RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3931-15T2
A-3933-15T2

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

A.A. and E.L., Sr.,

Defendants-Appellants.

IN THE MATTER OF THE GUARDIANSHIP OF E.L., Jr. and N.L., minors.

Argued May 31, 2017 – Decided July 11, 2017

Before Judges Koblitz, Rothstadt and Sumners.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FG-07-0110-16.

Beatrix W. Shear, Designated Counsel, argued the cause for appellant A.A. (Joseph E. Krakora, Public Defender, attorney; Ms. Shear, on the briefs).

Stephen Edward Miklosey, Designated Counsel, telephonically argued the cause for appellant E.L., Sr. (Joseph E. Krakora, Public Defender, attorney; Mr. Miklosey, on the brief).

Sarah K. Bennett, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General; Andrea M. Silkowitz, Assistant Attorney General, of counsel; Ms. Bennett, on the brief).

Karen A. Lodeserto, Designated Counsel, argued the cause for minors (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Ms. Lodeserto, on the brief).

PER CURIAM

In this consolidated appeal, defendants A.A. (Amy)[1] and E.L., Sr., (Edgar) appeal from the April 27, 2016 Judgment of Guardianship terminating their parental rights to their sons, E.L., Jr., (Eric) and N.L. (Neil). We remand Edgar's case for a supplemental hearing and affirm the termination of Amy's parental rights, with the proviso that she may reopen the matter if Edgar's parental rights are not terminated after remand.

I

Eric, born in 2012, and Neil, born two years later, are the biological children of Amy and Edgar. Edgar is also the father of N.J. (Natalie), born at the end of 2009, and I.L., born in 2006, who are not a party to the guardianship action under appeal. Amy is also the mother of N.A., born in 2007, who is not a party to this action and is in the custody of his paternal grandfather.

[1] We use pseudonyms and initials to refer to the parties pursuant to Rule 1:38-3(d)(12).

The Division of Child Protection and Permanency (Division) became involved with the family following multiple unsubstantiated referrals beginning in April 2012 alleging abuse to Edgar's daughter Natalie, who was being cared for by Amy. In December 2013, Natalie's daycare reported abuse that was substantiated. Daycare staff reported Amy had shaken four-year-old Natalie, slammed her into a chair and onto the floor, and punched her on the legs. Amy admitted hitting Natalie. In January 2014, the Division supplied parent aide services to the family.

Amy and Edgar were evaluated by Dr. Leslie J. Williams in February 2014. Dr. Williams recommended psychotherapy and parenting classes for both parents as well as anger management for Edgar. Dr. Williams stated Amy would "benefit from psychotherapy to address her low self-esteem and increase her problem solving ability."

The Division received another substantiated referral concerning Natalie in June 2014. During a visit by the Division, the worker observed that Natalie had two black eyes. When questioned, Edgar stated that Natalie was hit in the left eye during a football game on Memorial Day weekend. He first stated the bruise to her right eye was caused by Natalie falling down and hitting a radiator, and then said the eye became swollen by a mosquito bite. A medical examination of Natalie revealed a

healing, child-sized bite mark on her back, two black eyes, linear and patterned marks and scars on her legs that suggested multiple impacts with a linear or patterned object, multiple insect bites, and lesions on her left hand and back. The Division substantiated the allegation due to the unexplained physical injuries with contradictory explanations, medical neglect, and inadequate supervision. Medical records further corroborated a pattern of neglect: Natalie was brought to the emergency room seven times between 2011 and 2014. Both Eric and Natalie were removed from the home on an emergent basis in June 2014.

Dr. Williams conducted another psychological evaluation of Amy and Edgar in July 2014. Dr. Williams found Edgar scored in the "low average range" of intelligence, and Amy scored in the "borderline intellectual functioning" range. Dr. Williams renewed his earlier recommendations, adding that services should take into account the defendants' level of intelligence. He concluded both parents were unable to provide adequate parenting. In August 2014, defendants began therapy and parenting skills classes.

During the ensuing Division investigation, Amy stated the cause of Natalie's unexplained injuries were nearly daily beatings administered by her and Edgar. She said she beat Natalie with her hand. The bruises to Natalie's eyes were the result of Natalie not staying still while Edgar beat her with a belt. In addition,

Edgar would at times fail to feed Natalie. Amy stated that she was also victimized by Edgar; however, she refused to discuss the matter with a domestic violence liaison. On October 17, 2014, Amy and Edgar voluntarily stipulated to inadequate supervision of Natalie.

Later that month, Neil was born and custody was granted to the Division five days after his birth. Neil was placed directly from the hospital. After initial placement with non-relatives, the two boys were placed with their paternal grandmother in November 2016, where they remain.

Dr. Samiris Sostre conducted a psychological evaluation of Amy in November 2014. Amy told Dr. Sostre she spanked Natalie, and Edgar hit the child with a belt. Amy also related domestic violence issues with Edgar, but maintained the issues had been resolved. Dr. Sostre found that Amy had impaired judgment and concentration and poor insight. She opined Amy's cognitive disabilities would not improve and her dependent personality would hinder her ability to act in the children's best interests, concluding "prognosis for improvement [is] guarded."

In February 2015, Dr. Williams evaluated Amy for a third time. He stated Amy required lifelong treatment that is "focused and direct, and geared to [her] intellectual capacity," and that her unaddressed domestic violence issues constituted a risk to any

child in her care. The same month, Dr. Sostre evaluated Edgar. Edgar denied being violent to Amy or Natalie. Dr. Sostre opined that Edgar's impulse control, denial, and lack of parental concern demonstrated a lack of progress on his part, rendering reunification unadvisable.

At the request of Edgar's counsel, Dr. James R. Reynolds evaluated Edgar the following month. Dr. Reynolds stated in his report that, while Edgar possesses knowledge of "children's developmental capabilities and emotional needs," he "may be overly restrictive of children becoming autonomous in an age- and developmentally-appropriate manner," and he "may also conflate parent and child roles, possibly expecting children to provide a level of emotional support to their parents which is not appropriate." Dr. Reynolds concluded, however, that Edgar "appears to possess the capacity to benefit from parenting classes and other types of parental assistance" as long as those services were modified to accommodate [his] cognitive limitations."

In April 2015, Amy told the Division during a visit about an incident when Edgar pulled her hair and put his hands around her neck to choke her. Both parents were referred for domestic violence counseling and parenting classes. The parties separated four months later.

In September 2015, Dr. Jonathan H. Mack, a licensed doctor of psychology with expertise in neuropsychology, conducted a neuropsychological and psychological evaluation of Edgar on behalf of the Division. Dr. Mack's report stated, "[Edgar's] personality features that make him overly reactive, inclined to domestic violence, incapable of holding a job, and markedly over reactive in his personal life" were the result of traumatic brain injury and seizure disorder stemming from a car accident in 2008 or 2009. Dr. Mack opined: "[Edgar] is not capable of being a minimally effective parent in the foreseeable future, regardless of any interventions that were to be taken."

From November 2015 to January 2016, Dr. Sean P. Hiscox conducted separate bonding and psychological evaluations of Amy and Edgar. In an interview, Edgar admitted to a 2007 simple assault charge against him by a prior girlfriend and instances of mutual aggressiveness between him and Amy.

In her interview with Dr. Hiscox, Amy reported moving in with her unemployed, twenty-two-year-old boyfriend of one month and his family. In bonding evaluations, Dr. Hiscox observed loving behavior by both parents toward the boys, but stated, "their relationship is more reflective of a positive relationship often found with an extended family member . . . not a central attachment figure."

In July 2016, the court conducted a two-day guardianship trial. The Division offered the testimony of a Division caseworker and psychologist Dr. Hiscox as well as voluminous records. Amy testified as did her expert, Dr. Reynolds. Edgar did not testify and did not attend the second day of trial.

II

Both of the Division's witnesses testified to the unstable living conditions of Edgar and Amy. The caseworker testified that at the time of trial defendants were unemployed, and neither party had stable housing. Amy was living with a friend, while Edgar had no fixed address. During the first three months of 2016, Amy missed five therapeutic visits with the children and was late to two. Edgar missed two visits. During one visit, Amy inappropriately pinched Eric as a form of discipline.

Dr. Hiscox expressed strong concerns stemming from the parents' poor judgment, lifestyle instabilities, and relationship instabilities. He noted Edgar was "transient," staying with a friend for a week or two before moving on, and that he was unemployed, surviving on money from friends and family. Edgar told Dr. Hiscox that "he was not looking for employment," then altered his story to say he actually had a good job opportunity lined up working at a grocery store. Edgar estimated he would be in a position to care for the children by winter 2016, at which

time "he planned on moving out of New Jersey and moving to a place where nobody knows who he is so that he can start fresh."

Dr. Hiscox had concerns about Amy's stability as well, noting that the day he interviewed her, she was moving in with a boyfriend whom she had known for only a few weeks. She admitted knowing little about him, other than he was unemployed and receiving governmental benefits. She did not know why he received the benefits. Dr. Hiscox stated his concern was heightened by the fact that Amy's plan for her children was to bring them into a home with someone whom she had just met. Amy was unemployed.

Dr. Hiscox also testified regarding defendants' intellectual limitations, stating "low intellectual ability often leads to poorly thought out choices, difficulty with delaying gratification and impulsivity in that regard in terms of decision-making."

Dr. Hiscox concluded termination of Amy and Edgar's parental rights was appropriate and it would not do more good than harm, as he could not "foresee a situation where they would ever be in a position to be fit enough to care for these boys." Termination would give the children a chance to achieve permanency. He stated that termination of parental rights "would not result in severe and enduring harm to the children."

Amy's expert, Dr. Reynolds, testified there was a parental bond between the children and Amy. He did express concerns about

Amy's stability, testifying that in the short time between his and Hiscox's evaluations, "she changed her residence, quit her jobs, [and] she moved in with her boyfriend." Dr. Reynolds noted Amy presented a different explanation to Dr. Hiscox regarding how she met the new boyfriend, contradicting her account to Dr. Reynolds. Amy's history of employment, residential, and relationship instability was symptomatic of a dependent personality disorder, as diagnosed by Dr. Sostre.

Dr. Reynolds concluded that although Amy was not currently capable of parenting, "if [she] was provided additional parenting services and additional psychotherapy services that account for her intellectual limitations" it would be possible to tell "within the foreseeable future . . . whether or not she would be able to parent in the future." Reynolds stated he thought "[t]he Division's done a really good job . . . of identifying particular services that she requires and from which she could benefit." Amy testified she had completed parenting classes and individual therapy.

The judge rendered an oral decision, finding by clear and convincing evidence all four prongs of the best interests test, N.J.S.A. 30:4C-15.1(a), and that termination of defendant's parental rights was in the children's best interests. As to the first prong, the judge found Amy and Edgar caused the physical

abuse endured by Natalie. As to the second prong, the judge found defendants "have not stabilized in any way" in the two years since the Division first became involved and "appear to be incapable . . . of being able to correct the deficiencies and problems that led to the removal." The judge pointed to Edgar's plan to "runaway to someplace" where he is unknown in order to start over with the kids as evidence of his unwillingness or inability to provide permanency. The judge stated Edgar's transient living situation demonstrated instability. Amy's own expert testified Amy could not presently parent the children, and the expert could not predict whether additional services would be effective.

As to the third prong, the judge found the Division had made reasonable efforts, and, in some instances, "services have been repeated."

As to the fourth prong, the judge relied on Dr. Hiscox's testimony characterizing the parental relationship as similar to a relationship among "extended family member[s]" or "playmates," lacking a deep parent-child bond. The judge found "Dr. Hiscox['s] description of the bond . . . as an extended family type of bond . . . makes sense just from the standpoint of the time that they've spent together and the types of activities they've done together." He found the children did not believe they could "rely on these particular parents to be the ones that care for them on a day to

day basis or [that defendants were capable of] form[ing] that type of bond." The judge found that any harm from severing the bond would "be mitigated . . . by placing them in a stable permanent, loving relationship where they are well cared for." The judge, therefore, found termination of parental rights would not do more harm than good.

III

"We will not disturb the family court's decision to terminate parental rights where there is substantial credible evidence in the record to support the court's findings." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008). In light of the Family Part's "special jurisdiction and expertise in family matters" and its opportunity to assess witnesses first-hand and develop a "feel of the case," we accord deference to the Family Part's findings of fact and credibility. N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 343 (2010) (first quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998); then quoting E.P., supra, 196 N.J. at 104). "Only when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' should an appellate court intervene and make its own findings to ensure that there is not a denial of justice." E.P., supra, 196 N.J. at 104 (quoting N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007)).

EDGAR'S INABILITY TO CALL HIS EXPERT

At the outset of trial, Edgar's counsel indicated she would not be calling Dr. Reynolds as an expert, nor entering his report into evidence. She intended to reference statements made by Dr. Reynolds during his March 2015 evaluation that were included in Dr. Hiscox's report. The judge found it improper to "get in [Dr. Reynold's] opinions through [Dr. Hiscox's testimony]." The judge also forbade eliciting information about Dr. Reynolds' evaluation of Edgar during cross-examination when Dr. Reynolds testified on behalf of Amy. Edgar's counsel then tried to offer the report into evidence, but the judge precluded it, as trial had already commenced.

Edgar argues that his counsel's failure to call Dr. Reynolds as an expert, ask Dr. Reynolds to update the report, or enter his March 2015 report into evidence constituted either an abuse of the judge's discretion or ineffective assistance of counsel under the two-part test set forth in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); N.J. Div. of Youth & Family Servs. v. B.R., 192 N.J. 301, 307-09 (2007).

To establish an ineffective assistance of counsel claim,

> (1) counsel's performance must be objectively deficient--i.e., it must fall outside the broad range of professionally acceptable performance; and (2) counsel's deficient performance must prejudice the defense--i.e., there must be a "reasonable probability that

> but for counsel's unprofessional errors, the result of the proceeding would have been different."
>
> [B.R., supra, 192 N.J. at 307 (citing Strickland, supra, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698).]

This standard is "highly deferential," and "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Ibid. (citation omitted).

The issue of ineffective assistance of counsel is properly raised in the direct appeal of a termination of parental rights case. Id. at 311. "[A]ppellate counsel must provide a detailed exposition of how the trial lawyer fell short and a statement regarding why the result would have been different had the lawyer's performance not been deficient. That will include the requirement of an evidentiary proffer in appropriate cases." Ibid. We may resolve the question of ineffective assistance of counsel on the appeal record alone, unless a genuine issue of fact is present, in which case it must remand for an expedited hearing before the trial court on the factual question. Ibid. Such a hearing is appropriate here, given the importance of the expert's opinion.

Alternatively, Edgar asserts it was error for the judge to preclude Dr. Reynolds as his expert witness and exclude the report. Edgar cites Mathews v. Eldridge, 424 U.S. 319, 334-35, 96 S. Ct.

893, 902-03, 47 L. Ed. 2d 18, 33 (1976) in support of his argument that Edgar was denied due process. He argues "[t]his is not a situation where the court and the other parties were blind-sided by a call for an expert witness and the submission of an expert report into evidence." Edgar asserts the emergent hearing held on January 19, 2016, put everyone on notice of Edgar's intention to use Dr. Reynolds as an expert. Moreover, "the report in question was already presented and known to [the Division] and the court from previous FN [abuse or neglect] litigation."

Whether viewed as ineffective assistance of counsel or a misapplication of discretion, we are convinced that Edgar and his children were entitled to have the judge review Dr. Reynolds's testimony and report. The Division had received a copy of the report well before trial and Dr. Reynolds testified on behalf of Amy. His reported findings with regard to Edgar were hopeful for the most part, although not up-to-date. As we have said, the children as well as the parent benefit from the court's review of all available evidence potentially favorable to the parent. See N.J. Div. of Child Prot. & Permanency v. K.S., 445 N.J. Super. 384, 392 (App. Div. 2016) (remanding the termination of parental rights to allow the mother to testify, in spite of her non-appearance in court until after the close of evidence). The judge should allow Dr. Reynolds to update his report with regard to the

neurological findings, domestic violence occurrences and any other development. The court should then hold a hearing, in an abbreviated timeframe. The same judge who decided this case should preside over the hearing and reconsider the decision to terminate Edgar's parental rights in light of the additional evidence.

DEFICENCIES IN THE COMPLAINT

Amy asserts "this case is legally improper" because "[t]he guardianship complaint filed in this matter did not allege a 'best interests' cause of action under N.J.S.A. 30:4C-15(c)" and the complaint "was not properly verified." Amy asserts Rule 1:6-6 requires verification based on personal knowledge, which is lacking here as the caseworker swore only to the best of her knowledge, information, and belief. R. 5:12-1(b); R. 4:67; R. 1:6-6.

The complaint refers to "terminating parental rights . . . pursuant to N.J.S.A. 30:4C-15 through N.J.S.A. 30:4C-20." It also incorporates the initial abuse and neglect complaint and ensuing orders. The Court in N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 442 (2012) provided that "[t]o initiate a guardianship petition with the goal of termination of parental rights, at least one of the five grounds set forth in N.J.S.A. 30:4C-15(a) to (f) must be met." N.J.S.A. 30:4C-15(c) provides a petition for guardianship may be filed when "it appears that the

best interests of any child under the care or custody of the division require that he be placed under guardianship." An award of "care or custody" of a child to the Division "is a stand-alone basis for filing a guardianship complaint under N.J.S.A. 30:4C-15(c)." F.M., supra, 211 N.J. at 443.

Neither the issue of the substantive deficiencies in the complaint nor improper verification was raised before the trial judge and we decline to address the issues for the first time on appeal. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234-35 (1973).

TERMINATION OF AMY'S PARENTAL RIGHTS

Amy contends that the court erred in terminating her parental rights, arguing the court's findings as to the four prongs of the best-interests analysis were not supported by clear and convincing evidence. Parents have a right "to raise a child and maintain a relationship with that child[] without undue interference by the state." E.P., supra, 196 N.J. at 102. That right is fundamental, and protected under both the United States and New Jersey Constitutions. Ibid. That right is not absolute, however, 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." F.M., supra, 211 N.J. at 447. As

termination of parental rights is considered an "extreme form of action," E.P., supra, 196 N.J. at 102, and "a weapon of last resort in the arsenal of state power," F.M., supra, 211 N.J. at 447, the courts "have consistently imposed strict standards" in such cases. In re Guardianship of K.H.O., 161 N.J. 337, 347 (1999).

"The focus of a termination-of-parental-rights hearing is the best interests of the child," and the Division must "satisfy by clear and convincing evidence four factors, known as the best-interests-of-the-child standard, set forth in N.J.S.A. 30:4C-15.1(a)." F.M., supra, 211 N.J. at 448. Those four statutory factors are:

> (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).]

The above requirements should not be considered separately, but should form "a composite picture" of what is in the best interests of the child. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 280 (2007). "[T]he cornerstone of the inquiry is not whether the biological parents are fit but whether they can cease causing their child harm." In re Guardianship of J.C., 129 N.J. 1, 10 (1992). Parents in such proceedings should not be presumed unfit, and "all doubts must be resolved against termination of parental rights." K.H.O., supra, 161 N.J. at 347.

Because the trial judge must reconsider the termination of Edgar's rights in light of Dr. Reynold's testimony, we review only the termination of Amy's rights. Amy argues the court erred in finding the Division proved any of the four prongs. She argues the proofs as to prong one fail because her sons were taken away from her only because of her treatment of Edgar's daughter Natalie.

Under the first prong, the Division must demonstrate harm to the child resulting from the parental relationship "that threatens the child's health and will likely have continuing deleterious effects on the child." Id. at 352. The Division must proffer adequate evidence of "actual harm or imminent danger" to the child. N.J. Div. of Youth & Family Servs. v. A.L., 213 N.J. 1, 30 (2013). "Harm" in this context is not limited to physical harm, In re

Guardianship of R.G. & F., 155 N.J. Super. 186, 194 (App. Div. 1977); rather, it includes emotional and psychological harm, New Jersey Division of Youth & Family Services. v. W.W., 103 N.J. 591, 605 (1986), a parent permitting his or her children to be exposed to harm caused by another parent, New Jersey Division of Child Protection and Permanency v. J.L.G., ___ N.J. Super. ___, ___ (App. Div. 2015) (slip op. at 10), aff'd o.b., ___ N.J. ___ (2017); M.M., supra, 189 N.J. at 288-90, and a parent's inability to provide a safe and stable home for the child, New Jersey Division of Youth & Family Services. v. H.R., 431 N.J. Super. 212, 223 (App. Div. 2013), including the failure to provide day-to-day nurturing and a safe and caring environment for a prolonged period of time. N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 604-07 (1986).

The first prong may also be satisfied by expert evidence demonstrating that a parent's untreated mental illness poses a risk to the child, F.M., supra, 211 N.J. at 450-51, or that a parent's mental illness prevents him or her from meeting a child's daily needs. N.J. Div. of Youth & Family Servs. v. L.J.D., 428 N.J. Super. 451, 481-83 (App. Div. 2012).

The judge's findings as to prong one were adequately supported by the record. Amy's argument that her treatment of Natalie has no bearing on Eric and Neil is without merit. The Division need

not wait until a child is harmed before intervening. F.M., supra, 211 N.J. at 449. Amy admitted on multiple occasions to taking part in the physical abuse directed at Natalie.

To satisfy the second prong, the Division must demonstrate that 1) "the parent is 'unwilling or unable to eliminate the harm'", or 2) "the parent has failed to provide a 'safe and stable home for the child' and a 'delay in permanent placement' will further harm the child." K.H.O., supra, 161 N.J. at 352 (quoting N.J.S.A. 30:4C-15.1(a)(2)).

The second prong compels an assessment of "parental unfitness," based on "indications of parental dereliction and irresponsibility." K.H.O., supra, 161 N.J. at 352-53. The court should also consider any "[c]oncern and efforts by a natural parent after his or her child has been removed from the home, and [the parent's] genuine and successful efforts to overcome the cause of the removal," as such efforts are "of enormous significance" in the court's assessment of the second prong. N.J. Div. of Youth & Family Servs. v. A.R., 405 N.J. Super. 418, 437 (App. Div. 2009).

Amy argues the evidence showed that, by the time of trial, she "had corrected the parenting skills deficits [the Division] had identified as harmful to [Natalie] and potentially harmful to [Eric and Neil]." Amy contends she should be allowed to complete an additional six-months of therapy, as recommended by her expert,

Dr. Reynolds, "to see if additional services would held her achieve stability."

A child's best interests cannot be sacrificed because of a parent's inability to address potential future harm despite his or her willingness to try. See N.J. Div. of Youth & Family Servs. v. C.S., 367 N.J. Super. 75, 111 (App. Div.), certif. denied, 180 N.J. 456 (2004). The focus is on whether the parent has sufficiently overcome the initial harm that endangered the child's health, safety, or welfare and is able to continue the parent-child relationship without recurrent harm. J.C., supra, 129 N.J. at 10.

While Dr. Reynolds recommended additional services, he did not state that those services would ameliorate Amy's parental deficiencies. At the time of trial, all experts were in agreement that Amy was then unable to parent safely. She had been engaged in Division services for twenty months, from the beginning of parenting classes until trial.

The third prong of the analysis requires the Division to make reasonable efforts to provide services to help the parent correct the circumstances that led to the child's removal, and requires the trial court to thoroughly explore alternatives to termination of parental rights. A.G., supra, 344 N.J. Super. at 434.

Amy asserts the Division did not make reasonable efforts, as she was not provided with "psychotherapy to address low self-esteem," or problem-solving issues as per Dr. Williams' recommendation. Amy also argues that the judge erred in not considering kinship legal guardianship (KLG). N.J.S.A. 30:4C-15.1.

Whether the Division provided reasonable efforts is not measured by a defendant's success in his or her services. In re Guardianship of D.M.H., 161 N.J. 365, 393 (1999). Withholding permanency from a child with the hope that a parent will benefit from services is not an option. "Children have their own rights, including the right to a permanent, safe and stable placement." C.S., supra, 367 N.J. Super. at 111.

"[W]hen the permanency provided by adoption is available, kinship legal guardianship cannot be used as a defense to termination of parental rights." See N.J. Div. of Youth & Family Servs. v. P.P., 180 N.J. 494, 513 (2004); see also N.J.S.A. 3B:12A-6(d)(3) (instructing that a KLG is only proper when "adoption of the child is neither feasible nor likely"); N.J. Div. of Youth & Family Servs. v. T.I., 423 N.J. Super. 127, 137 (App. Div. 2011) (recognizing that the potential availability of a KLG does "not provide a basis for defeating the termination of parental rights").

The Division provided Amy with therapeutic supervised visits, evaluations, referrals for domestic violence counseling, individual psychotherapy and parenting classes. Dr. Hiscox testified at trial that no services, no matter how tailored to Amy's intellectual limitations, would facilitate her ability to parent independently in the foreseeable future. Permanency cannot be withheld with the hope that a parent will comply and benefit from services. See C.S., supra, 367 N.J. Super. at 111. The third prong was supported by sufficient evidence in the record.

Amy points to the positive bond that existed between her and the children. Dr. Hiscox testified that the lack of a strong attachment to a guardian may result in significant psychological and relationship issues in children. Moreover, Dr. Hiscox testified termination of parental rights would not do more harm than good. The Law Guardian points out that the bonding evaluation determined that while Eric may experience some minor disturbance that would result from termination, it would not be lasting and would not do more harm than good.

"[A] child's need for permanency is an extremely important consideration" under the fourth prong. R.G., supra, 217 N.J. at 559. "Ultimately, a child has a right to live in a stable nurturing environment and to have the psychological security that his [or her] most deeply formed attachments will not be shattered." F.M.,

supra, 211 N.J. at 453; see also D.M.H., supra, 161 N.J. at 385 (recognizing the "strong policy considerations that underscore the need to secure permanency and stability for the child without undue delay").

The fourth prong "is a 'fail-safe' inquiry guarding against an inappropriate or premature termination of parental rights." F.M., supra, 211 N.J. at 453. It requires proof that "a child's interest will best be served by completely terminating the child's relationship with that parent." E.P., supra, 196 N.J. at 108. Its "crux . . . 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.

A court is permitted to proceed with the termination of parental rights when the parents are unfit to care for the child, even in the event there is no bond with an alternative caregiver, see New Jersey Division of Youth & Family Services v. B.G.S., 291 N.J. Super. 582, 593 (App. Div. 1996), because children should not be allowed to "languish indefinitely" in a resource placement while a defendant tries to correct the problems that led to the Division's involvement with the family. N.J. Div. of Youth & Family Servs. v. S.F., 392 N.J. Super. 201, 209-10 (App. Div.), certif. denied, 192 N.J. 293 (2007). After trial, Eric and Neil were placed with their grandmother, who wishes to adopt them. In

his April 2016 report, Dr. Hiscox concluded, "it is clearly in the best interest[s]" of Eric and Neil to have Amy's "parental rights terminated to them so they can be legally freed for adoption." Dr. Hiscox found that termination of the parties' parental rights "would do much more good than harm." We affirm the termination of Amy's parental rights.

Should the judge who tried the case, after conducting the remand hearing, determine that the Division has not demonstrated that Edgar's parental rights should be terminated, Amy may move for reconsideration of the termination of her parental rights, because it is not the policy of our State to terminate only one parent's rights, leaving children with one rather than two parents. "Two parents are better than one, even if one parent falls far below the ideal." N.J. Div. of Youth & Family Sec'ys v. D.S.H., 425 N.J. Super. 228, 242 (App. Div. 2012).

We affirm as to Amy, A-3931-15. We reverse as to Edgar, A-3933-15, and remand for forty-five days to allow Edgar's expert to testify, the parties to inform the trial court of any significant updates in the situation, and the judge to decide anew whether the Division has proved its case. We retain jurisdiction.