RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-3546-15T1
A-3547-15T1
A-3548-15T1
A-3549-15T1

NEW JERSEY DIVISION OF
CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

D.A.G., R.J., R.L.B. and S.T.,

Defendants-Appellants.

IN THE MATTER OF THE GUARDIANSHIP
OF M.J.G., J.V.J. and J.S.-T.G.,

Minors.

Submitted February 13, 2018 - Decided March 14, 2018

Before Judges Yannotti, Carroll and Mawla.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FG-07-0210-14.

Joseph E. Krakora, Public Defender, attorney for appellant D.A.G. (Eric R. Foley, Designated Counsel, on the brief).

Joseph E. Krakora, Public Defender, attorney for appellant R.J. (Elizabeth H. Smith, Designated Counsel, on the brief).

Joseph E. Krakora, Public Defender, attorney for appellant R.L.B. (Jay Bernstein, Designated Counsel, on the briefs).

Joseph E. Krakora, Public Defender, attorney for appellant S.T. (Howard B. Tat, Designated Counsel, on the briefs).

Gurbir S. Grewal, Attorney General, attorney for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Michelle Cort-Hourie, Deputy Attorney General, on the brief).

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

PER CURIAM

In these four consolidated appeals, a mother and three fathers appeal from the April 7, 2016 judgment terminating their parental rights. The mother, D.A.G. (Danielle)[1] appeals from the termination of her parental rights to her three children: M.G. (Michael), presently fourteen years old, J.V.J. (Jennifer), presently twelve years old, and J.S.-T.G. (Jason), presently ten years old.[2] R.L.B. (Robert) appeals from the termination of his

[1] Pursuant to Rule 1:38-3(d)(12), we use pseudonyms for the parents and children to protect their confidentiality.

[2] Danielle is also the mother of a fourth child, J.C., who is presently eight years old and is not the subject of these termination of parental rights proceedings.

parental rights to Michael; R.J. (Richard) appeals from the termination of his parental rights to Jennifer; and S.T. (Samuel) appeals from the termination of his parental rights to Jason.

The parents argue that the judgment should be reversed because the Division of Child Protection and Permanency (Division) did not prove all four prongs of the best interests of the child test under N.J.S.A. 30:4C-15.1(a). The Law Guardian argues that the Division proved all four prongs as to the fathers, but failed to prove prong four as to Danielle. Robert also argues that the Interstate Compact on the Placement of Children (ICPC), N.J.S.A. 9:23-5, does not apply to out-of-state placements of children with their biological parents, and therefore the court erred in relying upon Florida's negative ICPC assessment of his home.

In a comprehensive and well-reasoned ninety-four-page written opinion, Judge Marysol Rosero found the Division 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 (1999). Based on our review of the record and applicable law, we are satisfied the evidence in favor of the guardianship petition adequately supports the termination of the parents' respective parental rights. See N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (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.

I.

The guardianship trial commenced on June 23, 2015, and continued on various non-consecutive dates until March 24, 2016. At the trial, the Division moved 235 exhibits into evidence, and presented testimony from Eric Kirschner, Ph.D., a psychologist; Ashley Mystila, a Division caseworker; and Emerald Irby, the Division's adoption/select home specialist. Danielle testified on her own behalf. For the most part, the fathers did not appear at trial, except Richard appeared for a few days, as did Robert (by telephone from Florida). The judge also conducted interviews of the children.

The evidence adduced at the trial is set forth at length in Judge Rosero's opinion and need not be repeated in the same level of detail here. We recount the most significant evidence to lend context to the analysis that follows.

The Children

(i) Michael and Jason

After the Division removed the children from Danielle's care in 2011, both Michael and Jason were evaluated and observed to have short attention spans, and hyperactivity with aggressive

behavior. Throughout the Division's involvement, both children have been provided with services, including psychological and psychiatric evaluations, therapy, and medication to address their trauma and behavioral issues, as well as educational interventions.

Although the boys initially were placed in the same resource home, Michael was removed from that home in early 2012, due to his inappropriate sexual touching of Jason, with Jason indicating that Michael had behaved similarly in the past. Michael was placed in a therapeutic resource home, but due to his dangerous and uncontrollable behavior, he was taken to the hospital numerous times in March 2012. He was placed on medication, moved to a different resource home, and ultimately moved to a residential treatment center in April 2012.

In the residential treatment facility, Michael continued to experience depression, demonstrate aggression, and present behavioral problems. In January 2014, however, he was stepped down to a different program, due to improvements in his behavior.

Michael struggled in his new placement and complained of mistreatment by the staff. The Division declared his allegations unfounded, but nevertheless moved him to a new residential treatment facility in November 2014, where he remained at the time of trial.

Jason remained in the same resource home between 2011 and March 2013, when he was moved to a placement committed to adoption. However, he was subsequently moved to multiple resource homes due to his serious behavioral issues. In November 2013, he was admitted to a hospital for psychiatric care after becoming violent at school. In January 2014, Jason was moved to a group home, where he gradually improved over time. During trial, in August 2015, he was moved to a treatment home, where his behavior continued to improve.

(ii) Jennifer

Jennifer also experienced significant behavioral problems and received evaluations, therapy, medication, and educational services to address her needs. Nevertheless, Jennifer's initial placement with her paternal great-grandmother was stable through early 2014, with the great-grandmother expressing a desire for Jennifer to stay with her on a permanent basis, either through kinship legal guardianship or adoption.

In February 2014, after the permanency plan was changed to adoption, the new caseworker observed that the relationship between Jennifer and her great-grandmother became strained. Danielle also reported to the Division that the great-grandmother was neglecting Jennifer. The Division's emergency response unit investigated the allegation, and moved Jennifer to a new resource

home based upon the alleged medical neglect, as well as Jennifer's claim that her great-grandmother had been hitting her.

During a psychosocial evaluation conducted in March 2014, Jennifer alleged physical abuse and neglect by her great-grandmother; corporal punishment by her father and great-grandmother; sexual abuse by Danielle's boyfriend, M.H.; witnessing M.H. physically abuse Danielle; and witnessing Danielle and M.H. having sexual intercourse. The evaluator recommended therapy, in-home services to assist in behavior management, and assignment of a mentor, as well as parenting lessons for Jennifer's father, and a psychological evaluation and parenting assessment of the great-grandmother, should the Division consider returning Jennifer to her care. The evaluator also reported Jennifer's abuse and neglect allegations to the Division. The Division investigated, and substantiated that Jennifer was a sexually and physically abused child, who also had been neglected and exposed to domestic violence.

Jennifer received psychiatric and psychological services. However, her behavior deteriorated to such an extent that she was moved through multiple resource homes over the course of the next few months. In August 2014, Jennifer was hospitalized for inpatient evaluation and treatment.

Upon her release, Jennifer was placed in a group home where

she continued to receive services. However, she still exhibited behavioral problems, including aggressive behavior and inappropriate sexual interactions with other girls in the home. She also complained of mistreatment by staff members and of threats made by another girl in the home.

Jennifer was admitted to a hospital for psychiatric care in October 2014, and again in May 2015. By the time of trial, however, the Division caseworker testified that Jennifer's behavior had improved, and the Division was hoping to move her to a treatment home. That move ultimately occurred in November 2015.

Throughout Jennifer's multiple placements, her great-grandmother expressed a desire that Jennifer be returned to her. Jennifer, however, expressed ambivalence on the issue, and her parents and law guardian opposed that plan. The Division nevertheless investigated the possibility, and in November 2015, it sent the great-grandmother for a psychological evaluation, as well as a bonding evaluation with Jennifer. The Division also provided the great-grandmother therapeutic visitation with Jennifer, although she did not attend all of the scheduled visits.

Ultimately, the psychologist did not support reunification unless the great-grandmother first received services, and the Division decided not to return Jennifer to her great-grandmother's care. The Division sent the great-grandmother a rule-out letter

in January 2016, advising that "the recommendations from your evaluations from November 2015 did not support reunification." At trial, when interviewed, Jennifer told the judge she did not want to live with her great-grandmother.

The Fathers

(i) Jennifer's Father

The Division referred Jennifer's father, Richard, to Dr. Kirschner for a psychological and bonding evaluation. During the evaluation, Richard admitted a past history of drug distribution, and stated he was presently unemployed and receiving public assistance, as well as financial assistance from his mother. He stated Jennifer would "be fine" if he had custody of her, and his family would assist in raising her.

Dr. Kirschner found Richard was unable to provide Jennifer with consistency, stability, or permanence due to his lack of parenting skills, independent income, or housing, and his failure to be a consistent presence in Jennifer's life. Although Jennifer had a parent-child bond with Richard, it was an insecure bond given Richard's pattern of inconsistent involvement in Jennifer's life.

Dr. Kirschner opined Jennifer might suffer some psychological harm if Richard's parental rights were terminated. However, he believed that harm could be mitigated through mental health

services, and the formation of a bond between Jennifer and a caregiver who met her needs. Moreover, notwithstanding there was no prospective adoptive home for Jennifer, Dr. Kirschner opined that termination of Richard's parental rights would not do more harm than good. Citing Jennifer's need for permanence, and the length of time the Division had been involved with the family, he supported the Division's plan for termination of parental rights followed by select home adoption.

(ii) Michael's Father

Michael's father, Robert, lived in Florida. In September 2011, the Division advised him of Michael's foster placement. At that time, Robert did not offer himself as a placement for Michael. Instead, he stated he would be offering his brother as a placement for Michael. However, Michael had never met this uncle, nor did Robert provide a name or any contact information for his brother.

Robert did not offer himself as a placement for Michael until May 2014, after the guardianship complaint had been filed. However, the interstate evaluation requested by the Division rejected Robert as a placement for Michael because he did not comply with the fingerprint process in Florida, and he did not have adequate financial resources, nor space or appropriate sleeping arrangements for Michael in the one-bedroom apartment he shared with his two older sons.

During the interstate evaluation in 2015, Robert provided the names of his brother and sister-in-law in Texas. However, he again did not provide any contact information for them, and the Division did not make any attempt to contact them at that time. Although the Division did attempt to communicate with Robert's brother during trial, the caseworker was never able to make contact with him, and the brother never communicated with the Division or expressed any interest in serving as a relative placement for Michael.

The record further reflects that Robert failed to keep in touch with the Division. He was advised of court proceedings, but for the most part he did not attend, either in person or by telephone. At trial he appeared only twice, by telephone, including to provide testimony.

Robert did not visit with Michael other than in September 2014, when the Division paid for him to come to New Jersey for psychological and bonding evaluations. The Division had no record of Robert maintaining contact with Michael after that visit, even though he was provided with Michael's contact information.

Dr. Kirschner conducted Robert's psychological and bonding evaluations in September 2014. He concluded Robert was unable to assume physical custody of Michael and provide him with the consistency, stability or permanence he needed. Dr. Kirschner

noted Robert's limited involvement in Michael's life, his limited appreciation of Michael's needs, and the struggles Michael faced with controlling his emotions and behaviors, which resulted in his multiple placements. Thus, Dr. Kirschner found it particularly disconcerting that Robert's plan was for Michael to first temporarily reside with a paternal uncle in Texas, whom Michael had never met, and later live with Robert in Florida, because of the emotional upheaval this would cause in Michael's life. Dr. Kirschner acknowledged, however, that the Division's plan to place Michael in a resource home would present similar concerns.

Based on his bonding evaluation, Dr. Kirschner found Robert and Michael had no bond. Consequently, Michael would not experience serious and enduring harm if Robert's parental rights were terminated. Dr. Kirschner concluded termination of Robert's parental rights would not do more harm than good, and he supported the Division's goal of termination of parental rights followed by select home adoption.

For his part, Robert testified at trial that he had been self-employed for eighteen years, and lived with his two sons, ages seventeen and twelve, in an apartment in Jacksonville, Florida. He stated he raised these children their entire lives, and he felt capable of raising Michael as well.

In terms of the interstate evaluation, Robert admitted he did

not have his fingerprints taken in Florida. However, he claimed he was fingerprinted in New Jersey in September 2014. He also stated he would accept the Division's assistance in obtaining a larger space if that was required in order for Michael to live with him, although the Division never made such an offer or offer other services.

Robert claimed he provided money to Danielle for Michael's needs. However, he admitted: he never sought custody of Michael before the Division became involved; before the visit in September 2014, he had not seen Michael since 2007 or 2008; and he did not know much about Michael's circumstances because he did not communicate with him other than when Danielle called him in Florida.

(iii) Jason's Father

The Division was unable to locate Jason's father, Samuel, until March 2014, a month after the guardianship complaint was filed. Thereafter, Samuel attended only one court hearing, and he did not attend the guardianship trial.

During his psychological evaluation, Samuel told Dr. Kirschner he was unemployed, and the longest he had held a job was about two years. Samuel stated that for the past year he lived with his brother and his family, and before that he lived for a year with his sister and her family. The last time he had his own

apartment was about two years earlier, but he could not afford it because of his child support obligations.

Samuel told Dr. Kirschner he believed Jason was about five years old, although he was actually seven. Samuel said he last lived with Jason when Jason was about three years old, and he took care of Jason for two months in the summer before the Division took custody of the children. That summer was the last time Samuel saw Jason, and he made no attempt to keep in contact with him thereafter.

Based upon his psychological evaluation of Samuel and his review of background materials, Dr. Kirschner found Samuel suffered from significant cognitive deficits; lacked financial and residential stability; and "essentially abandoned [Jason] to the care of others," while externalizing responsibility for his failure to maintain contact with his son. Dr. Kirschner opined that Samuel was unable to take custody of Jason and provide him with consistency, stability, or permanence.

Based on his bonding evaluation, Dr. Kirschner concluded Samuel and Jason were essentially strangers, without any parent-child bond or attachment. When Jason met Samuel at Dr. Kirschner's office, Jason did not recognize Samuel or understand he was his father. Moreover, during the evaluation, the two did not make eye contact or display any affection toward one another. Accordingly,

Dr. Kirschner supported the Division's plan for termination of Samuel's parental rights. He opined that Jason would not experience any psychological trauma if Samuel's parental rights were terminated, and terminating his rights would not do more harm than good.

Danielle

In her trial testimony, Danielle admitted that in the past she and the children had lived in a shelter. She also admitted the children witnessed domestic violence when she lived with M.H., and that after the children were removed from her care she became aware of their allegations that M.H. physically abused them and sexually abused Jennifer. Danielle further admitted Michael had behavioral issues before the Division took custody of him. However, she denied any awareness that the children engaged in sexualized behaviors when they were in her care.

Danielle testified that since January 2016, she had been working full-time earning $11 per hour. She had previously worked through a temporary agency, and prior to that, between September 2014 and July or August 2015, she worked for another employer.

At the time of trial, Danielle was living in her sister's two-bedroom apartment, with her sister and her sister's two children, trying to save money "so in the event that the kids do return home [she'd] be . . . more financially stable." She

believed her children could live in her sister's apartment with her, or with her aunt, both of whom she believed provided safe care for the children upon her arrest in 2011.

Danielle denied being told she required therapy before the children could be returned to her. She testified she loved her children, and she felt able to care for them notwithstanding their behavior during some of the visitations.

The Division caseworker testified the Division could not return the children to their mother due to her lack of housing and proven employment, and because she never completed individual counseling.

Dr. Kirschner performed two psychological evaluations of Danielle, one in July 2014, and the second in February 2015. In August 2014, he also performed a bonding evaluation between Danielle and all three children together. He did not perform separate observations of Danielle with each child individually because Danielle's plan was to be reunified with all three children.

Dr. Kirschner concluded Danielle had unresolved psychological issues from her own childhood trauma, which included abuse by her biological mother and in foster placements, and she experienced recurrent episodes of depression. Nevertheless, she was not compliant with the recommended psychological treatment and felt

it was neither necessary nor useful. According to Dr. Kirschner, Danielle lacked insight into how her mental health affected her ability to function and her capacity to parent. She also accepted minimal responsibility for her role in the removal of her children. Moreover, she did not appreciate the extent of each of her children's mental health and behavioral problems, and she expressed a willingness to continue their treatment only because it was court-ordered.

Dr. Kirschner testified the children experienced "significant trauma and maltreatment while they were in the care" of their mother. In his report, he elaborated:

> [T]he clinical data suggested that each of [Danielle's] children had experienced a history of psychological trauma, maltreatment and neglect, including exposure to domestic violence, parental substance abuse, inappropriate adult sexual behavior, and physical abuse while in [their] mother's care. Each of these three children have been in residential treatment for the past years and continue to do so at this time. Each of them are at-risk for long-term impairment of their emotional, behavioral and interpersonal functioning and will likely need to continue to receive intensive mental health services for the foreseeable future regardless of their eventual placement.

Based upon all these issues, as well as Danielle's lack of stable housing and employment, and a viable plan for reunification, Dr. Kirschner opined that Danielle was unable to provide the

children with safety, consistency, stability, or permanency, at the present time or in the foreseeable future.

Based on his bonding evaluation, Dr. Kirschner concluded that Michael and Jennifer had insecure parent-child bonds and attachment relationships with their mother. Thus, they would likely suffer some psychological harm if Danielle's parental rights were terminated. However, termination of Danielle's parental rights would not do more harm than good because: termination would end the harm the children were suffering currently based upon the uncertainty of their current situation, and provide them with a viable option for the future; and the harm from termination could be mitigated if the children were able to form bonds with another caregiver. Dr. Kirschner therefore supported the Division's goal of terminating Danielle's parental rights as to Michael and Jennifer, followed by select home adoption, with the children continuing to receive intensive mental health treatment.

As for Jason, Dr. Kirschner concluded that although he expressed a desire to be reunified with his mother, his behavior was inconsistent with his having a bond or attachment relationship with her. Therefore, Jason would not be expected to experience serious and enduring psychological harm should Danielle's parental rights be terminated, and termination of her parental rights would

not cause him more harm than good. Even assuming Jason had a bond with his mother, however, Dr. Kirschner's opinion would not change given the length of time Jason has been in out-of-home placements and the harm that was causing him. In Dr. Kirschner's opinion, any harm caused to Jason from the termination of his mother's parental rights could be mitigated with intensive mental health treatment and formation of a bond with a caregiver who appropriately met his needs. Thus, Dr. Kirschner also supported the Division's plan for the termination of Danielle's parental rights to Jason, so he could become legally free for select home adoption.

Select Home Adoption and the Children's Interviews

The Division's family service specialist, Emerald Irby, testified regarding the select home adoption process and her unit's past success in finding adoptive homes for children with difficulties similar to Michael, Jennifer, and Jason. Irby stated her belief that adoptive homes could be found for the children, including the possibility of a home where they could be placed together.

The children's caseworker, however, testified that at the time of trial none of the children were eligible to be placed together. Jennifer and Jason had been placed in separate treatment homes, and were not eligible to be placed together, whereas Michael

remained in a residential treatment facility and was not eligible to be placed with either of his siblings. Moreover, the caseworker testified that a clinician would have to assess whether the children could live together in the future.

When interviewed by the court, all three children stated they wished to live with their mother and siblings. Michael and Jennifer were opposed to adoption, although Jennifer seemingly less so than Michael. Jennifer expressed that she would like to live with a family if she could not live with her mother, whereas Michael said he would not. For his part, Jason said he would feel "good" if he were adopted, and he wanted to live with a family if he could not live with his mother.

II.

In her comprehensive written opinion, Judge Rosero found the Division witnesses were "knowledgeable and credible," while Danielle and Robert were only "partially credible" because some of their testimony was contradicted by the Division's evidence. Ultimately, the court concluded the Division proved all four prongs of the statutory test by clear and convincing evidence, which the parents challenge on appeal. We address each of the four prongs, and the evidence supporting them, in turn.

A. Prongs One and Two

"The first two elements of the best interests of the child

standard relate to the finding of harm arising out of the parental relationship." In re Guardianship of D.M.H., 161 N.J. 365, 378 (1999). The first prong ("The child's safety, health, or development has been or will continue to be endangered by the parental relationship")[3] "does not concentrate on a single or isolated harm or past harm as such. Although a particularly egregious single harm can trigger the standard, the focus is on the effect of harms arising from the parent-child relationship over time on the child's health and development." K.H.O., 161 N.J. at 348. The harm may be physical or psychological. N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 604-05 (1986); N.J. Div. of Youth & Family Servs. v. L.J.D., 428 N.J. Super. 451, 480 (App. Div. 2012).

The second prong ("The parent is unwilling or unable to eliminate the harm facing the child or is unable or unwilling to provide a safe and stable home for the child and the delay of permanent placement will add to the harm")[4] "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

[3] N.J.S.A. 30:4C-15.1(a)(1).

[4] N.J.S.A. 30:4C-15.1(a)(2).

harm to the child." K.H.O., 161 N.J. at 348. Alternatively, the second prong may be established through proof "that the parent is unable to provide a safe and stable home for the child and that the delay in securing permanency continues or adds to the child's harm." Id. at 348-49.

> While the second prong more directly focuses on conduct that equates with parental unfitness, the two components of the harm requirement, N.J.S.A. 30:4C-15.1(a)(1) and (2) are related to one another, and evidence that supports one informs and may support the other as part of the comprehensive basis for determining the best interests of the child.
>
> [D.M.H., 161 N.J. at 379.]

Addressing prong one, the court found the children's safety, health, or development had been harmed by their relationship with Danielle based upon the "multiple traumas" they suffered while in her care, as evidenced in the numerous evaluations conducted following their removal from her custody. The court cited the children having witnessed domestic violence as well as sexual activity between Danielle and M.H.; Jennifer's reports of sexual abuse by M.H.; and the children's resulting impulse control and behavioral issues, including violent episodes and episodes of sexually inappropriate behavior.

The court found the harm Danielle caused the children was continuing because Danielle was "given numerous opportunities to

become stable, engage in services, including individual and family counseling, obtain safe and secure housing for her children, and adequately plan for her children, but she failed to do so." Citing Dr. Kirschner's opinion, the court found Danielle was unable to provide the consistency and permanency the children required, at present or for the foreseeable future, and the children were harmed as a result.

With respect to Robert, Richard, and Samuel, the court found the children had been psychologically harmed by their relationships with their fathers because of the fathers' past and present "failure to provide their respective child with the nurture and care required for their safety and well-being . . . ." The court found the fathers had not been consistently or significantly involved in their children's lives, nor had they made themselves viable placement options for their children through engagement in services or otherwise. The court also cited Dr. Kirschner's conclusions that termination of the fathers' parental rights would not cause their children serious and enduring harm.

Addressing prong two of the statutory test, the court found the parents were "unable or unwilling to eliminate the harm that has endangered the children and the parental relationship." The court noted the length of time the children had been out of their parents' care; Danielle's failure to complete therapeutic

services, including family and individual therapy; Danielle's failure to obtain a safe and stable home for the children, notwithstanding the Division's offers of assistance with a security deposit and the first month's rent; Danielle's failure to provide the Division with proof of her employment; and Danielle's numerous missed visits with the children, without valid excuse, which caused the children great distress. The court also relied on Dr. Kirschner's assessment that the children would be in significant danger if placed in Danielle's care.

Regarding the fathers, the court noted Robert's failure to maintain contact with Michael both before and after he was removed from Danielle's custody; his lack of knowledge about Michael's status and his emotional, medical, and educational needs; and Robert's failure to develop a viable plan for Michael to be placed in his care or the care of a paternal relative.

As for Richard, the court found he "made no efforts to make himself available to care for [Jennifer]," and "showed a lack of desire and commitment to being a part of [Jennifer's] life." The court noted Richard's failure to comply with services offered by the Division, including parenting skills classes and individual therapy, as well as missed visits with Jennifer. Additionally, Richard's proposed placement of Jennifer with his grandmother was not viable given the grandmother's alleged physical abuse and

medical neglect of the child.

Finally, regarding Samuel, the court noted his complete absence from Jason's life, such that Jason did not recognize him or know Samuel was his father when they were together for a bonding evaluation. The court also noted Samuel's failure to provide a viable plan for Jason, and Dr. Kirschner's opinion that Samuel was unable to assume physical custody of Jason and provide him with consistency, stability, or permanence.

On appeal, the parents contend the first two prongs of the test were not met because there was never any finding of abuse or neglect made against them. However, a prior finding of abuse or neglect is not a prerequisite to the Division's pursuing a termination of parental rights. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 443-44 (2012).

The record amply supports the court's conclusion on prongs one and two of the statutory test regarding all of the fathers. As the court found, the record reflects that the fathers were not involved in their children's lives. At most, they had occasional and inconsistent contact with their children. Of the three fathers, only Robert offered himself as a placement for his child, although he had no viable plan for doing so, and alternatively offered relatives as possible placements. Richard and Samuel failed to engage in the services offered by the Division and

professed an inability to support their children, instead offering relatives as possible placements.

All of the possible relative placements were reasonably ruled out by the Division. While Robert complains that the Division did not timely assess his offered placements, see N.J.S.A. 30:4C-12.1(a), when the Division ultimately did inquire of the proposed relatives, they either ignored the Division's inquiries or responded they did not want to serve as a placement for Michael.

The fathers' absence from their children's lives, both before and after their removal, and their persistent inability or unwillingness to provide the children with a safe and stable home, constitutes a present and continuing harm recognized under prongs one and two of the statutory test. D.M.H., 161 N.J. at 379-83. "[I]njury to children need not be physical to give rise to State termination of biological parent-child relationships. Serious and lasting emotional or psychological harm to children as the result of the action or inaction of their biological parents can constitute injury sufficient to authorize the termination of parental rights." In re Guardianship of K.L.F., 129 N.J. 32, 44 (1992).

Moreover, "[a] parent's withdrawal of . . . solicitude, nurture, and care for an extended period of time is in itself a harm that endangers the health and development of the child."

D.M.H., 161 N.J. at 379; see also K.H.O., 161 N.J. at 353 (stating that second prong may be established by "indications of parental dereliction and irresponsibility," including "the inability to provide a stable and protective home," or "the withholding of parental attention and care"); In re Adoption of Children by G.P.B., 161 N.J. 396, 414 (1999) (O'Hern, J., concurring) (stating that a "father who never sees his child or never makes efforts to be a part of a child's life sufficient to cause the child to view the person as a parent, causes harm to the child").

The record is also replete with evidence supporting the court's conclusion that prongs one and two were satisfied as to Danielle. Notably, Danielle admitted that all of her romantic relationships involved domestic violence. At trial, she also admitted the children were exposed to M.H.'s domestic violence, which constitutes harm. F.M., 211 N.J. at 449; N.J. Div. of Youth and Family Servs. v. S.V., 362 N.J. Super. 76, 84 (App. Div. 2003).

Moreover, as the court found, the children's behaviors while in the Division's custody, and their need for significant psychological, educational, and behavioral interventions, are indicative of Danielle's failure to provide them with a safe and stable environment prior to removal, which caused them psychological harm. See N.J. Div. of Youth & Family Servs. v. B.G.S., 291 N.J. Super. 582, 591-92 (App. Div. 1996) ("Evidence

of serious emotional injury or developmental delay satisfies [prong one]."). Further, Dr. Kirschner testified the children experienced trauma and neglect while in Danielle's care. See D.M.H., 161 N.J. at 380 (citing expert testimony attributing children's behaviors to the instability and turmoil in their early lives).

Finally, the court reasonably concluded Danielle has been unwilling or unable to provide her children with a safe and stable home, and the delay of permanent placement will add to the harm (prong two), citing her failure to engage in therapy or obtain housing, and her lack of consistency in visiting the children, as well as Dr. Kirschner's testimony.

B. Prong Three

The third prong of the statutory test requires proof that the Division "made reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home and the court has considered alternatives to termination of parental rights[.]" N.J.S.A. 30:4C-15.1(a)(3). It requires the Division "to undertake diligent efforts to reunite the family." K.H.O., 161 N.J. at 354. Where, as here,

> one parent has been the custodial parent and takes the primary or dominant role in caring for the children, it is reasonable for [the Division] to continue to focus its efforts of family reunification on that custodial parent,

> so long as [the Division] does not ignore or exclude the non-custodial parent.
>
> [D.M.H., 161 N.J. at 393.]

Here, the trial court found the Division made reasonable efforts to assist the parents in correcting the circumstances that led to their children's placement outside the home. Specifically, the court found the Division offered the parents visitation. However, the fathers did not participate, and Danielle's participation was inconsistent.

In addition, the court found the Division communicated regularly with the parents and offered them psychological evaluations, substance abuse assessments, parenting skills programs, individual and family therapy, family team meetings, case plans, family agreements, domestic violence counseling, assessments of relative placements, and housing and transportation assistance. However, while Danielle completed one year of individual counseling through domestic violence services, she was "less than minimally involved in the other Division recommended services." Also, all of the proposed relative placements were ruled out.

The court further found the Division provided the children with a multitude of services to address their needs, including medical evaluations, individual and family therapy, psychological

evaluations, psychiatric evaluations, neuropsychological evaluations, educational assistance, in-home therapy, medication monitoring, foster placement, board payments, and an early intervention assessment.

Finally, the court considered alternatives to the termination of parental rights. For example, the court noted that in the past it had rejected the Division's proposed plan for adoption, and instead provided Danielle with additional time to complete services and secure appropriate housing. However, Danielle did not do what was necessary, and none of the proposed relative placements were viable. Thus, the court found no alternative to termination.

The record supports the court's factual findings and legal conclusions on prong three. Contrary to the parents' arguments on appeal, the Division offered them relevant services to effectuate family reunification, but the parents did not comply with those services, or did not benefit from them.

In particular, Danielle and Robert argue that the only thing standing in the way of reunification with their children is their inadequate housing, which is a result of their poverty. However, the record does not support their arguments. To the contrary, the court properly noted that the Division offered Danielle support in finding housing, including an offer to pay the first month's

rent and a security deposit, but more than four years after the children's removal she still had not secured a residence. Moreover, housing was not Danielle's only deficiency, as she was also non-compliant with individual therapy.

With respect to Robert, his inadequate housing was not the only barrier to his taking custody of Michael. Rather, the most significant barrier was his almost complete absence from Michael's life. Importantly, Robert failed to communicate with Michael or visit with him both before and after the Division took custody, and consequently he lacked any understanding of Michael's circumstances and his needs.

Robert also complains that the Division failed to make a timely search for relative placements for Michael. See N.J.S.A. 30:4C-12.1; N.J. Div. of Youth & Family Servs. v. J.S., 433 N.J. Super. 69, 81-83 (App. Div. 2013). In this regard, at trial, much was made of the fact that during the interstate evaluation in 2015, Robert provided the names of his brother and sister-in-law in Texas. However, Robert did not provide any contact information for these relatives. Thus, the Division did not attempt to contact them.

In any event, during trial, the Division attempted to contact Robert's brother, and also communicated with Robert's parents. However, these efforts were unfruitful. Robert's parents declined

to serve as a placement for Michael, and his brother never communicated with the Division or expressed any interest in caring for Michael. Thus, any lack of timeliness on the part of the Division in investigating these proposed family placements ultimately had no bearing on the termination of Robert's parental rights.

C. Prong Four

"[T]he fourth prong — whether termination of parental rights will do more harm than good — is a 'fail-safe' inquiry guarding against an inappropriate or premature termination of parental rights." F.M., 211 N.J. at 453. It does not require proof that no harm will befall the child from termination of their parents' rights. K.H.O., 161 N.J. at 355. "[T]he risk to children stemming from the deprivation of the custody of their natural parent inheres in the termination of parental rights and is based on the paramount need the children have for permanent and defined parent-child relationships." In re Guardianship of J.N.H., 172 N.J. 440, 478 (2002).

Where, as here, no bond or relationship exists between the child and a resource parent, courts should exercise particular caution, because "terminating parental rights without any compensating benefit, such as adoption, may do great harm to a child." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88,

109 (2008).

Nevertheless, there is no requirement that the children have a relationship with a resource parent for the Division to establish prong four. The Supreme Court has recognized that "termination of parental rights does not automatically lead to adoption or other comparable permanent arrangements." K.H.O., 161 N.J. at 359. Moreover, "there will be circumstances when the termination of parental rights must precede the permanency plan." A.W., 103 N.J. at 611.

Although there is a "natural tendency to want to continue working with parents to restore the family unit," the court "must not lose sight of time from the perspective of the child's needs," and must keep in mind the State's "strong public policy in favor of permanency." K.H.O., 161 N.J. at 357. "Children must not languish indefinitely in foster care while a birth parent attempts to correct the conditions that resulted in an out-of-home placement." N.J. Div. of Youth & Family Servs. v. S.F., 392 N.J. Super. 201, 209 (App. Div. 2007); see also N.J. Div. of Youth & Family Servs. v. A.G., 344 N.J. Super. 418, 438 (App. Div. 2001) (stating that keeping a child "in limbo, hoping for some long term unification plan, would be a misapplication of the law"). "Long-term foster care is the exception to the general rule favoring adoption, and is available under only very limited circumstances

. . ." K.H.O., 161 N.J. at 360.

In the present case, the trial court concluded it was in the children's best interests that their parents' rights be terminated, and termination of their parental rights would not do more harm than good. The court cited Dr. Kirschner's opinions and the factual record, and found "no realistic likelihood" that any of the parents would "be able to safely and appropriately care for" their children "now or in the foreseeable future."

While the court acknowledged the children's opposition to termination, and their desire to live with their mother, it determined their wishes were not dispositive. Rather, the court found the children were "in desperate need of permanency and stability," and concluded these needs were "of paramount concern at this time."

Citing the factual record and Dr. Kirschner's opinion, the court concluded Danielle was "not in the position to care for her children," nor would it be in their best interests to be placed in her care. Moreover, the court relied on Dr. Kirschner's opinion in concluding the children had only insecure attachments to their mother, as they were uncertain of her ability to care for them.

The court also relied upon Dr. Kirschner's assessment in concluding the children were "still of the age that they can form healthy attachments provided they are able to bond with another

caregiver" through a select home adoption, "which would offer the children the opportunity to have a permanent, safe and stable home" and overcome any harm caused by the termination of their parents' rights.

Addressing the fathers in particular, the court cited Dr. Kirschner's opinion and Robert's minimal involvement in Michael's life in concluding that Michael had no bond or attachment with his father, and would not experience serious and enduring harm if Robert's parental rights were terminated, particularly if he were able to form a bond with another caregiver.

As for Richard, the court found he had not shown any commitment to Jennifer, as he had been in and out of her life and never provided her with a safe and stable home. The court relied upon Dr. Kirschner's opinions in finding that Jennifer had a parent-child bond with her father, and would experience some psychological harm if his parental rights were terminated; however, that harm could be mitigated if Jennifer were able to form a bond with another caregiver.

As for Samuel, the court found he had no bond with Jason, and was unable to provide Jason with a safe and stable home. The court again relied on Dr. Kirschner's opinion that because there was no bond between father and son, Jason would not suffer any harm if Samuel's parental rights were terminated.

Finally, the court accepted Irby's testimony that, notwithstanding the children's issues, it was likely all three could be placed with a family through the select home adoption process, and termination of parental rights would open new avenues for finding them adoptive homes.

While we appreciate the Law Guardian's concern that the fourth prong has not been met as to Danielle, ultimately we conclude otherwise. We find sufficient credible evidence in the record to support Judge Rosero's finding that termination of parental rights will not do more harm than good, and would be in the children's best interests. At this stage, the children's need for permanency is paramount. They have been out of Danielle's care for more than six years, and have little or no relationship with their respective fathers. They should not continue to languish, especially where the undisputed expert evidence establishes there is "no realistic likelihood" that Danielle will be able to safely and appropriately care for them within the foreseeable future.

III.

Finally, Robert argues separately that the ICPC is inapplicable to placement of a child with a biological parent, and that the trial court erred in accepting the Division's "blanket adoption" of the interstate study performed by the State of Florida. We do not find this argument persuasive.

In support of his position, Robert relies on N.J. Div. of Youth & Family Servs. v. K.F., 353 N.J. Super. 623, 625-26, 635 (App. Div. 2002), where we held the ICPC "does not apply to relative placement and, therefore, it does not require the prior approval of the receiving state when a court in this state has decided against foster care in favor of placing children with their out-of-state maternal grandparents." (emphasis added).

However, K.F. does not address the Division's obligations with respect to assessing and placing a child with an out-of-state relative, parent or otherwise. The case only speaks to the court's ability to place a child with an out-of-state relative without reference to the ICPC standards, particularly where the court had dismissed the Division's case, and the relatives were deemed appropriate caretakers for the children, had complied with services, and had filed for custody of the children. Id. at 635-38.

Moreover, to the extent we held in K.F. that a placement to a natural parent is exempt from the ICPC, our holding was premised on the "nonsensical" application of the ICPC "to prohibit a court's placement of children with their natural family solely because that family resides in another state." Id. at 635. Indeed, "[t]he ICPC was intended to remove, not to create, obstacles to out-of-state placements that are in the best interests of children."

Ibid.

Here, regardless of whether the Division or the trial court were bound by the result of Florida's ICPC assessment, under the circumstances presented, it was reasonable for the Division to request the assessment. An assessment of Robert's fitness was necessary because Robert never had custody of his son, there was no shared custody arrangement between Danielle and Robert, and Michael was a deeply troubled child in need of supervision and services provided by a state child protective services agency. Thus, neither the Division nor the court could send Michael to live with Robert in Florida without first determining if it was in Michael's best interests to do so, and, if he were placed in Robert's custody, also arranging for after-placement care and supervision.

Ultimately, the trial court barely referenced the results of the Florida interstate evaluation in concluding it was in Michael's best interests to terminate Robert's parental rights. Rather, the court merely noted that the results of the ICPC showed Robert made no real effort to make himself a viable placement for his son, which is consistent with ample additional evidence in the record.

Affirmed.