RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4170-15T1

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

S.G.,

Defendant-Appellant.

IN THE MATTER OF THE GUARDIANSHIP OF S.H.G.,

Minor.

Submitted March 29, 2017 – Decided July 20, 2017

Before Judges Fuentes, Simonelli and Carroll.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FG-07-0232-15.

Joseph E. Krakora, Public Defender, attorney for appellant (Cary L. Winslow, Designated Counsel, on the brief).

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Sean P. Lardner, Designated Counsel, on the brief).

PER CURIAM

Defendant S.G. is the biological mother of S.H.G., a boy born in April 2012. The boy's biological father is dead. Defendant appeals from the Judgment of Guardianship entered by the Family Part on May 13, 2016, terminating her parental rights to her son. The guardianship judgment permits S.H.G. to be adopted by his maternal grandmother and her husband. Defendant is also the biological mother of S.H., a girl born in October 2005. S.H has a different biological father from S.H.G. This guardianship petition originally sought to terminate defendant's parental rights over S.H., but these plans changed to reunification with the child's biological father. Thus, S.H. is not a part of this appeal.

In this appeal, defendant argues the Division of Child Protection and Permanency (Division) failed to establish by clear and convincing evidence the four statutory prongs in N.J.S.A. 20:4C-15.1a governing the best interests of the child. Defendant also maintains the Division did not establish that kinship legal guardianship (KLG) under N.J.S.A. 3B:12A-6 was not a viable option to termination. After reviewing the record and mindful of our standard of review, we affirm substantially for the reasons

expressed by Judge David B. Katz in his oral opinion delivered from the bench on May 13, 2016.

Before discussing the evidence presented at the guardianship trial, we will first briefly summarize defendant's history of involvement with the Division. On February 8, 2012, the Division received an anonymous referral that defendant was driving around all hours of the day and night with S.H., who was then six years old. Defendant was pregnant with S.H.G. at the time. The anonymous reporter claimed to have seen defendant drinking alcohol and smoking marijuana despite being pregnant. After investigating the allegations, the Division concluded they were unfounded.

The Division received another referral concerning defendant on December 4, 2013. At the time, S.H.G.'s late father was contesting his child support obligation. He alleged he saw defendant consume alcohol and become inebriated around her children. He also claimed defendant suffered from bipolar disorder. Defendant declined the Division's offer of assistance. The Division also concluded the allegations were unfounded.

The next complaint the Division received came from defendant's mother and sister. On April 1, 2014, they reported being concerned over the children's well-being because of defendant's substance abuse problem. Defendant was allegedly using embalming fluid. Although defendant denied the allegations,

S.H., who was then eight years old, told Division investigators that she did not feel safe around her mother. According to the child, defendant had been acting "weird," like a "zombie." Defendant eventually admitted to the Division caseworker that she had been using Phencyclidine (PCP) as much as three times per week.

On April 1, 2014, defendant tested positive for PCP in a test administered by the Newark Renaissance House. The Division executed an emergent Dodd removal[1] of S.H.G. that same day and placed him with his maternal aunt. On June 18, 2014, S.H.G. was relocated by the Division to his maternal grandmother's house. He remained in her care from that day forward, including throughout the guardianship trial.

The guardianship trial occurred on May 10, 2016. The Division presented the testimony of two witnesses, psychologist Dr. Mark Singer and Division caseworker Arianna Concepcion. Neither the Law Guardian nor defendant called any witnesses. Judge Katz's findings were based entirely on the testimony of these two witnesses and the documentary evidence admitted without objection.

[1] "A 'Dodd removal' refers to the emergency removal of a child from the home without a court order, pursuant to the Dodd Act, which, as amended, is found at N.J.S.A. 9:6-8.21 to -8.82. The Act was authored by former Senate President Frank J. 'Pat' Dodd in 1974." N.J. Div. of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 609 n.2 (App. Div. 2010).

Judge Katz found these witnesses credible. Defendant was thirty-seven years old when this matter was tried before Judge Katz. She admitted to smoking PCP since she was in her mid-twenties. Although she denied using cocaine, heroin, or any other opiates, she tested positive for cocaine when she was tested in the courthouse. She has been treated for mental illness in an intensive outpatient setting. She was admitted into inpatient substance abuse rehabilitation programs, but tested positive for PCP numerous times while she was there.

Judge Katz found that during the first year after the removal of S.H.G., the Division arranged for defendant to receive substance abuse assessment and treatment in many different inpatient programs. She has received domestic violence counseling, psychological and psychiatric evaluations, referrals to "Mommy and Me" programs, psychotherapy, and parenting skills classes. She consistently failed to take advantage of these services.

With respect to defendant's ability or willingness to safely parent her son, Judge Katz found that Dr. Singer "had a command of the facts and the psychological principles that he applied to those facts." Judge Katz accepted Dr. Singer's opinion that defendant's continued use of PCP under these circumstances demonstrated her inability to create stability in her life. This also created an unstable environment for her son. Her failure to

take advantage of the services made available to her by the Division was also indicative of her inability to change, at least in the foreseeable future.

With respect to S.H.G., Judge Katz relied on Dr. Singer's testimony to find that the child "has a significant attachment to [defendant]." However, the maternal grandmother, as the caregiver, has also become "a significant parental figure in S.H.G.'s life." Although both of these women played an important role in the child's life, Judge Katz accepted Dr. Singer's assessment that the caregiver could mitigate the emotional harm caused by severing S.H.G.'s relationship with defendant. In fact, Dr. Singer opined that S.H.G. would be at risk of harm if reunified with his biological mother. In short, reunification with defendant was not in the child's best interest.

Based on the evidence presented, Judge Katz applied the settled principles of law and carefully considered each of the four prongs in N.J.S.A. 30:4C-15.1a as construed by the Supreme Court in In re Guardianship of K.H.O., 161 N.J. 337, 348-52 (1999). We are satisfied the Division proved each of the four statutory prongs by clear and convincing evidence. We will not repeat Judge Katz's comprehensive review of the evidence and the legal conclusions that he made therefrom. We discern no legal basis to disturb Judge Katz's findings or to question his legal analysis.

The evidence presented by the Division is uncontroverted. We defer to Judge Katz's credibility assessment of the witnesses' testimony because of his expertise in family matters and his ability to develop 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. M.C. III, 201 N.J. 328, 342-43 (2010) (citation omitted). We thus affirm substantially for the reasons he expressed in his oral opinions that he delivered from the bench on May 13, 2016.

Affirmed.