

## RECORD IMPOUNDED

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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-4299-16T4

NEW JERSEY DIVISION OF CHILD  
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

D.M.,

Defendant-Appellant,

and

L.W.,

Defendant.

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IN THE MATTER OF THE GUARDIANSHIP  
OF S.M., a minor.

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Submitted February 26, 2018 – Decided March 26, 2018

Before Judges Messano and O'Connor.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Ocean  
County, Docket No. FG-15-0016-17.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Eric P. Storjohann and  
Adrienne Kalosieh, Designated Counsels, on  
the briefs).

Gurbir S. Grewal, Attorney General, attorney for respondent (Jason W. Rockwell, Assistant Attorney General, of counsel; Rachel Simone Frey, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Linda Vele Alexander, Designated Counsel, on the brief).

PER CURIAM

Defendant D.M. (mother) appeals from a Family Part judgment terminating her parental rights to her third and youngest child, S.M. (Sarah), presently nine years of age.<sup>1</sup> The mother voluntarily surrendered her parental rights to her other two children over ten years ago. It is not known who Sarah's biological father is. At one time, the mother thought defendant L.W. was Sarah's father, but a paternity test established he is not and the complaint against him was dismissed.

The mother contends the Division of Child Protection and Permanency (Division) failed to prove by clear and convincing evidence the four-prong standard set forth in N.J.S.A. 30:4C-15.1(a).<sup>2</sup> After reviewing the record and the applicable legal

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<sup>1</sup> We use initials to protect defendant's and the child's privacy, and use a pseudonym for the child for ease of reference.

<sup>2</sup> These four prongs are:

principles, we reject the arguments she advances and affirm substantially for the reasons expressed by Judge Joseph L. Foster in his comprehensive oral decision. In lieu of reciting at length the evidence presented by the Division and Sarah's law guardian in support of terminating the mother's parental rights, we incorporate by reference Judge Foster's factual findings because they are supported by competent evidence presented at trial. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012). We highlight only the principal evidence,

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(1) The child's safety, health, or development has been or will continue to be endangered by the parental relationship;

(2) 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. Such harm may include evidence that separating the child from his resource family parents would cause serious and enduring emotional or psychological harm to the child;

(3) The division has 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; and

(4) Termination of parental rights will not do more harm than good.

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

which is predominantly the expert witnesses' testimony. This testimony was not only unrefuted but also found to be "highly credible" by the court.

The underlying event that ultimately led to Sarah's removal from her mother's custody was, when six years of age, Sarah was the victim of an aggravated sexual assault while in her home. The perpetrator was a man who lived in the child's home, along with her mother and her mother's boyfriend.<sup>3</sup> The Division, which had been involved with the family in the past because of reports of Sarah's poor hygiene, the mother's abuse of alcohol, and the mother's violence toward others, did not immediately seek to remove the child upon learning of the sexual assault. However, the Division immediately sought and secured the mother's agreement to abide by its recommendations.

Those recommendations included that Sarah not be left alone with the boyfriend because of his drug use<sup>4</sup>; the mother take Sarah to a therapist who specialized in treating sexually abused children; and the mother engage in various services. However, thereafter, Sarah was found alone in the boyfriend's care on

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<sup>3</sup> In 2015, the man who sexually assaulted Sarah pled guilty to first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1), and sentenced to a fifteen-year term of imprisonment.

<sup>4</sup> There is no evidence or any concern the boyfriend had ever engaged in sexually inappropriate conduct with Sarah.

various occasions; the mother was minimally compliant with taking the child to therapy; and the mother refused to fully engage in substance abuse treatment and other services. In July 2015, the Division sought and obtained custody of Sarah, who was then placed with her current resource parents. The resource parents wish to adopt Sarah.

At the guardianship trial, the Division called psychologist Elise Landry, Psy.D. as an expert witness. Dr. Landry performed a psychological evaluation of the mother, and bonding evaluations of the child with her mother and then with her resource parents.

First, we note Dr. Landry's expert's report was placed in evidence and, in that report, she comments upon a psychological evaluation conducted approximately one year before her evaluation. The earlier evaluation revealed concerns about the mother's ability to parent. Specifically, the evaluator found the mother has low cognitive functioning, as well as schizoid and paranoid personality features. The evaluator recommended the mother engage in individual counseling to help her address her "maladaptive personality features," but the mother did not believe she needed help and thus did not participate in counseling.

Dr. Landry testified that she also was concerned about the mother's cognitive abilities, specifically, her ability to "understand reason [and] think through with information." While the mother can engage in various tasks and can briefly retain "learned information," her low abstract reasoning abilities preclude her from understanding and empathizing with Sarah's emotional and behavioral needs. Dr. Landry testified she did not have enough information to determine if the mother is afflicted with a personality disorder, but was able to ascertain the mother does have an unspecified personality disorder which, like a personality disorder, is "very, very difficult" to treat. Dr. Landry opined that if the child were to resume living with her, the mother would place Sarah at risk of harm by exercising poor judgment.

Dr. Landry opined that, between her intellectual impairments and having an unspecified personality disorder, it is very unlikely the mother will ever learn to parent effectively, even with the intervention of services. The doctor also noted Sarah herself has significant emotional and behavioral problems, which the mother cannot understand and, thus, cannot address.

On the other hand, the resource parents are far more skilled at interacting with Sarah, to whom Sarah responds

favorably. During the bonding evaluation between Sarah and her mother, Sarah resisted interacting with and at times ignored her mother. Dr. Landry opined that if removed from her resource parents' care, Sarah would significantly regress. Dr. Landry noted children who have been sexually abused are at increased risk for attachment disorders and, the longer there is a delay in permanency, the greater the risk of emotional harm and behavioral regression. However, Dr. Landry opined severing her relationship with her mother would not cause any lasting harm.

Sarah called psychologist Maureen R. Santina, Ph.D. as her expert, who also conducted a psychological evaluation of the mother, as well as a bonding evaluation of the child with her mother and, separately, with her resource parents.

Dr. Santina found the mother to be "extremely egocentric" and unable to express empathy for others, including Sarah. Dr. Santina explained these two characteristics have "a very strong negative impact on parenting," and are "very detrimental to the child's emotional development." In her view, the mother does have a personality disorder, with anti-social and narcissistic features, afflictions that impair the mother's ability to empathize and understand Sarah's emotional needs. Further, it is unlikely the mother will overcome these impairments in the near future.

During the bonding evaluation, Dr. Santana noted Sarah has a strong, positive bond with her resource parents and that they are very invested in her, providing her the therapeutic environment she "desperately" needs. Sarah informed Dr. Santana she is afraid to return to her mother's home. There was evidence the resource parents obtained the services Sarah requires, and that she has improved academically since she began living with her resource parents.<sup>5</sup>

In reviewing a case in which termination of parental rights has been ordered, we remain mindful of the gravity and importance of our review. See N.J. Div. of Youth & Family Servs. v. I.S., 202 N.J. 145, 151 (2010) ("[T]he process for terminating parental rights is a difficult and intentionally rigorous one that must be satisfied by a heightened burden of proof . . . ."). Parents have a constitutionally protected right to enjoy a relationship with their children and to raise them without State interference. N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 102 (2008).

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<sup>5</sup> The resource mother was familiar with Sarah before she moved into the resource home. The resource mother was the principal of Sarah's school when Sarah still lived with her mother, and became aware the child was bullied by classmates because at times Sarah exhibited odd behavior and had poor hygiene. (At one time, the child's hygiene had deteriorated to the point where she attracted fleas). The resource mother took an interest in Sarah's plight and sought to become a resource parent.



However, this right is not absolute, as it is limited by the "State's parens patriae responsibility to protect children whose vulnerable lives or psychological well-being may have been harmed or may be seriously endangered by a neglectful or abusive parent." F.M., 211 N.J. at 447. The State has a strong public policy that favors placing children in a permanent, safe, and stable home. See generally In re Guardianship of K.H.O., 161 N.J. 337, 357-58 (1999).

In addition, a reviewing court should not disturb the factual findings of the trial court if they are supported by "adequate, substantial and credible evidence. . . ." N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007)(quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)). We defer to the trial court's credibility findings and, in particular, its fact findings because of its expertise in family matters, see N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 343 (2010), unless the trial court's findings are "so wide of the mark that the judge was clearly mistaken." N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007) (citing J.T., 269 N.J. Super. at 188-89).


We note providing proof a parent has in fact harmed a child is not essential to showing the first prong of N.J.S.A. 30:4C-

15.1(a) has been satisfied. N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 604-05 (1986). When no actual harm is proven, the first prong will be satisfied by evidence showing a parent will endanger the child's health, safety, or welfare. See In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999). A court does not have to wait until a child is "irreparably impaired by parental inattention or neglect" before it acts. Ibid. (quoting A.W., 103 N.J. at 616 n.14).

We have examined the mother's arguments the Division failed to satisfy the four prongs of N.J.S.A. 30:4C-15.1(a). After perusing the record, we conclude these arguments are without sufficient merit to warrant discussion in a written opinion, see Rule 2:11-3(e)(1)(E). The Family Part court's thorough opinion analyzes these prongs, and its findings are supported by substantial and credible evidence, mandating our deference. N.J. Div. of Youth & Family Servs. v. F.J., 211 N.J. 420, 448-49 (2012); Cesare v. Cesare, 154 N.J. 394, 413 (1998).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION