

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-4988-15T4
4989-15T4

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

P.R. and C.W.,

Defendants-Appellants.

IN THE MATTER OF THE GUARDIANSHIP
OF J.W.,

a Minor.

Argued December 20, 2017- Decided March 19, 2018

Before Judges Fuentes, Koblitz and Manahan.

On appeal from the Superior Court of New
Jersey, Chancery Division, Family Part,
Passaic County, Docket No. FG-16-0061-16.

Cecilia M.E. Lindenfelser, Designated Counsel
argued the cause for appellant P.R. (Joseph
E. Krakora, Public Defender, attorney; Cecilia
M.E. Lindenfelser, on the brief).

Eric R. Foley, Designated Counsel, argued the
cause for appellant C.W. (Joseph E. Krakora,

Public Defender, attorney; Eric R. Foley, on the brief).

Patricia J. O'Dowd, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Andrea M. Silkowitz, Assistant Attorney General, of counsel; Patricia J. O'Dowd, on the brief).

David B. Valentin, Assistant Deputy Public Defender, argued the cause for minor (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Margo E.K. Hirsch, Designated Counsel, on the brief).

PER CURIAM

Defendants P.R. (Pam) and C.W. (Charles) are the biological parents of J.W. (Julie), a little girl born in January 2014. Within weeks of Julie's birth, Pam was involuntarily committed to a psychiatric hospital; she was also found to have overdosed on illicit drugs. Charles was incarcerated at the time his daughter was born. On January 28, 2014, the Division of Child Protection and Permanency (the Division) filed a verified complaint and order to show cause for Julie's custody, care, and supervision under Title Nine, N.J.S.A. 9:6-8.21, and Title Thirty, N.J.S.A. 30:4C-12.1. The court granted the Division's application in an order entered on that same date. The Division placed Julie in a non-family resource home where she has been living since she was five

months old.¹ Her resource parent is eager to adopt her.

After nearly two years of active involvement with defendants, which included the provision of extensive family and psychological services, the Division decided to seek the termination of defendants' parental rights over Julie and filed a verified guardianship complaint and order to show cause. On the return of the order to show cause, the court ordered Pam to attend psychiatric and bonding evaluations and provide a list of relatives to the Division in order to determine whether any of these individuals were capable and willing to assume responsibility for Julie's care.

At trial, the Division presented evidence that defendants received a variety of services, including counseling, training, and transportation. The expert witnesses unanimously opined that defendants remained incapable of providing Julie with a safe and stable parenting environment. Pam was diagnosed as suffering from schizophrenia and refused to submit to medical treatment. Charles failed to complete many of the court-ordered services on a timely basis. The Division also claimed that the parties' relationship had a history of domestic violence.

¹ Julie was briefly reunited with her parents during this period of time.

The court conducted the guardianship trial over several days in June 2016. The Division called five witnesses, including two healthcare providers whom the court admitted as expert witnesses. With respect to Julie, the experts agreed the child had formed a strong and close bond to her resource parent, with whom she had resided for the past two and a half years. The experts opined Julie would suffer severe and enduring psychological and emotional harm if her relationship with her pre-adoptive parent was terminated. By contrast, the termination of defendants' parental rights would not do Julie more harm than good.

At the conclusion of the trial, the judge entered an order terminating defendants' parental rights. The trial judge described his factual findings and legal analysis in a comprehensive sixty-page, single-space memorandum of opinion.² Defendants filed separate notices of appeal challenging the court's ruling. We consolidate these appeals for purposes of our review and ultimate decision. Defendants argue that the trial judge erred when he found the Division established, by clear and convincing evidence, all four statutory elements of N.J.S.A. 30:4C-15.1(a). Charles also claims the court impermissibly shifted the burden of proof by requiring him to prove that he was

² The judge also submitted an amended opinion to correct certain typographical errors.

a fit parent.

We reject these arguments and affirm the judgment of guardianship as to both defendants. We incorporate by reference the detailed factual findings made by the trial judge as reflected in his memorandum of opinion. We make only the following brief comments.

The Division continued to provide services to defendants throughout their tumultuous relationship, including counseling and services related to the prevention of domestic violence. Defendants were uncooperative and consequently failed to reap the benefits offered by these services.³ They continued to struggle and engage in violence throughout the time leading to the trial. Pam was arrested and charged with assault after she allegedly stabbed Charles with a fork during a dispute. On February 1, 2016, Charles was arrested and charged with sexually assaulting Pam as well as committing other acts of physical violence against her.

Pam left New Jersey to stay with her mother in Georgia the same day Charles was arrested on these charges. She claimed her decision to relocate was prompted by the death of her niece, not

³ In February 2016, the YMCA terminated the supervised visitation arrangement with Pam and Charles due to their failure to attend. The record shows Charles missed twenty-three visitation appointments between August and December 2015.

the domestic violence issues she was having with Charles. Pam's mother consistently offered to serve as a placement option for Julie in Georgia. The Division conducted its investigation in this State and completed an interstate compact application. Pam remained in her mother's home in Georgia at the time of the guardianship trial. The suitability of placing Julie with her maternal grandmother was not determined before the guardianship trial ended.

At trial, Charles called Dr. Denise Williams-Johnson to address the issue of bonding and familial ties to Julie. In October 2015, she conducted a bonding evaluation between Charles and Julie during one of the YMCA visits. Dr. Williams-Johnson also conducted a separate bonding evaluation with Julie and her resource mother. She opined that Julie's bond with Charles was strong enough to overcome the difficulty of being removed from her foster home. However, she also stated that Julie's bond with her foster mother was sufficient to mitigate any harm she may endure if she were to be permanently separated from her father. Of particular note, Dr. Williams-Johnson did not affirmatively recommend reunification between father and daughter.

As ordered by the court, defendants met with the Division's psychologist Robert Kanen on April 14, 2016, for psychological and bonding evaluations with Julie. Dr. Kanen concluded Pam's mental

illness rendered her incapable of parenting Julie. Dr. Kanen found Charles' evaluation "raises concerns about [Charles's] capacity to be a responsible, predictable, and dependable parent[.]" Dr. Kanen expressed serious doubts about Charles' purported new plan to end his relationship with Pam. He diagnosed him as suffering from a "personality disorder with antisocial features." Dr. Kanen also mentioned Charles' past history of violence created the potential for child neglect.

With respect to bonding with Julie, Dr. Kanen opined that "both parents are emotional[ly] cold and unexpressive toward the child." He noted that "Julie appears to have a severely impaired attachment to P[am] and C[harles]." He concluded that Julie would not suffer serious or enduring harm if permanently separated from her parents. Dr. Kanen also conducted a bonding evaluation of Julie and her foster mother. He noted that Julie calls her "mommy" and the foster mother is also very sensitive to the child's needs. Dr. Kanen opined that "J[ulie] is securely attached to the foster mother" and concluded that she "would suffer serious and enduring harm if removed from the foster mother's care[.]"

The scope of an appellate court's review of the trial court's decision to terminate parental rights is limited. N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014). "[T]he trial court's factual findings should be upheld when supported by

adequate, substantial, and credible evidence." Ibid. "Concomitantly, reviewing courts should defer to the trial court's credibility determinations." Ibid. "Moreover, by virtue of its specific jurisdiction, the Family Part 'possess[es] special expertise in the field of domestic relations' and thus 'appellate courts should accord deference to [F]amily [Part] factfinding.'" Id. at 553 (quoting Cesare v. Cesare, 154 N.J. 394, 412-13 (1998)). However, "'[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.'" Id. at 552 (quoting Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995)).

As we noted earlier, the trial judge observed the testimony of the witnesses and carefully reviewed the evidence presented by the Division and the parties. Based on this evidence, the judge concluded the Division had presented sufficient competent evidence to satisfy the four statutory prong in N.J.S.A. 30:4C-15.1(a). We discern no legal basis to disagree.

Finally, we conclude the Division followed the requisite procedure when it evaluated the propriety of placing Julie with her maternal grandmother in Georgia. As explained in N.J. Div. of Youth & Family Servs. v. T.M., 399 N.J. Super. 453, 468 (App. Div. 2008), the Interstate Compact on the Placement of Children (ICPC), N.J.S.A. 9:23-5, requires:

if children are removed from the [s]tate of New Jersey and are placed in a home outside the [s]tate of New Jersey under any circumstances, the child welfare authorities in that particular state have to be notified. They have to, at a bare minimum, look over the physical plant where the children are and check out the entire situation and be the eyes and ears of [the Division] in that particular state.

Pam argues that ICPC did not apply here because the placement was with a relative. Pam cites to dicta in McComb v. Wambaugh, 934 F.2d 474, 481 (3d Cir. 1991) for this proposition. While it is true that ICPC does not apply to "[t]he sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian . . . , " N.J.S.A. 9:23-5-VIII(a), the placement here would have been made by the Division, who had care and supervision of Julie. Although the term 'guardian' is undefined in that statute, the ICPC process was required unless we were to deem the Division as Julie's guardian under the statute. Notwithstanding this determination, Pam's move to her mother's home in February 2016 made Julie's placement there impossible.

In accordance with the ICPC process, the Division contacted Georgia authorities to determine the suitability of the grandmother's home. The grandmother expressed an interest in housing Julie beginning in 2014. The record is unclear, however,


about when the interstate compact application was completed. It is clear that the application process was initiated some time before October 2015.

Division caseworker Jacqueline Livingston continued to follow up with the Trenton-based liaison to Georgia on a regular basis throughout this litigation seeking approval of the grandmother's home. Pam's move to the home in February 2016 "froze" the ICPC evaluation process. Thus, even if Julie had been placed with the grandmother immediately in 2014, she would have been removed when Pam joined the household in February 2016. Pam's decision to relocate to Georgia in the midst of this guardianship trial did not do anything to address her serious psychiatric illness. This disruption in Julie's life and stability would have undermined her emotional and psychological wellbeing.

Finally, Pam's reliance on N.J. Div. of Youth & Family Servs. v. K.F., 353 N.J. Super. 623 (App. Div. 2002) is misplaced. Unlike the situation we confront here, K.F. involved out-of-state grandparents affirmatively filing for custody. Here, Pam's mother merely expressed a willingness to house Julie. The trial judge correctly emphasized the importance of "permanency in the only home [Julie] has ever known."

Affirmed.

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


CLERK OF THE APPELLATE DIVISION