SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1083-20

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

A.B.,

Defendant,

and

J.B.,

Defendant-Appellant/
Cross-Respondent.

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IN THE MATTER OF THE
GUARDIANSHIP OF B.B.
and M.B., minors,

Cross-Appellants.

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Submitted March 30, 2022 – Decided April 26, 2022

Before Judges Hoffman, Whipple and Geiger.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Warren County, Docket No. FG-21-0109-20.

Joseph E. Krakora, Public Defender, attorney for appellant/cross-respondent (Robyn A. Veasey, Deputy Public Defender, of counsel; Catherine Wilkes, Assistant Deputy Public Defender, of counsel and on the briefs).

Matthew J. Platkin, Acting Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Julie B. Colonna, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors/cross-appellants (Meredith Alexis Pollock, Deputy Public Defender, of counsel; Karen M. Stecker, Assistant Deputy Public Defender, of counsel and on the briefs)

PER CURIAM

Defendant J.B. (John) appeals from a November 30, 2020 Family Part judgment of guardianship terminating his parental rights to the minor children M.B. (Michael) and B.B. (Brianna).[1] The Law Guardian for Brianna and Michael cross-appeals, challenging the trial judge's decision to treat John as a legal parent of the children and proceed with a guardianship trial. After

[1] We use initials and pseudonyms to protect the identity of the parties. R. 1:38-3(d)(12).

reviewing the record in light of the applicable legal standards, we affirm substantially for the reasons expressed by Judge Haekyoung Suh in her comprehensive sixty-five-page opinion.

I.

The evidence was reviewed at length in Judge Suh's opinion which, based on our review of the record, is supported by sufficient credible evidence. R. 2:11-3(e)(1)(A). We begin with a summary of the record and trial court proceedings.

John and defendant A.B. (Anna) met in 1998 and married in 2011. Anna gave birth to Michael in December 2013, and to Brianna in July 2017.[2] On March 4, 2020, Anna surrendered her parental rights to the children's current resource parents and did not appeal. Both Anna and John have a long history of drug abuse. The Division of Child Protection and Permanency (Division) first became involved with Anna prior to Michael's birth.

Paternity tests completed in 2018 and 2019 indicated that John is not the biological father of either Michael or Brianna; however, their birth certificates list John as their father as he was married to Anna at the time of their births.

[2] John had two other children with Anna, and their parental rights to those children were terminated in Pennsylvania in approximately 2005.

The biological fathers of Michael and Brianna remain unknown. Notwithstanding the results of John's paternity test, none of the parties requested the court to enter an order of non-paternity as to John.

Michael was born while Anna was incarcerated on drug-related offenses. After doctors diagnosed Michael with Neonatal Abstinence Syndrome (NAS) at birth, he remained hospitalized for six weeks due to withdrawal symptoms. Following a diagnosis of autism and attention-deficit/hyperactivity disorder in 2017, Michael began attending the Early Childhood Learning Center to address his special needs.

In March 2017, the Division learned that Anna was pregnant again and received reports that she was abusing drugs. In February 2018, a police officer found Michael wandering in the street without shoes or a coat. John allowed Anna to care for the children when he was at work; however, she had taken drugs and fallen asleep. At the time, Brianna was in daycare. When police and a Division caseworker returned Michael to the home, Anna was unable to stay awake. She admitted to relapsing and tested positive for cocaine and methadone.

Following this incident, the Division implemented a safety protection plan, which required John to supervise Anna's contact with the children at all times. Sometime thereafter, Division caseworker Nixie Colon made an

unannounced visit to the family's apartment after receiving a report that Anna dropped Brianna off at daycare unsupervised. Anna came out of the apartment, slurring her words and swaying. John then came out and appeared under the influence.

Based on this incident, the Division removed the children from the home and placed them with non-relative resource parents, "Rachel" and "Tom," where they remain. Rachel and Tom provided Michael with occupational, physical, and speech therapies. The couple had previously adopted a biracial son, "Danny," and also have a biological child together.

The guardianship trial took place between September and November 2020. In addition to testimony from five caseworkers, the Division presented expert testimony from Dr. Kinya Swanson, who conducted psychological testing and comparative bonding evaluations. John acknowledged that he had allowed Anna to be unsupervised with the children despite her drug use and that Michael had absconded from the home; in addition, he admitted that after he was supposed to supervise her contact, he allowed her to take the children to daycare and school because he needed to go to work early in the morning.

According to Dr. Swanson, John's psychological tests yielded incredibly low results, which were contrary to his interview, suggesting that he did not

properly attend to the questions and that he had a higher intelligence level than scored. Other results indicated that he would have difficulty with "applied parenting," such that he would struggle to coordinate Michael's autism services and would have difficulty making decisions on how best to address his needs. John also exhibited a low frustration tolerance and expected strict obedience of children.

Dr. Swanson concluded to a reasonable degree of psychological certainty that John's current ability to independently parent the children was impaired and he was not fit to parent, nor would he become fit in the foreseeable future. John demonstrated deficits in substance abuse, intelligence, personality traits, and parenting skills. During the bonding evaluation, John exhibited an authoritarian parenting style with Michael, which frustrated Michael and showed John's lack of insight into Michael's special needs.

In contrast, Dr. Swanson found that Rachel and Tom provided consistent daily care to the children and were their psychological parents. They also successfully addressed and regularly managed Michael's special needs. The children were thriving in their care and were also developing healthy bonds with them. Dr. Swanson opined that Rachel and Tom would serve as the best long-term option for the children, and that removing the children from John's care

would not do more harm than good. She further opined both children need permanency, and any delay in achieving it would add to the harm they had already experienced.

The Law Guardian presented expert testimony from Dr. Rachel Jewelewicz-Nelson, who also conducted psychological and bonding evaluations. Dr. Nelson found that the children had stronger bonds with their resource parents, Rachel and Tom, and that John is not presently capable of caring for the children, nor will he be capable in the foreseeable future.

In addition to his own testimony, John offered the testimony of an investigator, a physician from St. Luke's Hospital, a Catholic Charities Supervisor, and a Program Coordinator from People Helping People.

On November 30, 2020, Judge Suh issued a comprehensive written decision finding that the Division clearly and convincingly satisfied the four-factor best interests test of N.J.S.A. 30:4C-15.1(a). Under the first prong of the test, Judge Suh found that the Division presented clear and convincing evidence that John's substance abuse, his inability to monitor the children's contact with their mother, and "two close shaves" with Michael prove that the "children's safety and health has been and will continue to be endangered by the parental relationship with [John]." As to the second prong, the judge found that the

Division satisfied its burden by showing that John was unable to shield the children from harm posed by their mother, Anna, and that John failed to maintain safe and secure housing for the children. With regard to the third prong, Judge Suh found that the Division made reasonable efforts to reunify John with his children, including offering substance abuse evaluations, psychological and bonding evaluations, parenting skills classes, individual counseling, and referrals to housing and transportation agencies. Finally, under the fourth prong, relying on the psychologists presented by the Division and the Law Guardian, the judge found that the children had developed a "healthy and secure bond" with their resource parents, and that it was in their best interests to be adopted by them.

Judge Suh also found that John was Brianna's and Michael's psychological parent. See V.C. v. M.J.B., 163 N.J. 200 (2000). She explained that, as the children's psychological parent, John stood "in parity with a legal parent." She also found that John was the legal parent based on the previous court order that granted him sole legal and physical custody of Michael and Brianna.

The judge found the Division's witnesses credible; in particular, she described Dr. Swanson as "highly credible." She also found Dr. Nelson credible; however, she placed little weight on her psychological testing results because

she used the outdated Rorschach inkblot test. Her reliance on those results regarding John's inability to parent was therefore "not scientifically reliable or convincing."

Judge Suh characterized John's testimony as punctuated by numerous inconsistencies and omissions. She noted that John had a long history of substance abuse. Finally, she rejected John's accusations of racism against the resource parents as unsupported by any credible evidence.

II.

In striking a balance between a parent's constitutional rights and the children's fundamental needs, courts employ the four-prong best interests test articulated in N.J. Div of Youth & Fam Servs v. A.W., 103 N.J. 591, 604–11 (1986), and codified by N.J.S.A. 30:4C-15.1(a):

> a. The division shall initiate a petition to terminate parental rights on the grounds of the "best interests of the child" pursuant to [N.J.S.A. 30:4C-15(c)] if the following standards are met:
>
> (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.

In their application, the four factors above "are not discrete and separate, but relate to and overlap with one another to provide a comprehensive standard that identifies a child's best interests." N.J. Div. of Youth & Fam. Servs. v. I.S., 202 N.J. 145, 167 (2010) (quoting N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 606–07 (2007)).

In reviewing Judge Suh's decision, we must defer to her factual findings unless they "went so wide of the mark that a mistake must have been made." N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 279 (2007) (citation omitted). So long as "they are 'supported by adequate, substantial and credible evidence,'" a trial judge's factual findings will not be disturbed on appeal. In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993) (citation omitted). We owe special deference to the trial judge's expertise in handling

family issues. Cesare v. Cesare, 154 N.J. 394, 411–13 (1998). Judged by those standards, we find no basis in the record to second-guess Judge Suh's decision.

On appeal, John argues that the Division failed to satisfy the four prongs of the best interests test. He contends that the Division failed to prove that he has harmed the children and will continue to do so. Similarly, he disputes that he is unwilling or unable to eliminate the harm facing Brianna and Michael. He also contends that the Division failed to provide him with sufficient services and that the Division presented biased testimony against him. We find the record lacking in credible evidence to support any of John's arguments.

Based on our review of the record, we are satisfied that Judge Suh's decision was supported by substantial credible evidence, see N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448-49 (2012), and that defendant's arguments challenging the termination of his parental rights lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

We briefly address the Law Guardian's argument on cross-appeal that John should not have been included as a defendant in the guardianship action because 1) John is not the children's legal parent, and 2) a psychological parent does not have standing to defend guardianship actions. The Law Guardian therefore argues that the trial court erred in proceeding with a guardianship trial,

asserting that John lacked constitutionally protected parental rights to the children that would warrant a guardianship trial to terminate his parental rights.

The Division agrees with the Law Guardian's arguments that the controlling case law does not confer parental rights upon psychological parents. See Tortorice v. Vanartsdalen, 422 N.J. Super. 242, 250 (App. Div. 2011) (holding that a grandparent's psychological parent status does not equate to the constitutional protections enjoyed by legal parents). The Division also agrees that the paternity tests excluding John as the biological father of both Michael and Brianna were sufficient to rebut the presumption that he is their legal father under N.J.S.A. 9:17-43(a)(1), and that custody alone does not confer legal parenthood. J.S. v. L.S., 389 N.J. Super. 200, 204 (App. Div. 2006).

Because John was married to Anna at the time of Michael's birth and Brianna's birth, he was presumed to be the children's father. N.J.S.A. 9:17-43(a)(1). While the genetic testing completed in 2018 and 2019 would have been sufficient to rebut the presumption of paternity in favor of John, N.J.S.A. 9:17-43(b), Judge Suh was never asked to enter an adjudication of non-paternity based on this testing, and therefore made no findings on the issue. Instead, in response to a motion made by John's counsel for John to be deemed the children's psychological parent, the Division acquiesced to amend its

guardianship complaint to include John and proceed with a guardianship trial. The Law Guardian did not oppose the inclusion of John as a defendant at that time, so the judge was not faced with competing arguments nor was she presented with an application to make a determination on John's legal parentage. In the absence of such a determination, John remained the children's legal father throughout the guardianship trial.

Under these unique circumstances, we conclude that Judge Suh did not err in proceeding with the trial to terminate John's parental rights. It is undisputed that John was presumed to be the children's legal parent based on his marriage to Anna at the time of the children's births. See N.J.S.A. 9:17-43(a)(1). Although the genetic testing would have been sufficient to rebut this presumption, see N.J.S.A. 9:17-43(b), no application was made for the entry of a non-paternity order based on this testing. Importantly, a "scientific test is not the functional equivalent of a court order; nor does a paternity test negating paternity automatically result in a court order of non-parentage." N.J. Div. of Youth & Fam. Servs. v. D.S.H., 425 N.J. Super 228, 242 (App. Div. 2012). Furthermore, without an order of non-paternity, John was not granted the opportunity to contest the order's entry, as would have been his right.

Lastly, we note that, while paternity tests "in most instances may be accepted as reliable and accurate," "rare or unusual occurrence[s]" may require the court to consider additional factors, including expert testimony, to evaluate the "integrity of a DNA test and the validity of its results." See Passaic Cnty. Bd. of Soc. Servs. ex rel T.M. v. A.S., 442 N.J. Super. 59, 79 (N.J. Super. Ct. Ch. Div. 2015). Without a formal adjudication of non-paternity entered by the trial court, the presumption in favor of John's paternity continued in this case and warranted including him as a defendant to terminate his parental rights.

In light of the absence of an order of non-paternity as to John, we decline to address whether the trial court erred in ruling that John' status as the children's psychological parent provided an alternative basis for including him as a defendant in the guardianship proceedings.

Considering Judge Suh's extensive findings, which were amply supported by clear-and-convincing evidence for each of the four prongs under the statutory test, we agree with the Division that John was afforded the most due process he could have received under any circumstance. As the children deserve permanency, we discern no basis to disturb the judgment of guardianship terminating John's parental rights.

Affirmed.