

# RECORD IMPOUNDED

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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-1961-15T3  
A-2713-16T2

NEW JERSEY DIVISION OF CHILD  
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

S.T.,

Defendant-Appellant.

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IN THE MATTER OF THE GUARDINASHIP  
OF C.T.,

Minor.

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Submitted March 6, 2018 — Decided April 18, 2018

Before Judges Fisher and Sumners.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Morris County,  
Docket Nos. FN-14-0044-15 and FG-14-0022-16.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Laura M. Kalik, Designated  
Counsel, on the briefs in A-1961-15, and  
Elizabeth H. Smith, Designated Counsel, on the  
brief in A-2713-16).

Gurbir S. Grewal, Attorney General, attorney for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel in A-1961-15; Michelle J. McBrian, Deputy Attorney General, on the brief, and Jason W. Rockwell, Assistant Attorney General, of counsel in A-2713-16; Michelle McBrian, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Nancy P. Fratz, Assistant Deputy Public Defender, on the brief in A-1961-15, and Elahna Strom Weinflash, Assistant Deputy Public Defender, on the brief in A-2713-16).

PER CURIAM

These two matters, which have been consolidated for the purpose of a single opinion, involve appeals by S.T. (Susan)<sup>1</sup> of Family Part orders finding that she abused or neglected her then two-year daughter C.T. (Claudia); and that her parental rights to Claudia, then five-years-old, is terminated.<sup>2</sup> Our review of the trial judges' decisions are limited. We defer to the expertise of Family Part judges, Cesare v. Cesare, 154 N.J. 394, 413 (1998), and we are bound to their factual findings when supported by sufficient credible evidence. N.J. Div. of Youth & Family Servs.

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<sup>1</sup> We use acronyms and pseudonyms to protect the identities of the parties involved.

<sup>2</sup> The order also terminated the parental rights of the father D.M., which is not the subject of this appeal.

v. M.M., 189 N.J. 261, 279 (2007) (citing In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)).

In A-1961-15, we consider the judge's oral decision that Susan's drug addiction placed Claudia in an extreme risk of harm, which constituted abuse or neglect in accordance with N.J.S.A. 9:6-8.21(c)(4). The judge noted that she did not attend the second day of the two-day trial because she "advised that she would not need a ride to court as, due to the fact that she didn't want to waste her day in court and planned, instead, to go to the mall with her friend or to go to Shop-Rite." Susan did not testify nor refute the Division's testimony. The judge pointed to the Division's credible testimony detailing Susan's extensive history of substance abuse; causing her to spend almost fifty dollars a day on heroin as opposed to purchasing food, clothing, doctors' visits, etc. for Claudia. The judge reasoned:

[Susan] admitted to the Division workers on multiple occasions that she's a heroin addict . . . . A drug addict presents a danger to their child. A drug addict who uses on average five bags of heroin a day while in a primary caretaker role for their child is a danger to that child.

He concluded that Susan "continued to put her desire to go out, use drugs, and have a social life generally over the needs of the

child[] . . . [along with] her heroin addiction put[ting] the two-year-old [Claudia] at substantial risk of harm."

On appeal, Susan contends the judge's finding of abuse and neglect is not supported by sufficient evidence that Claudia was in substantial risk of harm within the meaning of Title 9. She argues "there was no demonstration of a connection between [her] use of heroin and any substantial risk of harm to [Claudia]. At most, [she] . . . was merely an observer . . . [and] not directly affected by [her] conduct." She further contends the judge violated principles of fundamental fairness when it failed to convert the case to a termination of parental rights under Title 30. We find insufficient merit in this argument to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We agree with Division and the Law Guardian that the judge's finding of abuse or neglect was based on credible substantial evidence and, for that reason, we must defer to those findings.

In A-2713-16, Susan's drug addiction was also the centerpiece of the action. This time a different judge, applying the four-prong best interests of the child test, N.J.S.A. 30:4C-15.1(a)(1)-(4), issued a thirty-eight page written decision<sup>3</sup> finding that the

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<sup>3</sup> Also including the termination of D.M.'s parental rights.

Division proved by clear and convincing evidence that Susan's parental rights to Sarah should be terminated.

In regards to prong one, continued endangerment of the child's safety and health, N.J.S.A. 30:4C-15.1(a)(1), the judge stated "the Division has unquestionably demonstrated that [Susan] placed [her daughter] at substantial risk of harm" as evinced by the Division's extensive involvement with Susan's addiction and her multiple relapses.

For prong two, inability to eliminate the harm facing the child or provide a safe and stable home, N.J.S.A. 30:4C-15.1(a)(2), the judge credited the testimony of the Division's expert Dr. Frank Dyer over the testimony of Susan's two experts. Though she noted that "none of the three experts recommended reunification at this time and each acknowledged that [Susan] would need continued substance abuse treatment and significant mental health treatment." Summarizing Dr. Dyer's testimony, the judge remarked:

Dr. Dyer concluded that while [Susan] is high average in intellectual functioning, her psychological profile is "extremely negative with respect to parenting capacity." He explained that [Susan] has an "extremely severe drug problem that so far proved refractory to multiple attempts at rehabilitation" and that her use of PCP is "particularly worrisome, as this substance has been known to precipitate psychotic episodes in its users." Dr. Dyer noted that [Susan] has little capacity to resist the urge to use drugs; has "extremely poor interpersonal

relations[;]"[] is "prone to respond to minor frustrations and difficulties with irritation and anger[;]"[] and has a "low threshold for physical aggression.[]" Dr. Dyer noted that "[t]he severity and chronicity of [Susan's] drug problem and emotional problems present enormous obstacles to treating her [and] [t]his would be true even if [Susan] had been cooperative with attempts to provide services for her; however, her history is one of poor compliance." He continued that "she remains much too disorganized, immature, emotionally unstable, socially alienated, and vulnerable to drug relapse to be entrusted with the care of any child." Moreover, "[h]er prognosis for acquiring adequate parenting capacity within the foreseeable future is extremely poor, given her history and the severity of her problems." Dr. Dyer found that [Susan] was not fit to care for Claudia and Claudia "would be [at] extremely high risk of medical neglect, as well as [at] risk of ordinary neglect, in light of [Susan's] emotional instability and unreliability."

The judge thus reasoned that Susan was unable to adequately address the risk of harm she created that resulted in Claudia's removal, and is unlikely to do so in the near future.

Addressing prong three, whether the Division made reasonable efforts to help Susan correct the problems that lead to her daughter's harm and if it considered alternatives to termination, N.J.S.A. 30:4C-15.1(a)(3), the judge determined that the evidence demonstrated the Division offered multiple services to assist Susan; it attempted to prevent the initial removal of Claudia with a protection plan; it advocated on Susan's behalf for several

treatment programs; and it investigated and ruled out all possible alternative placements.


And as to prong four, will termination of parental rights do more harm than good, N.J.S.A. 30:4C-15.1(a)(4), the judge agreed with Dyer's testimony that, "although Claudia did have a 'degree' of attachment to her mother, she considers her resource parents as her 'primary source of security, nurturance, and structure rather than her mother.'" She also accepted his opinion "that while the resource parents could mitigate any harm that resulted from termination of parental rights, Susan lacked the capacity to mitigate the loss Claudia would experience if contact with the resource parents was severed."

In challenging the judge's decision, defendant contends the finding that the Division satisfied its burden under the best interests test was not supported by credible evidence. Specifically, she argues there was no proof that her past drug use harmed Claudia, or that she would harm Claudia in the future given that she established at the time of trial she was being treated. She also contends the Division did not prove that it offered her the appropriate services to remediate both her substance abuse and mental health issues. Susan further contends termination of her parental rights would damage her loving relationship with her daughter. Similar to our conclusion regarding abuse or neglect,

we find insufficient merit in Susan's arguments to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Credible substantial evidence supported the termination of Susan's parental rights to Claudia and, for that reason, we must defer to the judge's findings.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION