve the appropriate balance between parental rights and the State's parens patriae responsibility." N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 280 (2007).

The Division must prove the four statutory factors by clear and convincing evidence. N.J.S.A. 30:4C-15.1(a); see M.M., supra, 189 N.J. at 280. The factors are not "discrete and separate" but "relate to and overlap with one another to provide a comprehensive standard that identifies a child's best interests." In re Guardianship of K.H.O., 161 N.J. 337, 348 (1999).

The scope of our review of a trial court's decision to terminate parental rights is limited. N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007). "Appellate courts must defer to a trial judge's findings of fact if supported by adequate, substantial, and credible evidence in the record." Ibid.

A. Prong One

Prong one of the statutory test requires the Division to

establish that the "child's safety, health or development has been or will continue to be endangered by the parental relationship[.]" N.J.S.A. 30:4C-15.1(a)(1). The trial court found that the Division had established this prong with clear and convincing evidence.

The court stated that since they were born, Sarah and Sydney's relationships with K.A.H. have been marked by instability. The court noted that K.A.H. shirked her parenting responsibilities and failed to comply with the services the Division had provided. As a result, the children had numerous placements and were separated from their mother.

The court found that this lack of permanency put the children at substantial risk of harm. The court accepted Dr. Singer's testimony that this lack of permanency had a negative impact on the children. The court stated:

Dr. Singer testified that without permanency, children develop lower self-esteem[], have increased educational issues and problems with interpersonal relationships. He further found that multiple placements and separations from their mother for so long has resulted in maladaptive behaviors. . . . [K.A.H.] has had nearly eight years to rectify the issues that caused her children to be removed from her care and provide them with stability, but her unwillingness to comply with services and Division recommendations has prevented their return.

The court also found that Dr. Singer had credibly and persuasively testified that K.A.H.'s decision to move to

Pennsylvania had disrupted her relationships with the children. The court noted that Dr. Singer found that this led to a decrease in her contact with the children, and ultimately the children did not view K.A.H. as a consistent physical presence in their lives. The court found that by voluntarily removing herself from this State, K.A.H. had "created a situation where it became increasingly difficult [for her] to visit and decreased the amount of quality time that she [could] spend with her children."

The court also accepted Dr. Singer's opinion that K.A.H.'s continued use of marijuana, despite previous drug treatment, suggested substance-abuse dependency. In addition, the court found that K.A.H.'s repeated non-compliance with services placed the children at a substantial risk of harm. The court found that K.A.H.'s refusal to participate in services was "indicative of [K.A.H.'s] inability to comprehend the seriousness of the issues that [stood] between her and reunification with the children." The court further found that by refusing to comply with the services provided, K.A.H. had "effectively prevented reunification and prolonged the harm to the children."

On appeal, K.A.H. does not dispute the court's findings, but nevertheless argues that she did not harm the children. She asserts that her separation from the children was not the result of any

abuse or neglect on her part, but rather the Division's unilateral actions. We disagree.

We are convinced that there is substantial credible evidence in the record to support the trial court's findings. As the court found, the evidence established that K.A.H. harmed Sarah and Sydney with her inconsistency and failure to do what was necessary to regain custody of them. As a result, the children have been in foster care for most of their lives. This lack of permanency put the children at substantial risk of harm. We conclude that the Division presented clear and convincing evidence showing that the children's safety, health, or development has been endangered by their parental relationships with K.A.H.

B. Prong Two

Prong two of the statutory test requires the Division to prove that 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." N.J.S.A. 30:4C-15.1(a)(2). "The second prong of the statutory standard relates to parental unfitness." K.H.O., supra, 161 N.J. at 352.

Parental unfitness may be established in two alternative ways. Ibid. First, the Division may demonstrate that the parent is "'unwilling or unable to eliminate the harm' that has endangered

the child's health and development." Ibid. (quoting N.J.S.A. 30:4C-15.1(a)(2)). Second, the Division may show that the parent "failed to provide a 'safe and stable home for the child' and a 'delay in permanent placement' will further harm the child." Ibid. (quoting N.J.S.A. 30:4C-15.1(a)(2)).

In this case, the trial court found that K.A.H.'s refusal to participate in or complete services showed that she is unable or unwilling to remove the harm facing the children. The court noted that K.A.H. had failed to comply with virtually every service recommended for her, even though she knew that such compliance was necessary for reunification with the children

The court also noted that there were prolonged periods in which K.A.H. did not visit the children. This contributed to the ongoing harm. The court acknowledged that in August 2014, it had suspended K.A.H.'s visits with the children. However, before the court suspended visitation, K.A.H. had not seen the children for more than a year. The court found that this showed K.A.H.'s "general disinterest" in consistent visitation with the children, which contributed to the ongoing harm.

On appeal, K.A.H. argues that the trial court's findings are not supported by the record. She asserts that her fitness to parent Sarah and Sydney is shown by the fact that after she aged out of the foster-care system, she adequately cared for her two young

children. She contends this demonstrates she was willing and able to eliminate the initial threat of harm, specifically, her youth, immaturity, and lack of resources. We are not persuaded by these arguments.

Here, Dr. Singer testified that although K.A.H. was caring for her other children, this did not establish that she was capable of adequately parenting Sarah and Sydney. Dr. Singer pointed out that Sarah and Sydney are in a different position from their half-siblings since K.A.H. had not been a consistent presence in their lives. Moreover, both Sarah and Sydney have emotional and behavioral issues. There is no evidence showing that K.A.H.'s other children have such issues.

We conclude that there is substantial credible evidence in the record supporting the trial court's findings on prong two. The record contains clear and convincing evidence showing that K.A.H. was unwilling and unable to eliminate the harm facing Sarah and Sydney, and a delay in permanent placement will cause further harm.

C. Prong Three

Prong three of the statutory criteria requires the Division to establish that it 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[.]" N.J.S.A. 30:4C-15.1(a)(3). The determination of whether the Division made reasonable efforts depends upon the circumstances of a particular case. N.J. Div. of Youth & Family Servs. v. F.H., 389 N.J. Super. 576, 620 (App. Div.), certif. denied, 192 N.J. 68 (2007).

Moreover, the reasonableness of the Division's efforts is not measured by whether they were successful. In re Guardianship of D.M.H., 161 N.J. 365, 393 (1999). Indeed, "even [the Division's] best efforts may not be sufficient to salvage a parental relationship." F.M., supra, 211 N.J. at 452.

In its opinion, the trial court noted that the Division had provided K.A.H. numerous opportunities to participate in services, but she did not avail herself of these opportunities. The court found that the Division made reasonable efforts toward reunification and explored alternatives to termination of parental rights.

The court noted that at the time of the trial, the Division was re-evaluating Ms. S., but placements with other relatives had been ruled out. The court observed that at the time of the trial, Sarah was residing in a home with foster parents who are willing to adopt her, and Ms. S. has expressed an interest in adopting Sydney if he becomes legally free and her home is deemed appropriate.

K.A.H. argues, however, that the court's analysis is not supported by sufficient evidence. She contends the court's finding that she did not comply with services is not based on the entire record. She asserts that the services that the Division offered to her were not tailored to her circumstances. K.A.H. further argues that the court's conclusion that there were no alternatives to termination of parental rights was clearly erroneous because establishing a permanent placement with relatives, such as Ms. S., was an option from the inception of the case.

These arguments are without sufficient merit to warrant extended comment. R. 2:11-3(e)(1)(E). We note, however, that the record shows that since 2006, the Division provided K.A.H. with numerous services. K.A.H.'s claim that these services were not tailored to her circumstances is not supported by the record. The Division also considered alternatives to termination of parental rights, and found that there were no such alternatives. We note that because adoption is feasible and likely, kinship legal guardianship was not an option. See N.J. Div. of Youth & Family Servs. v. P.P., 180 N.J. 494, 512 (2004).

D. Prong Four

The fourth prong of the statutory standard requires the Division to establish that "[t]ermination of parental rights will not do more harm than good." N.J.S.A. 30:4C-15.1(a)(4). The focus

of the fourth prong is on the effect termination of parental rights will have upon the child. G.L., supra, 191 N.J. at 609.

Here, the trial court found that the Division had presented clear and convincing evidence to establish prong four. The court explained:

In the present case, [Sarah] has bonded with her resource parents who have provided something that her biological parents cannot: a safe and stable home. . . .

Dr. Singer testified that if [Sarah] were to be removed from her resource parents, she will likely experience loss that would result in "significant and enduring harm." Given [Sarah]'s previous diagnoses, Dr. Singer opined that "severing this relationship would further traumatize this child and would likely have significant implications regarding her short and long term emotional functioning." Dr. Singer further found that [Sarah] views her resource parents as her psychological parents, and have become her primary nurturers, the people that [Sarah] looks to for security. . . .

. . . .

Even conceding that at the last bonding evaluation, [Sydney] demonstrated some bond with [K.A.H.], the record is replete with evidence that demonstrates that [K.A.H.] is unfit to parent this child. [K.A.H.] has had eight years to remedy the issues that led to [Sydney] being placed out of her care. [K.A.H.]'s refusal to engage with the Division clearly supports the conclusion that terminating her parental rights will not do more harm than good for [Sydney].

It is Dr. Singer's expert opinion . . . [that the evidence] supports [pursuing] termination of [K.A.H.'s] parental rights so that [Sydney] could be free to achieve the consistency and stability that comes with adoption. Plainly, Dr. Singer's prediction is that [Sydney's] behaviors will continue to worsen over time, without permanency and stability. He further asserts that [Sydney] cannot achieve permanency with [K.A.H.], due to her inability to parent. This [c]ourt agrees.

On appeal, K.A.H. argues that the court erred because it did not apply the balancing test required by K.H.O. She contends the court should have considered and balanced the various relationships, and determined whether the children would suffer a greater harm from termination of her parental rights than from a permanent disruption of their relationships with the foster parents. K.H.O., supra, 161 N.J. at 363.

We are not persuaded by K.A.H.'s arguments. The trial court's finding that the Division established prong four is supported by sufficient credible evidence in the record, including Dr. Singer's testimony. Notwithstanding K.A.H.'s arguments to the contrary, the trial court considered and balanced the various relationships involved, and properly determined that termination of K.A.H.'s parental rights to Sarah and Sydney will not do more harm than good.

III.

Next, K.A.H. argues that the trial court erred by suspending

visitation, which she claims prejudiced her at the guardianship trial. She contends that the court did not conduct the hearing at which visitation was suspended with the requisite formalities to support such a decision, and the court based its decision on unreliable hearsay, specifically an email and letters from the children's treating therapists.

The record shows that on August 11, 2014, while K.A.H. was in New Jersey to attend a funeral, she appeared for a hearing and requested visitation with Sarah and Sydney. K.A.H. also requested visitation in Pennsylvania and asked the court to order the Division to transport Sarah and Sydney to Pennsylvania to facilitate such visitation.

The Division objected to the request, noting that the then-current permanency plan was for termination of K.A.H.'s parental rights, not reunification. The Division noted that K.A.H. had not visited with the children in approximately one year. The court permitted visitation while K.A.H. was in New Jersey, and the visit was supposed to occur the next day. The court reserved its decision on additional visitation in Pennsylvania pending the outcome of the New Jersey visit.

The following day, at the Division's request, the court conducted an emergent hearing regarding K.A.H.'s visit with the children. K.A.H. was represented by counsel, but it appears that

K.A.H. was not personally notified of the hearing. K.A.H.'s attorney proceeded in her absence without objection.

The Division opposed visitation, arguing that it would not be in the best interests of the children and that it would be harmful to them. In support of its application, the Division presented an email and letters from the children's treating therapists, who did not recommend visitation at that time. K.A.H.'s counsel did not object to the court's consideration of the therapists' statements.

The court noted that K.A.H. had not been an active part of the children's lives for "many, many years." The court also pointed out that neither of the statements from the children's therapists indicated that visitation should never happen, but rather that it should not happen at this time. The court found that because there was no "real possibility of reunification in this case as it stands now, [visitation does not] make sense for these children at this time."

The court ordered the Division to have the children's therapists speak with K.A.H. about the impact her visitation would have on the children and her level of commitment to them. The court stated that K.A.H.

needs to make a commitment that no matter how we have to arrange it, at a certain time and a certain place and date, she's going to be

there for the children and they're going to know she's there.

So let's start by setting up something for her to visit with the clinicians and let's start it from that perspective. I'm certainly not trying to stop any mother from seeing their children if that's what she wants to do.

Because K.A.H.'s attorney did not object to the admission of the therapists' statements into evidence, we review the court's consideration of the therapists' statements for plain error. We conclude that the court's consideration of this evidence does not rise to the level of plain error because it was not "clearly capable of producing an unjust result." R. 2:10-2.

The court did not err by suspending K.A.H.'s visitation, in view of her failure to visit with the children for a substantial period of time and the need for K.A.H. to demonstrate a commitment to them. As noted, the court ordered K.A.H. to speak with Sarah and Sydney's therapists to explore the possibility of future visitation and to discuss her commitment to her children. The record shows that K.A.H. did not do so.

Furthermore, even if the court erred by suspending visitation on August 12, 2014, it would not have affected the court's ultimate disposition of the case. Indeed, she had previously failed to maintain consistent visitation with the children. K.A.H.'s lack of visitation from August 2014 until February 2015, was only one

of the factors the court considered in determining that K.A.H.'s parental rights should be terminated.

IV.

K.A.H. argues that the trial court erred by dismissing the litigation on May 11, 2015. She argues that the court left in abeyance issues regarding visitation, the licensing of Ms. S.'s home, Sydney's placement with Ms. S., and the adjudication of the therapists' recommendations on the benefits of visitation. K.A.H. argues that, by dismissing the action the court did not "scrupulously safeguard" her "due process interests" and those of the children. We disagree.

The record shows the following. On March 3, 2015, after the conclusion of the guardianship trial, the trial court issued a written opinion, together with a final order, terminating K.A.H.'s parental rights to Sarah and Sydney. The order scheduled a summary hearing "under the open FC [child-in-placement] docket" on May 11, 2015, "to track the status of the adoption filing." On May 11, 2015, the court conducted that hearing and issued an order dismissing the guardianship action. The court ordered that "the matter will continue to be reviewed under the open FC dockets."

K.A.H.'s arguments on this issue are without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E). We add the following comments.

When the court entered its order terminating K.A.H.'s parental rights and awarding guardianship of the children to the Division, the order effectively concluded the guardianship proceedings. The court appropriately determined that issues regarding visitation, the licensing of Ms. S.'s home, and Sydney's adoption could be addressed in the court's child-in-placement open dockets. We reject K.A.H.'s contention that, by dismissing the guardianship action, the court did not "scrupulously safeguard" her right to due process.

V.

K.A.H. also argues that she was denied the effective assistance of counsel in these proceedings. She contends that her attorney failed to investigate the matter adequately. She argued that her attorney did not argue controlling law on issues regarding the children's placement with Ms. S. as an alternative to termination of her parental rights.

It is well established that when the Division seeks to terminate a person's parental rights, the parent has the right to the assistance of counsel. N.J. Div. of Youth & Family Servs. v. B.R., 192 N.J. 301, 305-07 (2007). A party who claims he or she has been denied the effective assistance of counsel in such a proceeding must show that counsel's performance was objectively deficient, and that counsel's deficient performance prejudiced the

defense. Id. at 307 (citing Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674, 697 (1984)).

On appeal, K.A.H. argues that her trial attorney erred by failing to meet with Ms. S., visit her home, or review her licensing paperwork. She contends that after the Division ruled-out Ms. S. as a placement, counsel did not file a motion in the trial court or assist Ms. S. in challenging the rule-out decision. She claims her attorney did not track the status of the appeal, and did not inform the court that Ms. S. was successful in her appeal.

K.A.H. further claims that the Division had numerous opportunities to place the children with Ms. S., rather than have them subjected to multiple placements. She contends that there is a reasonable probability that, if her attorney maintained contact with Ms. S., investigated the January 2011 incident in which Ms. S. was arrested as a result of a domestic-violence incident, and tracked the status of her rule-out appeal, the result of the proceeding would have been different.

We cannot agree. Even if K.A.H.'s attorney had taken the actions that K.A.H. asserts should have been taken, the result here would not have been different because there was clear and convincing evidence showing that the termination of K.A.H.'s parental rights was in the children's best interests. As we have

explained, the evidence clearly and convincingly established that the children had been harmed by their relationship with K.A.H., and she was unable or unwilling to eliminate that harm.

It is undisputed that K.A.H. failed to complete virtually all of the services necessary to regain custody of the children. As a result, the children were subjected to multiple placements. The lack of permanency caused the children to suffer further harm. K.A.H. also failed to maintain consistent visitation. Dr. Singer testified that termination of K.A.H.'s parental rights was necessary so the children could be adopted and achieve the permanency they require.

We conclude that K.A.H. has not shown that if her attorney had handled the matter differently, her parental rights would not have been terminated. Therefore, she has not shown that she was denied the effective assistance of counsel.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION