

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Court. In the interest of brevity, portions of any opinion may not have been summarized.)

New Jersey Division of Child Protection and Permanency v. A.S.K. (A-50-17) (079700)

(NOTE: The Court did not write a plenary opinion in this case. Instead, the Court affirms the judgment of the Appellate Division substantially for the reasons expressed in the per curiam opinion, which is published at ___ N.J. Super. ___ (App. Div. 2017).)

Argued January 2, 2019 -- Decided January 23, 2019

PER CURIAM

The Court considers the Appellate Division’s affirmance of the trial court’s decision to terminate the parental rights of E.M.C. (“Eric”) to his son, A.E.C. (“Adam”) based on the record and the application of the best-interests-of-the-child test.

Adam was born on November 14, 2009, and began residing with Eric in March 2012. Before Adam came to live with him, Eric had last seen him in July 2011.

The first referral to the Division of Child Protection and Permanency (the Division) was made in April 2012, after Eric brought twenty-nine month-old Adam to the pediatrician with severe eczema. Adam was undernourished, weighing twenty-one pounds, the weight of a child half his age. His speech was mumbled. Eric cooperated with the Division’s investigation. The April 2012 investigation summary reported Eric “followed-up with all the child’s medical appointments” and Adam was “now up to date with his immunizations and . . . receiving treatment for his eczema.” Because Adam was residing with Eric, the allegation of abuse and neglect against Adam’s mother, A.K. (“Ali”) was deemed unsubstantiated.

In September 2012, a second referral to the Division was made by an anonymous neighbor of Ali’s, reporting drug use by Ali, her sister and mother while children were in their care. The investigation confirmed Adam continued to reside with Eric at this time and, although child welfare concerns persisted regarding Ali’s admitted drug use, the allegations of neglect and inadequate supervision were deemed to be unfounded.

Ali gave birth to a third child in June 2013, and alleged Eric was the biological father. Eric’s fiancée was displeased that Eric had another child with Ali and, by July 2013, Adam returned to live with Ali.

In December 2013, the Division was granted care and supervision of all three of Ali’s children. The children were eventually placed with M.L. (“Maisie”), a resource identified by Ali. The Division was unable to contact Eric because his whereabouts were unknown.

In May and June 2014, the Division embarked upon an extensive search to locate Eric. The search ended, by coincidence, on June 18, 2014, during an unannounced home visit to Ali. Eric emerged from her residence as Ali was speaking with the caseworker. The caseworker exchanged contact information with Eric. She also advised him a Family Team Meeting was scheduled and it was important for him to attend. Eric did not attend the meeting and, after the caseworker contacted him about the importance of attendance, his telephone number was shut off. The Division's goal changed from reunification for the three children to adoption in January 2015 and a guardianship complaint was filed.

The Division was again unable to locate Eric for an extended period of time. The Primary Worker on this matter testified she was in the process of checking addresses for him when his grandmother provided an address. While she was on her way there, she received a call from Eric, who had been called by his grandmother, and was then able to meet with him. Eric's first appearance in the guardianship litigation was on January 14, 2016, approximately eleven months after it had been initiated. Eric expressed a desire for visitation and to parent.

A psychological evaluation was scheduled and guardianship proceedings commenced. Eric attended few of the many scheduled appearances and never had an evaluation. Although he had requested visitation with Adam, Eric had only two hours of supervised visitation and did not visit Adam at the foster home even though he had the ability to do so.

At the time of trial, Adam had been living with Maisie for approximately two years. A psychologist testified that Maisie had "become the psychological parent for all three children. The data suggests that they have a very secure attachment. And should that relationship be severed there would likely be some significant negative consequences" The psychologist noted the children enjoyed an added benefit by the fact that all three were together, giving them "an opportunity to foster a relationship amongst themselves."

Termination of parental rights is warranted when the Division establishes by clear and convincing evidence that the four prongs of the best-interests-of-the-child test codified at N.J.S.A. 30:4C-15.1(a) are met.

The first and second prongs of that test -- (1) "The child's safety, health, or development has been or will continue to be endangered by the parental relationship;" and (2) the parent's unwillingness or inability to eliminate that harm -- are interrelated. As to the first prong, 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. The trial court found that the Division had established that element, citing Eric's missed appearances, failure to visit Adam, and lack of a plan for correcting the situation. The trial court also found that the Division had met the second prong in light of Eric's inaction.

The Appellate Division majority agreed. ___ N.J. Super. ___, ___ (App. Div. 2017) (slip op. at 32). The panel found it "evident Eric was capable of recognizing and caring for Adam's needs because, during the time Adam lived with him, Eric saw to it that Adam received appropriate medical treatment." (slip op. at 28). The panel stressed, however, that

“from July 2013, the time he returned Adam to the care of a person Eric knew had neglected him, until January 2016, the only initiative Eric took to reach out to the Division was the phone call he made after his grandmother contacted him.” (slip op. at 29). The panel also found significant Eric’s awareness of but failure to appear at scheduled evaluations and trial proceedings. (slip op. at 30-31). The panel thus determined that “there was ample evidence to satisfy the first and second prongs of the best interests test.” (slip op. at 32).

The third prong of the best-interests tests asks whether “[t]he [D]ivision 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.” The trial court cited the Division’s attempts to contact Eric and Eric’s failure to appear at appointments, as well as the Division’s consideration of alternative placements. The court found that the Division had met the third prong. The panel agreed, rejecting Eric’s arguments that his failure to be evaluated was excusable and that the Division should have considered placing Adam with Eric’s mother. (slip op. at 34-35).

The fourth prong of the best-interests test asks whether “[t]ermination of parental rights will not do more harm than good.” The trial judge found this prong was satisfied by clear and convincing evidence, relying primarily on the psychologist’s testimony. Noting that “[t]he unrefuted evidence here is that Adam has an emotional attachment to Maisie, who wants to adopt him and his siblings, and he wants to continue to live with her,” and that “[n]o evidence was presented to suggest Eric, an inconsistent presence in Adam’s life, has any ability to ameliorate the harm Adam would suffer,” the Appellate Division majority found that “[t]here is ample evidence here to support the court’s findings.” (slip op. at 37).

The panel majority affirmed the termination of Eric’s parental rights to Adam. (slip op. at 42). Judge Guadagno dissented, and Eric appealed as of right.

HELD: The judgment of the Appellate Division is affirmed substantially for the reasons expressed in panel majority’s per curiam opinion. The Court adds only the following.

1. The Division acknowledged that, in its search efforts for Eric, there were some deviations from its normal procedures. Ultimately, in this matter, Eric was located, and the Court perceives no prejudice to him in this proceeding attributable to the delay in service. The errors in this instance -- anomalous as they may be -- created needlessly drawn out proceedings that have now kept Adam from receiving permanency for an additional two-and-a-half years. Current Division processes would be enhanced by conducting a new search for a parent for each phase of litigation and implementing procedures that retain a party’s past contact information. The Division made representations about enhancing its efforts to diligently search for and serve absent parents. The Court accepts its representations.

AFFIRMED.

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, ALBIN, PATTERSON, FERNANDEZ-VINA, SOLOMON, and TIMPONE join in this opinion.

SUPREME COURT OF NEW JERSEY

A-50 September Term 2017

079700

New Jersey Division of
Child Protection and Permanency,

Plaintiff-Respondent,

v.

A.S.K., and T.T.,

Defendants,

and

E.M.C.,

Defendant-Appellant.

In the Matter of the Guardianship of
N.D.K., A.E.C., and E.S.K., minors.

On appeal from the Superior Court,
Appellate Division, whose opinion is reported at
___ N.J. Super. ___ (App. Div. 2017).

Argued
January 2, 2019

Decided
January 23, 2019

Clara S. Licata, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, Office of Parental Representation, attorney; Clara S. Licata, of counsel and on the briefs).

Sara M. Gregory, Deputy Attorney General, argued the cause for respondent (Gurbir S. Grewal, Attorney General, attorney; Sara M. Gregory, on the briefs, Jason W. Rockwell, Assistant Attorney General, of counsel and on the briefs).

David Valentin, Assistant Deputy Public Defender, argued the cause for minor A.E.C. (Joseph E. Krakora, Public Defender, Law Guardian, attorney; David Valentin, on the briefs).

PER CURIAM

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in the majority opinion of the panel. ___ N.J. Super. ___, ___ (App. Div. 2017) (slip op. at 22-37). We fully support the conclusion that the four prongs of the best-interests-of-the-child test have been met and that the record supports the termination of E.M.C.'s parental rights. Ibid. As a result, A.E.C. may achieve permanency through the adoption plan that has been held in abeyance for him.

We add only the following.

As the Division of Child Protection and Permanency (DCPP) acknowledged before this Court and the remand court, which examined closely the facts surrounding the issue of the DCPP's search efforts for E.M.C., there were some deviations in the DCPP's normal procedures to ensure that reasonable efforts are exercised to locate and serve notice on a biological

parent who is not currently “in the picture” for a child under the DCPD’s supervision. Ultimately, in this matter, E.M.C. was located and we perceive no prejudice to him in this proceeding attributable to the delay in service. The errors in this instance -- anomalous as they may be -- created needlessly drawn out proceedings that have now kept A.E.C. from receiving permanency for an additional two-and-a-half years.

As revealed in this matter, current DCPD processes would be enhanced by conducting a new search for a parent for each phase of litigation, regardless of the recency of the previous search, and implementing procedures that retain a party’s past contact information, with effective dates, to promote the accuracy of such information.

The DCPD made representations to this Court about enhancing its efforts to diligently search for and serve absent parents, including such steps as the two identified above. We accept its representations.

We affirm the judgment of the Appellate Division.

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, ALBIN, PATTERSON, FERNANDEZ-VINA, SOLOMON, and TIMPONE join in this opinion.