SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2924-16T3

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

C.D.H.-F.,

Defendant-Appellant,

and

J.M.B.,

Defendant.

IN THE MATTER OF THE GUARDIANSHIP OF M.A.B. and D.B.-H.,

Minors.

Submitted December 19, 2017 – Decided January 11, 2018

Before Judges Yannotti, Carroll and Mawla.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FG-07-0197-16.

Joseph E. Krakora, Public Defender, attorney for appellant (James D. O'Kelly, Designated Counsel, on the briefs).

Christopher S. Porrino, Attorney General, attorney for respondent (Jason W. Rockwell, Assistant Attorney General, of counsel; Casey Woodruff, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Joseph Hector Ruiz, Designated Counsel, on the brief).

PER CURIAM

Defendant C.H., the biological mother of M.B., born in June 2004, and D.B.-H., born in February 2007, appeals from the February 27, 2017 Family Part judgment that terminated her parental rights to the children. The judgment also terminated the parental rights of the children's biological father, defendant J.B., who does not appeal. Defendant contends that plaintiff New Jersey Division of Child Protection and Permanency (Division) failed to prove prongs two and four of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence. The Law Guardian supported termination before the trial court and, on appeal, joins the Division in urging us to affirm. Having considered the parties' arguments in light of the record and applicable legal standards, we affirm.

I.

We will not recite in detail the history of the Division's involvement with the family. Instead, we incorporate by reference the factual findings set forth in Judge James R. Paganelli's

detailed February 27, 2017 oral opinion. We summarize the most pertinent facts to lend context to the legal analysis that follows.

On January 8, 2009, the Division was awarded care, custody and supervision of the children after receiving a referral from Clara Maass Hospital reporting that defendant had been voluntarily hospitalized in the psychiatric ward for several days due to a mood disorder. The children were placed with a maternal uncle because J.B. could not be located. Defendant received inpatient psychiatric services followed by outpatient treatment, and the children were thereafter returned to her custody.

The Division received another referral from Clara Maass Hospital on August 16, 2012, after C.H.'s landlord contacted police advising she was "acting bizarre and throwing things around the house" with the children present. The Division then sought and obtained custody of the two boys, who were again placed with the same maternal uncle. Defendant was subsequently referred for a psychological evaluation, and also received mental health services and medication monitoring. However, on October 13, 2012, the Division received another referral indicating defendant was admitted to Clara Maass due to a manic episode.

J.B. was eventually located but did not take custody of the children due to his own mental health issues, partial homelessness, and an outstanding arrest warrant. The Division maintained custody

of the children while defendant continued to receive a variety of rehabilitative services, including psychotherapy, behavioral counseling, and medication monitoring. The Division also referred defendant for evaluations by psychologist Gerard Figurelli, Ph.D., and psychiatrist Samiris Sostre, M.D., both of whom expressed concern about defendant's lack of compliance with her required medications.

Defendant eventually made progress in addressing her mental health issues. As a result, on January 28, 2014, the court returned the children to defendant's custody and terminated the litigation. However, the Division kept its file open and required defendant to participate in further counselling services and medication monitoring.

Defendant was again voluntarily hospitalized for twelve days in August 2014. She was driven to the hospital by the family's pastor, who cared for the children while defendant received inpatient treatment.

On September 11, 2014, the children's school contacted the Division and reported defendant was "all over the place, sp[eaking] quickly and off topic." Specifically, defendant had "come in the first [three] days of school exhibiting strange behaviors [such as] yelling and talking about Barack Obama, pencils in her hair, and how she burns herself." A teacher reported M.B. stated

defendant had not taken her medication in two weeks. M.B. also told a Division caseworker that, beginning on September 8, 2014, defendant "got crazy" and was screaming and singing, particularly in the morning and at night, which prevented him from sleeping. M.B. admitted he was "a little" afraid of his mother, but stated she never hit him. D.B.-H. similarly mentioned that his mother had a history of "throwing things," but also advised he was not afraid of her. Defendant was hospitalized overnight and released the next day.

Defendant was voluntarily hospitalized on September 26, 2014, due to manic behavior. The Division's investigation again revealed "there was an issue with [defendant] taking her medication." Defendant remained in the hospital through October 1, 2014, while the children stayed with the pastor and his wife.

Defendant returned to the hospital on October 29, 2014, and the pastor again assumed care of the children. The pastor spoke to a Division caseworker and expressed concern that defendant was experiencing "more back to back hospitalizations" and "getting worse." He also indicated he could not care for the children on a long-term basis. The Division continued to provide services to C.H. after she was discharged from the hospital.

On January 16, 2015, the Division responded to another referral from the children's school, reporting M.B. displayed

signs of physical abuse consistent with belt marks. M.B. told the school that, the previous night, he was awakened by C.H. beating him with a belt. M.B. further advised that defendant had been acting irrationally, including knocking on neighbors' doors, making loud noises and screaming, and turning the volume up on the television and radio to excessively high levels. He also noted defendant was not compliant with her medication, and had "observed her taking seven days of medication all at one time on [three] different times." Defendant appeared at the school exhibiting "pressured speech, thoughts racing, and [was] talking about pregnant ladies on an airplane that crashed . . . ." The Division removed the children on an emergency basis, and defendant was again hospitalized.

On January 20, 2015, the Division was granted care, custody, and supervision of the children for the third time. They were subsequently placed in a resource home where they continue to reside. Defendant was released from the hospital on January 28, 2015, but re-admitted the following month.

Defendant was again involuntarily hospitalized from December 31, 2015, to January 8, 2016. Around that time, defendant's landlord reported to the Division that he observed her "running around outside of the home in her pajamas and then talking to the trash can." The Division then changed its permanency plan to

termination of parental rights followed by adoption, which the court approved on January 14, 2016. Defendant was again hospitalized from January 22, 2016, to February 6, 2016.

On February 25, 2016, the Division filed a verified complaint to terminate defendant's parental rights and award the Division guardianship of the children. Defendant continued to exhibit manic, bipolar, and/or schizophrenic behaviors. For example, she demanded her children be returned immediately or she would "kill everyone with a shotgun and blow up the Division offices." She further stated a Division caseworker had "just signed his death warrant" and threatened to stab him "in the heart with a knife." Defendant also threatened to kill the tenants in her building and a garbage man. In March 2016, defendant was taken to the hospital by ambulance for jumping in front of moving cars.

Dr. Sostre again evaluated defendant at the Division's request in June 2016. She opined "that many of [defendant's] hospitalizations[,] at least initially[,] were precipitated by poor compliance or no compliance with medications . . . ." Dr. Sostre ultimately concluded defendant "was unable to appropriately care for her children."

Judge Paganelli conducted the guardianship trial on January 13, February 6, and February 7, 2017. The Division presented the testimony of Dr. Sostre; expert psychologist Frank Dyer, Ph.D.;

and Division caseworker Neury Trinidad. The Law Guardian presented the testimony of expert psychologist Carolina Mendez, Ph.D. Defendant testified on her own behalf.

On February 27, 2017, the judge placed an oral decision on the record. He found the testimony of the Division caseworker and the three experts credible. He also found defendant "sincere" in her desire to have the children returned to her. After carefully reviewing the testimony and the documentary evidence presented, the judge concluded the Division proved by clear and convincing evidence the four prongs of the best interests test codified in N.J.S.A. 30:4C-15.1(a), and defendant's parental rights to the children should therefore be terminated. This appeal followed.

II.

The scope of our review on an appeal from an order terminating parental rights is limited. N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007) (citing In re Guardianship of J.N.H., 172 N.J. 440, 472 (2002)). We will uphold a trial judge's factfindings if they are "supported by adequate, substantial, and credible evidence." N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014) (citing N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008)). No deference is given to the court's "interpretation of the law," which is reviewed de novo.

D.W. v. R.W., 212 N.J. 232, 245-46 (2012) (citing N.J. Div. of Youth & Family Servs. v. I.S., 202 N.J. 145, 183 (2010)).

We "accord deference to factfindings of the family court because it has the superior ability to gauge the credibility of the witnesses who testify before it and because it possesses special expertise in matters related to the family." N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012) (citing Cesare v. Cesare, 154 N.J. 394, 413 (1998)). "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., 196 N.J. at 104 (quoting G.L., 191 N.J. at 605). We also accord deference to the judge's credibility determinations "based upon his or her opportunity to see and hear the witnesses." N.J. Div. of Youth & Family Servs. v. R.L., 388 N.J. Super. 81, 88 (App. Div. 2006) (citing Cesare, 154 N.J. at 412-13).

When terminating parental rights, the court focuses on the "best interests of the child standard" and may grant a petition when the four prongs set forth in N.J.S.A. 30:4C-15.1(a) are established by clear and convincing evidence. In re Guardianship of K.H.O., 161 N.J. 337, 347-48 (1999). "The four criteria enumerated in the best interests standard are not discrete and separate; they relate to and overlap with one another to provide

a comprehensive standard that identifies a child's best interests." Id. at 348.

On appeal, defendant contends there was insufficient evidence supporting the court's findings as to prongs two and four of the best interests standard. We address these arguments in turn.

A.

Prong two requires the Division to prove that the parent is unable or unwilling to eliminate the harm that led to the child's removal, and that a delay in permanent placement will cause further harm. N.J.S.A. 30:4C-15.1(a)(2). "The second prong, in many ways, addresses considerations touched on in prong one." F.M., 211 N.J. at 451. Notably, prong one in turn can be satisfied where a parent refuses to treat his or her mental illness and the mental illness poses a real threat to a child. F.M., 211 N.J. at 450-51; see also In re Guardianship of R.G. and F., 155 N.J. Super. 186, 194 (App. Div. 1977) (holding that the parents' mental illnesses created an environment in which they were unable to adequately care for and raise their children, thus causing them harm, despite the absence of physical abuse or neglect); N.J. Div. of Youth & Family Servs. v. A.G., 344 N.J. Super. 418, 438-39 (App. Div. 2001) (holding that the fact that parents may be morally blameless is not sufficient when psychological incapacity makes it impossible for them to adequately care for a child).

The second prong is aimed at determining whether the parent has "cured and overcome the initial harm that endangered the health, safety, or welfare of the child, and is able to continue a parental relationship without recurrent harm to the child." K.H.O., 161 N.J. at 348 (citing In re Guardianship of J.C., 129 N.J. 1, 10 (1992)). Under the second prong, a trial court determines whether it is "reasonably foreseeable that the parents can cease to inflict harm upon" the child. N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 607 (1986). "No more and no less is required of them than that they will not place their children in substantial jeopardy to physical or mental health." Ibid. "Prong two may also be satisfied if 'the child will suffer substantially from a lack of . . . a permanent placement and from the disruption of [the] bond with foster parents.'" F.M., 211 N.J. at 451 (quoting K.H.O., 161 N.J. at 363).

In concluding the Division satisfied the second prong by clear and convincing evidence, Judge Paganelli substantially relied on the unrefuted testimony of the three expert witnesses. The judge explained:

> Dr. Sostre opines that [defendant's] negative symptoms are symptoms that persist and that are poorly responsive to treatment. It's schizophrenia and schizo-affective disorder.

> Further, . . . [defendant] has a chronic psychotic disorder and that she experiences symptoms that are disabling even when she is not in the midst of having a psychotic symptom or major mood symptoms such as mania, hypomania, or depression.
>
> Similarly, Dr. Dyer opines that [defendant's] level of adjustment is a far cry from the degree of impulse control, judgment, emotional stability, logical thinking, and consistent reality contact that [defendant] would need in order to be able to parent her children appropriately.
>
> Further, her lack of acknowledgment of her bizarre and dangerous behaviors predicts a recurrence of the behavior.
>
> And lastly, to burden her fragile ego with the responsibility of taking care of two children who themselves have some degree of emotional behavioral problems would push her past her limits and seriously threaten her emotional stability.
>
> Dr. Mendez also opines that the totality of the data suggests that [defendant] is not likely to become a viable parenting option for these children. The children have experienced multiple removals from their mother. And further, to place the children back with [defendant] would likely result in another removal and further traumatize them.

In challenging the court's conclusion on prong two, defendant concedes she has been hospitalized for psychiatric care on a multitude of occasions. However, she argues that her condition has stabilized, she has had no recent hospitalizations, and has obtained housing and gainful employment. Defendant points to the

testimony of Dr. Dyer, who found defendant was relatively stable when he evaluated her in August 2016.

Defendant's argument fails to consider the totality of Dr. Dyer's testimony, especially his conclusion that defendant's current stability "is a far cry from the degree of impulse control, judgment, emotional stability, logical thinking, and consistent reality contact that [she] would need in order to be able to parent her children appropriately." Contrary to defendant's position, Drs. Sostre, Dyer, and Mendez all ultimately concluded defendant is not capable of parenting her children.

In short, the expert evidence establishes defendant has significant mental health issues that have rendered her incapable of providing a safe, stable home to her sons, one of whom she struck with a belt. The unrebutted expert testimony establishes that defendant's condition continued to deteriorate and was unlikely to improve with further treatment. Another unsuccessful reunification would cause additional harm to the children, who require permanency after two failed reunifications. Thus, the judge's conclusion that the Division satisfied its burden under N.J.S.A. 30:4C-15.1(a)(2) is supported by sufficient credible evidence in the record.

B.

The fourth prong of the best interests of the child standard seeks to determine whether "[t]ermination of parental rights will not do more harm than good." N.J.S.A. 30:4C-15.1(a)(4). This prong serves as a "'fail-safe' inquiry guarding against an inappropriate or premature termination of parental rights." F.M., 211 N.J. at 453. "The question ultimately is not whether a biological mother or father is a worthy parent, but whether a child's interest will best be served by completely terminating the child's relationship with that parent." E.P., 196 N.J. at 108. The court must determine whether "the child will suffer a greater harm from the termination of ties with [his or] her natural parents than from the permanent disruption of [his or] her relationship with [his or] her foster parents." K.H.O., 161 N.J. at 355.

Because harm to the child stemming from termination of parental rights is inevitable, "the fourth prong of the best interests standard cannot require a showing that no harm will befall the child as a result of the severing of biological ties." Ibid. Rather, the court's inquiry is one of comparative harm, for which the court must consider expert evaluations of the strength of the child's relationship to the biological parents and the foster parents. Ibid. Thus, "[t]o satisfy the fourth prong, the [Division] should offer testimony of a well[-]qualified expert who

has had full opportunity to make a comprehensive, objective, and informed evaluation of the child's relationship with both the natural parents and the foster parents." F.M., 211 N.J. at 453 (quoting N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 281 (2007)).

When a termination action is based on parental unfitness rather than bonding, the proper inquiry under the fourth prong focuses on the child's need for permanency and the parent's inability to care for him or her in the foreseeable future. N.J. Div. of Youth & Family Servs. v. B.G.S., 291 N.J. Super. 582, 593 (App. Div. 1996). "Under this prong, an important consideration is '[a] child's need for permanency.' 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., 211 N.J. at 453 (citations omitted).

Here, Judge Paganelli relied on the bonding evaluations conducted by Drs. Dyer and Mendez. The judge found:

> [O]verall[,] the results of the bonding evaluations indicate that [the children] are more closely bonded to [defendant]. Nevertheless, neither child identified her as a person who could be relied upon for nurturing and care in times of trouble. . . .
>
> [T]he evaluation suggests though, [the children's] true affection for [defendant].

> But the best evidence of parental support and guidance was provided by the resource parent. The children's behaviors in her presence indicated clearly that they see her as a reliable caregiver and her guidance is invaluable to them.
>
> In contrast, while the children played with [defendant], it was [M.B.] rather than she who took the lead in structuring interaction.
>
> Collectively, the data suggests the children have a stronger attachment to [defendant] than they do with their resource mother. At the same time, there is reason to believe that she is not healthy enough to be a reliable parent.
>
> The bonding evaluations suggest that [M.B.] feels parentified [and] needs to provide structure for her. The data does not suggest that [defendant] is a healthy attachment object.
>
> The children have formed the foundation for a meaningful bond with their resource mother. Although the children will likely have a negative reaction to losing their relationship with their mother, maintaining and building upon the relationship that they have with their resource parent would likely serve to mitigate that harm.

Defendant argues that neither Dr. Dyer nor Dr. Mendez conducted a bonding evaluation of the resource mother's partner to assess his degree of attachment to the children and his ability to mitigate the harm to the children should defendant's parental rights be terminated. Defendant contends that, without this information, the trial court lacked the ability to make a proper determination of comparative harm to the children under prong

four. However, the record is clear that the resource mother is not married and it is only she who intends to adopt the children. Therefore, a bonding evaluation of her partner was not necessary. Moreover, defendant's argument fails to consider the children's need for permanency and her own inability to care for them in the foreseeable future. Having reviewed the record, we find the judge's conclusion that the Division satisfied its burden under N.J.S.A. 30:4C-15.1(a)(4) is supported by substantial credible evidence, and we discern no basis to disturb it.

Affirmed.