

# RECORD IMPOUNDED

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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4990-15T2

NEW JERSEY DIVISION  
OF CHILD PROTECTION  
AND PERMANENCY,

Plaintiff-Respondent,

v.

A.O.,

Defendant-Appellant,

v.

R.H.,

Defendant.

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IN THE MATTER OF THE GUARDIANSHIP  
OF R.H. and A.H., minors.

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Argued December 11, 2017 – Decided January 19, 2018

Before Judges Messano and O'Connor.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Burlington  
County, Docket No. FG-03-0058-15.

Thomas W. MacLeod argued the cause for  
appellant (Joseph E. Krakora, Public

Defender, attorney; Thomas W. MacLeod,  
Designated Counsel, on the briefs).

Jennifer A. Lochel, Deputy Attorney General,  
argued the cause for respondent (Christopher  
S. Porrino, Attorney General, attorney;  
Melissa H. Raksa, Assistant Attorney  
General, of counsel; Arundhati Mohankumar,  
on the brief).

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

PER CURIAM

Defendant A.O. (mother) appeals from a Family Part judgment terminating her parental rights to R.H. and A.H., the two youngest of her four children.<sup>1</sup> At the time of trial, R.H. was three and A.H. two years of age. Their biological father surrendered his parental rights to these children before the trial commenced. The mother's two oldest children are in the custody of their maternal grandmother and are not the subject of this action.

The mother contends the Division of Child Protection and Permanency (Division) failed to prove by clear and convincing evidence the four-prong standard codified by our Legislature in

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<sup>1</sup> We use initials to protect defendant's and the children's privacy.

N.J.S.A. 30:4C-15.1(a).<sup>2</sup> After reviewing the record, the applicable legal principles, and the arguments advanced by the parties, we affirm.

When the judgment terminating her parental rights was entered in June 2016, the twenty-eight year old defendant had been struggling with opiate addiction for fifteen years. She has a history of participating in treatment for her addiction, only to relapse. Although between 2006 and 2008 she managed to

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

(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).]

abstain from drugs, she was under house arrest at that time and subject to incarceration if she used any substances.

The mother has never been the primary caretaker of R.H. and A.H.; the children have been cared for by relatives since their respective births. As of February 2015, both boys have been living with their paternal aunt and her husband, both of whom wish to adopt the boys.

In March 2015, the mother entered the Jersey Shore Dream Center (Center), a women's discipleship program that provides rehabilitative services. The mother resided in the Center and received various services for one year. Thereafter, she continued to reside at the Center, providing routine services for a modest wage. At the time of trial in June 2016, the mother had not used any illegal substances since entering the Center fifteen months earlier.

Notwithstanding this achievement, psychologist Alan Lee, Psy.D., one of the experts credited by the trial court, opined the mother's prognosis for a sustained recovery was poor in light of her: (1) long history of drug abuse; (2) failures at maintaining sobriety in the past despite successful completion of treatment programs; and (3) struggles with anxiety and depression. He noted a person's ability to stay drug-free in a supportive, controlled environment does not demonstrate he or

she can refrain from using drugs once living outside of a treatment center and forced to contend with the stressors of daily living.

Dr. Lee also found the mother ill-equipped to face some of the practical demands of parenting, such as providing a safe home for the children, as evidenced by her long-standing inability to maintain stable housing or employment.

Psychologist Gianni Pirelli, Ph.D., another expert whose testimony was also credited by the court, stated the mother's addiction to substances and her other parenting deficits cannot be remediated in the foreseeable future.

When considering whether to terminate parental rights, the court focuses on the child's best interests. N.J.S.A. 30:4C-15.1(a). The Division must satisfy the best-interests-of-the-child test by establishing all four prongs in N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence, in order to terminate parental rights. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 447-48 (2012). Assessing these four prongs requires a fact-sensitive examination of the particularized evidence presented in each case. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 280 (2007).

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) ("The 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 and to raise their children without State interference. N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 102 (2008).

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 (citing E.P., 196 N.J. at 102). The State has a strong public policy that favors placing children in a permanent, safe, and stable home. See In re Guardianship of K.H.O., 161 N.J. 337, 357 (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 . . . ." M.M., 189 N.J. at 279 (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).

The mother's fundamental argument about the Division's proofs on the first two prongs of N.J.S.A. 30:4C-15.1(a) is the judgment must be reversed because the mother neither harmed nor posed a risk of harm to either child. The claim lacks merit. Providing proof a parent has in fact harmed a child is not essential to showing the first prong has been satisfied. N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 605 (1986). When no proven actual harm is shown, 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) (citing A.W., 103 N.J. at 616 n.14). A court does not have to wait until a child is "irreparably impaired by parental inattention or neglect" before it acts. Ibid. (citing A.W., 103 N.J. at 616 n.14).

Here, there is ample evidence the mother has had a chronic, long-standing struggle with drugs. Treatment has been effective only to the extent that, while in a controlled setting, she may be able to resist using drugs. However, her resolve diminishes when confronted with the stresses and strains of everyday

living. She can be disciplined about resisting drugs if there is a certainty there will be an immediate, harsh consequence – such as incarceration – if she were to succumb to using drugs, as she demonstrated when under house arrest.

Otherwise, however, there is substantial evidence the mother has not yet overcome her addiction to the point where these two young boys would be safe in her care. The boys do not have to wait indefinitely for their mother to surmount her dependency on drugs and delay their own permanency. We are satisfied there is sufficient evidence to satisfy the first two prongs of N.J.S.A. 30:4C-15.1(a). The children's safety, health, and development would be endangered if they were placed in the mother's care, and she is unable to eliminate the harm facing the children.


We have examined the mother's arguments the Division failed to satisfy the third and fourth prong of the subject statute. 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 court's comprehensive opinion carefully analyzes these two 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) (citing 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