

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3344-15T2

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

S.L.S.,

Defendant-Appellant.

IN THE MATTER OF THE GUARDIANSHIP
OF C.S.S.,

Minor.

Submitted January 25, 2017 – Decided March 7, 2017

Before Judges Simonelli and Carroll.

On appeal from the Superior Court of New
Jersey, Chancery Division, Family Part, Cape
May County, Docket No. FG-05-0011-15.

Joseph E. Krakora, Public Defender, attorney
for appellant (Marc D. Pereira, Designated
Counsel, on the briefs).

Christopher S. Porrino, Attorney General,
attorney for respondent (Melissa Schaffer,

Assistant Attorney General, of counsel;
Jennifer Russo-Belles, Deputy Attorney
General, on the brief).

Joseph E. Krakora, Public Defender, Law
Guardian, attorney for minor (Karen A.
Lodeserto, Designated Counsel, on the brief).

PER CURIAM

Defendant S.L.S., the biological father of C.S.S., born in 2010, appeals from the March 28, 2016 Family Part judgment for guardianship, which terminated his parental rights to the child. The judgment also terminated the parental rights of the children's biological mother, defendant V.L.M., who voluntarily surrendered her parental rights and does not appeal. On appeal, defendant contends the trial judge erred in finding that respondent New Jersey Division of Child Protection and Permanency (Division) proved all four prongs of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence. Defendant also contends that he received ineffective assistance of trial counsel, who allegedly failed to insist that the court and the Division comply with the notice provisions of the Indian Child Welfare Act (ICWA), 25 U.S.C.A. §§ 1901-1963. For the following reasons, we affirm.

We will not recite in detail the history of the Division's involvement with defendant and C.S.S. Instead, we incorporate by reference the factual findings set forth in Judge John R. Rauh's

March 18, 2016 oral opinion. However, we add the following comments.

Defendant has a history with the Division dating back to 2003, involving two of his four other children, none of whom is in his care. Defendant has an extensive criminal history, and was incarcerated during much of this litigation. When not incarcerated, he failed to engage in services the Division offered or attend visitation with C.S.S. despite having received bus passes from the Division. Defendant had no stable housing, and articulated no plan for C.S.S.

The Division's undisputed expert psychological evidence revealed that defendant was diagnosed with Adjustment Disorder with Mixed Disturbance of Behavior and Emotion (chronic). He has numerous risk factors, including future criminal involvement and re-incarcerations; irresponsible or unreliable parenting; housing instability; unhealthy relationship dynamics with V.L.M.; and failure to protect C.S.S. Defendant also has a history of anger control problems and domestic violence with V.L.M., and his intent to maintain a relationship with her placed him at risk for severe conflict and instability, to which C.S.S. would be exposed if he lived with one or both parents.

The expert evidence also revealed concerns about defendant's inability to stay focused on responsible parenting over time.

Defendant had exercised poor parenting judgment in the past, as well as repeated violations of court orders barring contact with V.L.M due to domestic violence concerns. In addition, defendant's conduct since his release from incarceration showed he was either unable to manage responsibilities well, or lapsed into an irresponsible pattern of behavior at C.S.S.'s expense. The expert evidence confirmed that defendant will be unable to provide safe and stable care for C.S.S. in the foreseeable future.

The undisputed expert bonding evidence revealed that C.S.S. had a fairly strong, but ambivalent, attachment to defendant; however, he was separated from defendant for nearly two years and could not possibly view him as being a reliable part of his life. Since C.S.S.'s placement with his present foster parents, who want to adopt him, his behavioral signs of emotional distress improved significantly. C.S.S. had positive attachments with his foster parents, which would become stronger and healthier over time, and he has thrived in their care.

The expert bonding evidence confirmed that although C.S.S. would be affected by the permanent loss of defendant, his foster parents were more than able to mitigate that risk. If removed from them, however, C.S.S. would be at increased risk for harm. He would suffer the loss of care, comfort, routine, and predictability that has helped him improve, and suffer behavioral

setbacks, none of which defendant could mitigate. Adoption by his foster parents would give C.S.S. the best opportunity to experience a safe, healthy, and secure childhood.

Judge Rough reviewed the evidence presented at the trial, made detailed factual findings as to each prong of N.J.S.A. 30:4C-15.1(a), and thereafter concluded the Division met by clear and convincing evidence all of the legal requirements for a judgment of guardianship. The judge's opinion tracks the statutory requirements of N.J.S.A. 30:4C-15.1(a), accords with N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420 (2012), N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88 (2008), In re Guardianship of K.H.O., 161 N.J. 337 (1999), In re Guardianship of D.M.H., 161 N.J. 365 (1999), and N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591 (1986), and is more than amply supported by the record. F.M., supra, 211 N.J. at 448-49.

We have considered defendant's contention that trial counsel rendered ineffective assistance of counsel in light of the record and applicable legal principles and conclude it is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). When asked about his possible Cherokee heritage, defendant disclaimed any ties to the Cherokee tribe.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION