

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1321-16T5

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

C.D.-M.,

Defendant-Appellant,

and

H.O.,

Defendant.

IN THE MATTER OF THE
GUARDIANSHIP OF C.D.-O.,
H.D.-O. and M.D.-O.,

Minors.

Submitted January 24, 2018 – Decided February 12, 2018

Before Judges Koblitiz, Manahan and Suter.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Union County,
Docket No. FG-20-0024-16.

Joseph E. Krakora, Public Defender, attorney for appellant (Ryan T. Clark, Designated Counsel, on the briefs).

Gurbir S. Grewal, Attorney General, attorney for respondent (Jason W. Rockwell, Assistant Attorney General, of counsel; Samuel J. Fillman, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Noel C. Devlin, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant C.D.-M. (Carl) appeals from a Family Part order terminating his parental rights to his three minor children, C.D.-O. (Chelsea), H.D.-O. (Harry) and M.D.-O. (Michael) (collectively, children).¹ Carl contends that the Division of Child Protection and Permanency (Division) failed to prove each prong of the best interests test of N.J.S.A. 30:4-15 and N.J.S.A. 30:4-15.1.

In a comprehensive and well-reasoned 122-page written decision, Judge Richard C. Wischusen found the Division had satisfied the four prong test by clear and convincing evidence and held that the termination was in the children's best interests. In re Guardianship of K.H.O., 161 N.J. 337, 354 (1999). Based on our review of the record and applicable law, we are satisfied the

¹ Pursuant to Rule 1:38-3(d)(12) and Rule 5:12-1, we use pseudonyms for the parents, the children, the resource parents and the paternal aunt and uncle to protect their confidentiality.

evidence in favor of the guardianship petition adequately supports the termination of Carl's parental rights. See N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2009) (holding that a reviewing court should uphold the factual findings respecting the termination of parental rights if they are supported by substantial and credible evidence in the record as a whole). Accordingly, we affirm.

The evidence is set forth in detail in the judge's opinion. A summary will suffice here. Carl is the biological father of Harry and Michael, and is listed as Chelsea's father on her birth certificate. Results obtained from a paternity test revealed Carl is not Chelsea's biological father. In April 2015, the Division informed H.O. (Helen), the biological mother of all three children, that C.R. (Cole) was the biological father of Chelsea. Helen was unaware of Cole's whereabouts.²

In October 2014, the Division received a referral stating that Helen left the family residence and never returned; and Carl was experiencing difficulty caring for the children. Since Helen's abandonment in June 2014, Carl commenced a pattern of leaving the children with his brother H.D.M. (Henry) and Henry's wife, C. —

² During trial, Cole contacted the Division. With the assistance of counsel, Cole surrendered his parental rights to Chelsea on September 14, 2016. Neither Cole nor Helen appealed.

M.D.M. (Cindy). By September 2014, Carl presented Henry with a notarized letter that gave parental custody of the children to Henry and Cindy. The children remained in their care until November 2014, when due to family and financial concerns expressed by Henry, the Division requested that Carl retrieve his children to reside with him.³ Carl was reunited with the children and together they resided in a "living room area of a single-family home." The Division provided emergency funds for food and an initial rental payment conditioned upon Carl finding sustainable housing.

In December 2014, Carl notified Division caseworker Fabiola Ricaldi that he and the children slept in the basement of the building where they resided because he was evicted from the residence for non-payment of rent. Ricaldi met with Carl and observed him to be intoxicated. She also observed Carl had facial injuries, which according to Carl, were the result of a fistfight. Due to concerns regarding Carl's stability, parenting skills, substance abuse, and financial ability to care for the children, an emergency removal was effectuated by the Division. N.J.S.A. 9:6-8.29.

³ Henry testified that it was Carl's decision to retrieve the children. Henry denied making a statement that he was no longer able to serve as the children's caregiver.

At the time of the removal, the Division contacted Henry and Cindy to explain the placement process to obtain custody of the children, if they could establish their immigration status, but they declined consideration.⁴ Thereafter, Henry was sent a rule out letter from the Division, which was not appealed, and the children were placed in non-relative resource care with the Rodgers family.

Following the children's placement, the Division offered Carl reunification services, which included visitation and referrals for substance abuse and psychological evaluations. The record is replete with accounts of non-compliance or failed attempts by Carl, due to his relapse with alcoholism, to avail himself of the services provided. Throughout this time, the Division completed satisfactory monthly visits with the children and the Rodgers family. A decision was made by the Division to transfer the case to the adoption unit. The Division filed a guardianship complaint in January 2016.

A nineteen-day guardianship trial commenced on July 18, 2016, whereby the Division sought termination of parental rights of Carl and Helen. The Division took the position that it was in the

⁴ Ricaldi was unaware that Division policy permitted the placement of children in their custody to be placed with undocumented resource parents under certain circumstances.

children's best interest to be adopted by Henry and Cindy. The Law Guardian agreed with the Division's recommendation of parental rights termination, but argued in favor of adoption by the Rodgers family. Carl, through counsel, opposed termination of his rights, but argued in the alternative that it would serve the children's best interest to be adopted by Henry and Cindy.

In addition to fact witnesses, psychological expert Dr. Frank J. Dyer testified on behalf of the Division, psychological expert Dr. Carolina Mendez testified on behalf of the Law Guardian, and Dr. Aida Ismael-Lennon, also a psychological expert, testified on behalf of Carl.

Dyer determined that termination of Carl's parental rights would not negatively impact the children and that permanency would benefit the children's well-being and emotional stability. He opined that permanency could be achieved in either prospective home, although removing Michael and Harry from the Rodgers' home would "have a disturbing and distressing negative psychological impact" because "it does appear that [the Rodgers] are these children's psychological parents." Dyer also testified that the common culture and a sufficient positive connection between the children, Henry and Cindy, was enough to "prevent any effect that would cause these children to have serious psychological damage or long-lasting psychological damage."

Mendez expressed concerns regarding Carl's ability to independently parent the children because "he doesn't even acknowledge that he has a drinking problem." Mendez opined that the children are "closely bonded" to the Rodgers and recognize them as their "primary attachment figure[s]" or "psychological parent[s]." Mendez further stated that all three children would encounter "severe and enduring harm" if their relationship with the Rodgers was severed.

Lennon opined that although Henry and Cindy were capable of providing a nurturing environment for the children, the children would suffer "long and enduring harm" if removed from the Rodgers' home.


A judgement terminating Carl's parental rights and approving a permanency plan of adoption by the Rodgers was issued on November 16, 2016, accompanied by the judge's opinion, which gave thoughtful attention to the importance of permanency and stability. This appeal followed.

On this appeal, our review of the judge's decision is limited. We defer to his expertise as a Family Part judge, Cesare v. Cesare, 154 N.J. 394, 412 (1998), and we are bound by the factual findings so long as they are supported by sufficient credible evidence. M.M., 189 N.J. at 279 (citing In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)). We conclude the factual

findings by the judge are fully supported by the record and the legal conclusions drawn therefrom are unassailable.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION