SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5537-14T2

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

C.R.,

Defendant,

and

A.V., SR.,

Defendant-Appellant.

IN THE MATTER OF

A.V., JR., Minor

Submitted February 1, 2017 – Decided July 31, 2017

Before Judges Fuentes and Gooden Brown.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Somerset County, Docket No. FN-18-0130-15.

Law Offices of Randall J. Peach, attorney for appellant (Randall J. Peach, of counsel and on the brief).

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Lisa M. Black, Designated Counsel, on the brief).

PER CURIAM

Defendant A.V., Sr. is the biological father of A.V., Jr., a boy who is now nine years old. Defendant and the child's biological mother, C.R., have been engaged in a hotly contested private action in the Family Part concerning their son's custody and parenting time. The record shows A.V., Jr. may suffer from severe psychological problems.

On October 6, 2014, the Division of Child Protection and Permanency (the Division) received an anonymous referral alleging that text messages on defendant's cellular phone suggested illicit drug activity. The caller claimed that then six-year-old A.V., Jr., who was hospitalized at Summit Oaks Hospital's inpatient psychiatric unit, had found his father's phone and turned it over to his mother. A Division caseworker met with defendant on October 13, 2014 to investigate these allegations. Defendant denied any involvement with illicit drugs. When the caseworker asked

defendant if he was willing to submit a urine sample for analysis, defendant stated he wanted to consult with his attorney first.

On October 28, 2014, a Division caseworker met with C.R., who provided photographs depicting the contents of defendant's text messages. The messages contained numerous references to recent illicit drug transactions, some of which allegedly occurred while A.V., Jr. was in defendant's custody. Armed with this information, the Division filed a verified complaint and an order to show cause (OTSC) in the Family Part. The Division sought an order compelling defendant to: (1) undergo a substance abuse evaluation; (2) submit to the extraction of a hair follicle for testing; and (3) submit random urine samples for drug screening, "with a refusal to do so being considered a positive."

On the return date of the OTSC, the Family Part granted the Division's request for an investigation. Although defendant was present, he was not represented by counsel. The court granted the Division's request to obtain "the hair follicle kit[,]" but denied its application to use it immediately. When the judge asked defendant if he denied sending text messages containing references to alleged drug transactions, defendant responded as follows: I don't believe anybody has a right . . . to go through my cell phone. They knew it was missing. They all knew it was missing.

The hospital knows it was missing. I reported it missing right away."

On January 16, 2015, defendant, this time represented by counsel, filed a motion on short notice seeking to dismiss the Division's verified complaint and OTSC. The Law Guardian supported the Division's application to test defendant to determine whether he was using illicit substances. On March 30, 2015, the Family Part denied defendant's motion to dismiss, holding the Division had authority to conduct the investigation under Title 30.[1] The court ordered defendant to attend a substance abuse evaluation, to submit to random urine screening, and to submit to the extraction of a hair follicle. The court granted defendant's motion to stay the order's execution until April 10, 2015.

On April 9, 2015, we denied defendant's emergent application to file a motion for leave to appeal. On April 28, 2015, the Division moved to withdraw the verified complaint and OTSC. As the Deputy Attorney General explained on behalf of the Division:

> [A]t this point the requested reliefs are moot. There are other concerns.

[1] The Division has authority to initiate Title 30 proceedings "when it 'appear[s]' that a child's parent or lawful guardian is 'unfit' or has failed 'to ensure the health and safety of the child, or is endangering the welfare of such child[.]'" N.E. v. State Dep't of Children & Families, 449 N.J. Super. 379, 400 (App. Div. 2017) (quoting N.J. Div. of Youth and Family Servs. v. I.S., 214 N.J. 8, 34, cert. denied, ___ U.S. ___, 134 S. Ct. 529, 187 L. Ed. 2d 380 (2013)); see N.J.S.A. 30:4C-12.

> Specifically, this morning it was brought to my attention that [defendant] is not consenting to the medication that was recommended by Summit Oaks for the child. There are concerns that the child is still having behavioral issues.
>
> These were concerns that were present prior to the Division's involvement that were raised and addressed under the FD docket.
>
> The Division would assume that if this litigation is dismissed and the order is withdrawn that they would continue to address these issues under the FD docket.
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> . . . .
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> THE COURT: [Defense counsel], you have no objection?
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> DEFENSE COUNSEL: I have no objection.
>
> . . . .
>
> [W]e, obviously, agree with the Division that the complaint should be dismissed.
>
> THE COURT: All right. I am going to grant the Division's request and dismiss the litigation.

Against this record, defendant appeals the Family Part's April 28, 2015 order dismissing the litigation against him. Defendant argues the Family Part did not "set forth its findings and the reasons for its ruling[.]" Defendant's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). It is a well-settled principle of appellate jurisdiction that "if the order of the lower tribunal is valid,

the fact that it was predicated upon an incorrect basis will not stand in the way of its affirmance." Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968) (citations omitted). Stated differently, "appeals are taken from judgments and not from opinions[.]" State ex rel. J.A., 195 N.J. 324, 354 n.2 (2008) (quoting Glaser v. Downes, 126 N.J. Super. 10, 16 (App. Div. 1973)). Defendant cannot appeal an order granting the relief he argued for and ultimately obtained.

Appeal dismissed.