

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-3457-15T3
A-3458-15T3

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

J.I. and L.R., Sr.,

Defendants-Appellants.

IN THE MATTER OF THE
GUARDIANSHIP OF L.R., Jr., a Minor.

Submitted January 31, 2017 – Decided March 8, 2017

Before Judges Leone and Vernoia.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FG-02-39-15.

Joseph E. Krakora, Public Defender, attorney
for appellant J.I. (Christine B. Mowry,
Designated Counsel, on the briefs).

Joseph E. Krakora, Public Defender, attorney
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Ciccio, Designated Counsel, on the briefs).

Christopher S. Porrino, Attorney General, attorney for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Julie B. Colonna, Deputy Attorney General, on the brief).

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

PER CURIAM

These appeals arise from the April 4, 2016 order terminating the parental rights of defendant J.I. ("Mother") and defendant L.R., Sr. ("Father") regarding their son L.R., Jr. ("Lewis").¹ We consolidate defendant's appeals and affirm.

I.

The following facts are drawn from the family court's opinion and the trial evidence. Prior to Lewis's birth, the Division received a referral concerning another of defendant's children. During its investigation, the Division learned that Mother was pregnant with Lewis. Beginning in February 2013, the Division repeatedly scheduled defendants for drug tests, but they failed to attend.

In June and July 2013, while pregnant with Lewis, Mother was compelled to undergo a drug-screen, and tested positive for heroin,

¹ Lewis is the pseudonym given to the child by the family court. Defendants, married in 2012, each have other children, none of whom remained in their custody at the time of trial.

cocaine, amphetamines, morphine, opiates, methadone, and benzodiazepines. The Division executed an emergency removal of Mother's children, custody was transferred to their two fathers, and Mother stipulated to abuse or neglect through her unresolved drug abuse. When Lewis was born in September 2013, both Mother and Lewis tested positive for benzodiazepines.

Before Lewis's hospital discharge, Father agreed to sign a Safety Protection Plan to limit Mother's contact with Lewis. Within two days, Father left Lewis and went to spend time with Mother. The Division removed Lewis from Father's custody.

Mother submitted to methadone maintenance at Paterson Counseling Center (Paterson). In October 2013, Mother admitted to injecting heroin twice a week for at least three weeks.

Mother continued to have positive drug tests, and repeatedly failed to comply with drug and mental health programs. In December 2013, Mother admitted she had an addiction to opiates and that she used heroin while receiving methadone treatment.

From January through July 2014, Mother repeatedly tested positive for numerous illegal drugs. Defendants also repeatedly failed to attend drug screens, parenting classes, visitation sessions, and mental evaluations.

In September 2014, the Division filed a guardianship complaint. Mother was ordered to attend inpatient/outpatient

substance abuse treatment. Nonetheless, throughout the end of 2014, Mother continuously tested positive for a number of illegal drugs, methadone, and benzodiazepines.

In February and July 2015, Mother tested positive for cocaine, methadone, and benzodiazepines.

The guardianship trial began on July 15, 2015 and ended on September 10, 2015. Neither defendant attended their scheduled pre-trial psychological and bonding evaluations. Both finally submitted to psychological and bonding evaluations by Dr. Robert J. Miller on August 25, 2015, approximately five weeks after the start of trial. The family court terminated defendants' parental rights. Defendants appealed.

II.

"Appellate 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). Our task is to determine whether the decision "is supported 'by substantial and credible evidence' [i]n the record.'" N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012) (citation omitted). "We ordinarily defer to the factual findings of the trial court because it has the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand; it has a 'feel of the case' that can never be realized by a review of the cold record." N.J.

Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008) (citation omitted).

"Particular deference is afforded to family court fact-finding because of the family courts' special jurisdiction and expertise in family matters." N.J. Div. of Child Prot. & Permanency v. N.C.M., 438 N.J. Super. 356, 367 (App. Div. 2014) (citing Cesare v. Cesare, 154 N.J. 394, 412 (1998)), certif. denied, 222 N.J. 18 (2015). Thus, "[w]e will not overturn a family court's factfindings unless they are so 'wide of the mark' that our intervention is necessary to correct an injustice." F.M., supra, 211 N.J. at 448 (citation omitted). We must hew to our deferential standard of review.

III.

"A parent's right to enjoy a relationship with his or her child is constitutionally protected." In re Guardianship of K.H.O., 161 N.J. 337, 346 (1999). However, this protection "is tempered by the State's parens patriae responsibility to protect the welfare of children." Id. at 347; see N.J.S.A. 30:4C-1(a).

As the family court recognized, the Division must prove by clear and convincing evidence that termination of parental rights is in the best interests of the children. N.J.S.A. 30:4C-15(c); F.M., supra, 211 N.J. at 447. The Division must show:

- (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 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.

[N.J.S.A. 30:4C-15.1(a).]

A.

We first address whether the Division presented clear and convincing evidence to satisfy prongs one and two of the best-interests test. The first two prongs "relate to the finding of harm arising out of the parental relationship." In re Guardianship of DMH, 161 N.J. 365, 378 (1999). They "are related to one another, and evidence that supports one informs and may support the other as part of the comprehensive basis for determining the best interests of the child." Id. at 379.

Prong one "requires that the State demonstrate harm to the child by the parent" in the form of "endangerment of the child's health and development resulting from the parental relationship." K.H.O., supra, 161 N.J. at 348. The second prong requires the Division show "that the harm is likely to continue because the parent is unable or unwilling to overcome or remove the harm." Ibid.

1.

The family court did not err in finding clear and convincing evidence to satisfy prongs one and two as to Mother. The court emphasized Mother's extensive history of substance abuse, her chronic mental health issues, her extensive history of failing to cooperate and communicate with the Division, her failure to obtain treatment, and Dr. Miller's testimony assessing Mother's ability to parent. We agree this evidence showed harm to Lewis that Mother was unable or unwilling to eliminate.

Under prong one, harm is shown

by indications of parental dereliction and irresponsibility, such as the parent's continued or recurrent drug abuse, the inability to provide a stable and protective home, the withholding of parental attention and care, and the diversion of family resources in order to support a drug habit, with the resultant neglect and lack of nurture for the child.

[Id. at 353.]

"[H]arm and risk of harm [can be] proven [where] the parents' drug use resulted in their failure to provide a stable home, with appropriate nurture and care of the young child[.]" N.J. Div. of Youth & Family Servs. v. H.R., 431 N.J. Super. 212, 222 (App. Div. 2013).

From her pregnancy with Lewis in early 2013 through the beginning of the guardianship trial in July 2015, Mother frequently and continuously tested positive for illegal drugs despite her repeated efforts to avoid drug tests and evaluations. In June and July 2013, while pregnant with Lewis, she repeatedly tested positive for opiates, cocaine, amphetamines, methadone, and benzodiazepines. At birth in September 2013, both Mother and Lewis tested positive for benzodiazepines. Later that month, she tested positive for opiates. In October 2013, Mother admitted to injecting heroin twice a week, and she tested positive for opiates, methadone, and benzodiazepines. In December 2013, Mother admitted to an addiction to opiates and to using heroin while receiving methadone treatment.

In December 2013, January 2014, and February 2014, Mother tested positive for opiates, methadone, and benzodiazepines. In March 2014, Mother tested positive for opiates, amphetamines, barbiturates, methadone, and benzodiazepines. In April 2014,

Mother tested positive for opiates, cocaine, methadone, and benzodiazepines. In May, June, and July 2014, Mother tested positive for cocaine, methadone, and benzodiazepines. In August 2014, Mother tested positive for opiates, cocaine, barbiturates, methadone, and benzodiazepines.

In September 2014, Mother tested positive for barbiturates and methadone. In October 2014, Mother tested positive for opiates, methadone, and benzodiazepines. In November 2014, Mother tested positive for opiates, cocaine, methadone, and benzodiazepines. In December 2014, February 2015, and July 2015, when the trial began, Mother tested positive for cocaine, methadone, and benzodiazepines. Mother evaded many other drug tests and substance abuse evaluations.

Mother's sustained and unremitted drug abuse threatened obvious harm to the very young Lewis. N.J. Div. of Child Prot. & Permanency v. B.O., 438 N.J. Super. 373, 385 (App. Div. 2014). We recognize "that the use of illicit drugs is illegal and that a parent should not exercise visitation, even supervised visitation, while impaired," let alone be the custodial parent. N.J. Div. of Youth & Family Servs. v. V.T., 423 N.J. Super. 320, 331 (App. Div. 2011). "[P]arents dabbling with addictive substances must accept the mandate to eliminate all substance abuse." N.J. Div. of Youth

& Family Servs. v. T.S., 417 N.J. Super. 228, 245 (App. Div. 2010),
certif. denied, 205 N.J. 519 (2011). Mother failed to do so.

The Division's expert, Dr. Miller, testified "there were significant issues with substance abuse" of cocaine, heroin, other opiates, and methadone affecting Mother's ability to parent. As Dr. Miller noted, that Mother was continuing to test positive for cocaine in July 2015 "raised concerns that she had not addressed the substance abuse problem."

As Dr. Miller stressed, Mother's failure to address her drug problem rendered her unable to parent "during a particularly important time in the child's development." He stated:

These first couple of years, this first year-and-a-half is the period of time when the child is developing a secure or an insecure attachment, when a child is forming an emotional bond with a caregiver, this is part of brain development. . . . [Mother] was non-compliant with service recommendations at a time when the child needed her the most, essentially for the most important developmental early phase . . . of his life.

Such an "inability to parent" constitutes harm sufficient to justify termination. N.J. Div. of Youth & Family Servs. v. P.P., 180 N.J. 494, 512 (2004); see also In re Guardianship of K.L.F., 129 N.J. 32, 44 (1992) (providing that inaction "can constitute injury sufficient to authorize the termination of parental rights"). Courts are not required to "wait to act until a child

is actually irreparably impaired by parental inattention or neglect." DMH, supra, 161 N.J. at 383.

Indeed, Mother's drug use caused the removal of her other children. We reject Mother's argument that her history with her other children was irrelevant in determining whether there will be harm to Lewis. "All any court can rely upon in determining whether to sever parental rights is the parents' past course of conduct, whether to the child in question or to other children in their care." J. v. M., 157 N.J. Super. 478, 493 (App. Div.) (emphasis added), certif. denied, 77 N.J. 490 (1978).

Further, "suffering from mental disorders which adversely affect [one's] ability to parent" can be sufficient evidence to satisfy the first prong. N.J. Div. of Youth & Family Servs v. A.G., 344 N.J. Super. 418, 440 (App. Div. 2001), certif. denied, 171 N.J. 44 (2002). If the parents lack "the mental status sufficient to eliminate the risk of future harm to the child," that indicates "the child's safety, health or development will be endangered in the future and [that] the parents are or will be able to eliminate the harm." Ibid.

Dr. Miller cited Mother's bipolar disorder and "manic-depressive mood instability which raises a significant risk [for] children" if unmanaged. Dr. Miller "c[ould]n't find a period of stability where she has attempted to manage this problem without

substances . . . and where she's been able to have a period of stability and independent functioning from which to parent." He stated the disorder "leaves her with a lack of empathy or . . . inability . . . to understand children's emotional needs, she's always distracted by her own. She's unable to set those aside and to focus on the children's needs primarily." He stated "[t]here's a very high incidence of emotional neglect with this particular kind of problem."

Dr. Miller also described her personality as functioning "in a borderline context," signifying a "denial of reality" and a "resist[ance] to engaging or taking responsibility for her behavior or problems." Dr. Miller concluded Mother's "unwillingness to address . . . some of those underlying psychological emotional problems is a significant indicator that . . . her capacity to provide an empathic or sensitive consistent environment for a child is non-existent at this time" and "in the foreseeable future."

As set forth above, Mother was unable or unwilling to eliminate the harm despite years of Division efforts to provide drug and mental health treatment. Mother repeatedly failed to participate in evaluations and programs set up by the Division, demonstrating an unwillingness to engage in treatment and prevent harm to Lewis.

Indeed, Mother's illegal drug use continued despite her being on methadone treatment. Even though Mother's use of lawfully-prescribed methadone may not be grossly negligent as required to constitute abuse or neglect, see N.J. Div. of Child Prot. & Permanency v. Y.N., 220 N.J. 165, 185-86 (2014), her continued drug use "endangered" Lewis and showed she was "unwilling or unable to eliminate the harm." N.J.S.A. 30:4C-15.1(a)(1), (2). Moreover, she continued to use illegal drugs despite being on methadone.²

Accordingly, Mother's persistent substance abuse issues, her severe mental health issues, her recurrent lack of stability or stable housing, and her continued failure to cooperate with the Division demonstrate clear and convincing evidence sufficient to satisfy the first two prongs of the best-interests standard. As Dr. Miller concluded, when asked whether Mother could safely parent Lewis, "[a]t this time she cannot, and will not be able to in the foreseeable future . . . remedy those parenting deficits in a way that could support reunification."

Mother alleges misstatements in the family court's opinion. They do not amount to error that was "clearly capable of producing an unjust result." R. 2:10-2.

² Even if we disregard prescribed usage of methadone and Xanax, Mother's use of illegal drugs itself was sufficient harm.

The family court incorrectly stated Mother did not receive any prenatal care. In fact, she did not receive any prenatal care for the final third of her pregnancy, from May 21, 2013 to September 2013, during which period she was abusing drugs. This error is not clearly capable of producing an unjust result, as Mother still lacked prenatal care at a critical time in her pregnancy, showing her failure to appreciate the responsibilities of parenting.

The family court properly inferred Mother's use of Xanax during her pregnancy was not authorized by a prescription. While the Division confirmed Mother was prescribed Xanax, it also discovered she was only permitted to take it up to a certain point in her pregnancy. In a December 2013 evaluation, she admitted she took "left over" Xanax while pregnant with Lewis that she was prescribed earlier without asking her doctor if this was safe during her third trimester. Furthermore, the Division's expert confirmed that use of Xanax during pregnancy was inappropriate.

Moreover, Mother also used heroin, cocaine, amphetamines, morphine, and other illegal drugs during her pregnancy with Lewis and thereafter. While "[d]rug use during pregnancy, in and of itself, does not constitute a harm to the child under N.J.S.A. 30:4C-15.1(a)(1)," K.H.O., supra, 161 N.J. at 349, the family court properly noted Mother's drug use during pregnancy was

evidence of her "extensive history of substance abuse" which persisted long after Lewis's birth.

The family court stated Mother "passed [her] addiction on to her child who was born positive for illegal substances." As noted above, Mother was addicted to drugs and was illegally taking Xanax, which resulted in both she and Lewis testing positive for benzodiazepines at birth. While Lewis did not experience any withdrawal symptoms, so Mother's "addiction" was not passed on to him, the court's error in phrasing was not clearly capable of producing an unjust result, particularly as it was undisputed that Lewis was born healthy.

The family court incorrectly stated Lewis had never been in the custody of either Mother or Father. This error is not clearly capable of producing an unjust result as Lewis was only in his Father's custody for two days and was never in Mother's custody.

The family court cited the fact that Mother "never participated in a long term in-patient rehabilitation program" as an example of her lack of compliance with the Division. In particular, the court stated Mother "refused the offer to attend Great Expectations and [its] Mommy and Me programs." It is undisputed Mother never went to these programs, despite being ordered to do so in July 2013. Mother points to the testimony of a Division caseworker that Mother "never stated that she was

unwilling to go [to a residential program]" and "always said she was willing to go." However, the caseworker also testified that Mother "did not want to go into the program" at Great Expectations, that Mother never called for a referral into that program despite saying she would call, and that Great Expectations "did not work out because it wasn't followed up on." The caseworker's testimony was corroborated by her e-mail to Mother pointing out she "did not comply with th[e] recommendation" for Great Expectations. The court could reasonably infer from Mother's failure to comply that she was refusing to attend. Any error was not clearly capable of producing an unjust result.³

The family court erroneously stated Mother was discharged from the Straight & Narrow Rehabilitation program on August 7, 2014 for "daily heroin use."⁴ In fact, the discharge report stated Mother was discharged because she had completed a particular level of care, although the program recommended additional inpatient treatment. This error was not clearly capable of producing an unjust result because Mother admitted using cocaine around this

³ While Mother argues the caseworker testified it was not her fault she did not have in-patient treatment, the caseworker was referring only to Bergen Regional and not to the other programs put forward by the Division.

⁴ In fact, "daily heroin use" was listed as the reason for Mother's initial participation in the program.

period, refused additional treatment, and continued to test positive for illegal substances even after her discharge.

The family court stated Mother was not attending any programs from August to December 2014. Mother countered that she engaged in a methadone program at Paterson for the entirety of 2014. As the court acknowledged Mother's treatment at Paterson in its opinion, it apparently was referring to the other programs she was ordered but failed to attend. Regardless, any error was not clearly capable of producing an unjust result. Dr. Miller testified Paterson was simply "a methadone program." He also noted Mother "continued to use cocaine throughout that program while receiving methadone."

Where the trial court erred in its findings, we set aside those findings. However, we do not find that they were "of such a nature as to have been clearly capable of producing an unjust result." R. 2:10-2. Further, "'an appeal is taken from a trial court's ruling rather than reasons for the ruling.'" N.J. Div. of Child Prot. & Permanency v. K.M., 444 N.J. Super. 325, 333-34 (App. Div.) (citation omitted), certif. denied, 227 N.J. 211 (2016). "We may affirm the final judgment of the trial court 'on grounds other than those upon which the trial court relied.'" Id. at 334 (citation omitted).

Finally, Mother argues the family court failed to consider her progress toward maintaining sobriety, most significantly the Paterson reports from May to December 2015, which Mother introduced during closing arguments. These reports stated that Mother tested positive for benzodiazepines and methadone and that Mother's "drug screens [do] not reflect any illicit drug use at this time." The court was concerned "[n]o expert testimony was offered to explain what that means," an understandable concern given that other evidence showed Mother tested positive for cocaine during this period. The court also noted there was no confirmation testing for the positive results. As a result, the court stated it "read the exhibit as another exhibit" but stated "reliance was neither positive nor negative for either side . . . [b]ecause there are unanswered questions about these tests."

The family court has discretion whether to credit or give weight to certain evidence and to determine what pieces of evidence are relevant. See LaBracio Family P'ship v. 1239 Roosevelt Ave., Inc., 340 N.J. Super. 155, 165 (App. Div. 2001). It was within the court's discretion, as the fact-finder, not to rely on these reports. We defer to that court's "assessment of individual pieces of evidence." N.J. Div. of Youth & Family Servs. v. I.H.C., 415 N.J. Super. 551, 582 (App. Div. 2010).

Even assuming the Paterson reports accurately showed Mother was only taking methadone and Xanax from May to December 2015, that evidence was offset by expert testimony that avoidance of illegal drugs during that period would be inadequate to show Mother was capable of parenting Lewis. Dr. Miller testified that a conservative eight-month period of sobriety would "not [be] that long of a period of time for someone in treatment to address the basics of substance abuse, to achieve some level of sobriety." Even "a year of documented sobriety" would put her just at "the beginning of treatment." Further, to address her bipolar disorder, she "would need some sobriety that extends beyond a year and a careful assessment of . . . mood shifts and orientations for another six to nine months within a psychiatric relationship." When asked to assume Mother has not had a positive drug screen since July 2015, Dr. Miller said a conservative estimate would be that she would need to continue that sobriety into the end of 2016 to be considered for parenting Lewis. He concluded "the relapse potentials remain very high for her." The trial court credited Dr. Miller's testimony.

Thus, the Paterson reports showing Mother's continued use of methadone and Xanax did not show she is capable of removing the harm. For all these reasons, the refusal of the family court to rely on those reports was not arbitrary or capricious, a due

process violation, or clearly capable of producing an unjust result.

2.

We next consider whether the Division presented clear and convincing evidence to satisfy prongs one and two of the best-interests test as to Father. The family court found clear and convincing evidence based on Father's belief that Mother did not present any risk of harm to their children; Father's extensive history of failing to cooperate with the Division, including not submitting to drug testing and psychological evaluations; and Dr. Miller's testimony about Father's mental health issues.

Father denied Mother had used cocaine, had no concerns about her ability to parent, and insisted he would co-parent with her and remain with her "no matter what." Dr. Miller testified Father "appeared . . . to resist any reflection of the seriousness of [Mother]'s substance abuse problems," or risk to Lewis. Dr. Miller concluded:

[Father] struck me as someone who has primarily placed his own needs for the relationship with [Mother] beyond the parenting needs. He has not placed the child's needs first and foremost in his mind to provide a safe and stable environment or to understand how this relationship itself presents risk, or . . . the mother's behavior, presents risk.

Ultimately, Dr. Miller found Father is "unable to reflect on how [a spouse with substance abuse problems] creates a . . . risk to the child, and he denies any concerns regarding his spouse in her capacity to provide a safe and stable environment."

"A parent has the obligation to protect a child from harms that can be inflicted by another parent." F.M., supra, 211 N.J. at 449. "The crucial inquiries are whether the parent's association with others causes harm to the child and whether the parent is unable or unwilling to provide a safe and stable home." N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 289-90 (2007). If a parent "is unwilling or incapable of following court orders to shield [the] child from that danger," then the parent has harmed the child. F.M., supra, 211 N.J. at 451. Here, Father's statements and actions despite the Division's "case plan" showed he did "not fully appreciate the needs of his infant son or the risks created by the mother's presence." M.M., supra, 189 N.J. at 283-84.

During the only two days Lewis was in his custody, Father chose to be with Mother rather than Lewis, demonstrating a lack of responsibility. Despite signing the Safety Protection Plan to keep Mother away from Lewis, Father indicated he intended to continue his relationship with Mother and refused to acknowledge Mother's inability to parent, indicating it was a reasonable

inference that, if Lewis were in Father's custody, he would expose Lewis to a dangerous person.

Due to Father's lack of cooperation, the family court was unable to determine the full extent of his substance abuse problems. Father repeatedly tested positive for marijuana, including as recently as the time of trial in July 2015. His drug use combined with his willingness to expose Lewis to Mother showed Lewis would be endangered. Father's lack of compliance with drug testing and evaluations showed he was unwilling and unable to eliminate the harm. Accordingly, there was clear and convincing evidence to satisfy the first two prongs of the best-interests standard.

B.

Under prong three, the Division must make "reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home." N.J.S.A. 30:4C-15.1(a). N.J.S.A. 30:4C-15.1(c) defines "reasonable efforts" as "attempts by an agency authorized by the division to assist the parents in remedying the circumstances and conditions that led to the placement of the child and in reinforcing the family structure."

The family court found the Division "made reasonable efforts to provide Mother and Father with services required by this third

prong." The court cited the Division's provision of a lengthy list of services, including psychological and psychiatric evaluations, substance abuse evaluations, methadone treatment, various drug rehabilitation programs, referrals to various in-patient programs, supervised visitation, scheduling family team meetings, parenting classes, and transportation as needed.

While recognizing the extensive efforts by the Division, Mother argues the Division "fell far short" in providing her with assistance. Although the Division contacted and gave Mother referrals to several facilities to provide MICA (mentally ill chemically addicted) in-patient treatment, such as Great Expectations, Mother claims that some facilities did not have an available bed and that the Division failed to take additional action.

However, "'[t]he diligence of [the Division]'s efforts on behalf of a parent is not measured by' whether those efforts were successful." F.M., supra, 211 N.J. at 452 (citation omitted). Rather, the Division's efforts are measured "against the standard of adequacy in light of all the circumstances of a given case." DMH, supra, 161 N.J. at 393. The Division made reasonable efforts to place Mother at an in-patient facility. Moreover, it was also Mother's responsibility to follow up and work with the facilities after the Division made a referral, which she failed to do with

Great Expectations. Even after that failure, the Division continued to communicate with Great Expectations and inform Mother what had to be done.⁵

The Division offered service after service, even after defendants were continually non-compliant and failed to communicate with the Division. There was clear and convincing evidence sufficient to satisfy prong three.

C.

To satisfy the fourth prong, the Division must prove by clear and convincing evidence that "[t]ermination of parental rights will not do more harm than good." N.J.S.A. 30:4C-15.1(a)(4). "[T]he question to be addressed under [prong four] is whether, after considering and balancing the two relationships, the child will suffer a greater harm from the termination of ties with [his] natural parents than from permanent disruption of [his] relationship with [his] foster parents." N.J. Div. of Youth & Family Servs. v. I.S., 202 N.J. 145, 181 (2010) (citation omitted). "The crux of the fourth statutory subpart is the child's need for a permanent and stable home, along with a defined parent-child relationship." H.R., supra, 431 N.J. Super. at 226.

⁵ Mother notes several inpatient programs would not accept her because of her methadone use. Mother's failure to progress off methadone was not for lack of effort on the Division's part.

The family court largely based its conclusion on the testimony of Dr. Miller. Dr. Miller testified to a "secure attachment" and emotional bond between Lewis and the foster parents, who cared for him since he was four days old and want to adopt him.

Dr. Miller found separation from the foster parents would cause "enduring and significant harm" to Lewis's development. By contrast, he found a "lack of attachment" and "no emotional bond" between defendants and Lewis, who had never been in Mother's care and had only been in Father's care for two days.

Dr. Miller also testified Lewis would suffer additional harm if permanency was delayed, particularly given both parents' poor prospect for change in the foreseeable future. The family court properly could and did rely on Dr. Miller, whose observations were based on his various meetings with the biological parents, the resources parents, and Lewis.⁶

Father called Dr. Figurelli, who found that Lewis appeared comfortable with Father and that Father could be an adequate parent if he was compliant with all Division services and abstained from substance abuse. However, Father had been largely noncompliant and had tested positive for illegal drugs. Dr. Figurelli conceded Father's abstinence could not be ascertained given his failure to

⁶ The family court could credit Dr. Miller despite Mother's challenges to his qualifications, interview, and sources.

comply with substance abuse evaluations and treatment. Dr. Figurelli acknowledged Lewis would suffer significant harm if removed from his foster parents, but advocated for a gradual six-month transition to Father's care.

The family court properly declined to make Lewis wait for Father to do things he had refused to do over three years of the Division's reasonable efforts. New Jersey recognizes "the paramount need the children have for permanent and defined parent-child relationships." J.C., supra, 129 N.J. at 26. "A child cannot be held prisoner of the rights of others, even those of his or her parents. Children have their own rights, including the right to a permanent, safe and stable placement." 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). "Keeping the child[ren] in limbo, hoping for some long term unification plan, would be a misapplication of the law." A.G., supra, 344 N.J. Super. at 438.


Moreover, the Law Guardian supports the termination of parental rights. "[T]he Law Guardian's position [is] of particular significance because . . . [h]e has to advocate for the best interests of the child too young to speak for himself, and represents neither adversary in the case." N.J. Div. of Youth & Family Servs. v. A.R., 405 N.J. Super. 418, 433 (App. Div. 2009).

We agree that termination of parental rights will not do more harm than good given that each defendant "has exposed [the] child to continuing harm . . . and has been unable to remediate the danger to the child, and . . . the child has bonded with foster parents who have provided a nurturing and safe home" and wish to adopt him. E.P., supra, 196 N.J. at 108.

Defendants' remaining arguments are without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION