

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1228-20

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

D.B.,

Defendant-Appellant/
Cross-Respondent,

and

J.H., T.H., and A.J.,

Defendants.

IN THE MATTER OF THE
GUARDIANSHIP OF N.B., S.H.,
and K.B., minors.

Submitted April 4, 2022 – Decided April 21, 2022

Before Judges Rothstadt and Mayer.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Union County, Docket
No. FG-20-0012-20.

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appellant (Mark E. Kleiman, Designated Counsel, on
the briefs).

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General, on the brief).

PER CURIAM

Defendant D.B. (Dorothy)¹ appeals from a November 19, 2020 judgment
of guardianship after a trial terminating her parental rights to her three sons,
K.B. (Kevin), born in 2008, N.B. (Neil), born in 2006, and S.H. (Steven), born

¹ We use initials and pseudonyms for the parties to protect their privacy in
accordance with Rule 1:38-3(d)(12) and N.J.S.A. 9:6-8.10a(a).

in 2007, arguing respondent New Jersey Division of Child Protection and Permanency (Division) failed to present clear and convincing evidence under all four prongs of the best interests test, N.J.S.A. 30:4C-15.1(a). Kevin and Neil cross-appeal from that same judgment, arguing the Division failed to satisfy its burden under the third and fourth prongs of the best interests test. We affirm for the thorough and detailed reasons articulated on the record on November 19, 2020 by Judge Marc R. Brown.

We will not recite the lengthy history of the Division's interactions with Dorothy. Instead, we incorporate by reference the extensive factual findings articulated in Judge Brown's comprehensive oral decision. We provide a summary of the relevant facts and expert testimony.

Dorothy has a long history of interactions with the Division.² In April 2014, the Division took custody of Neil, Steven, and Kevin based on environmental neglect, poor hygiene, sporadic school attendance, and Dorothy's non-compliance with the Division's individual therapy and parenting programs.

The boys were placed in several different foster homes between 2014 and the guardianship trial in 2020. Eventually, Steven was placed with David

² Dorothy gave birth to seven children. The Division previously took custody of four of Dorothy's children. Those children are not the subject of this appeal.

Walter³ and Neil and Kevin were placed together with the Dee family. The boys remain with their same resources parents to date.

During the six years between the time the Division took custody of the children and the guardianship trial, Dorothy had visitation with the children and saw her sons regularly in 2018. However, Dorothy saw her sons sporadically in 2019 and 2020 and her visits with the children for the three months preceding the guardianship trial were "almost non-existent."

The Division referred Dorothy to individual therapy and parenting groups. However, she failed to attend these programs with regularity and often failed to show up for scheduled appointments.

From 2014 to the date of the guardianship trial, Dorothy lacked stable and secure housing. For a period, she lived in a homeless shelter in New York. During the trial, Dorothy lived in a shelter in Pennsylvania. The Division offered Dorothy assistance in obtaining suitable housing for herself and the children, but Dorothy superficially participated in pursuing the Division's offers.

Prior to the trial, Steven's resource parent stated his intention to adopt Steven. Neil and Kevin's resource family testified at trial they were open to adoption but would consider either Another Permanent Planned Living

³ We refer children's resource parents by pseudonyms to protect their privacy.

Arrangement (APPLA) or a Kinship/Legal Guardian (KLG) plan. Laura Dee told the judge that Neil and Kevin did not want their mother's parental rights terminated. Thus, the Dee family remained willing to consider options that could incorporate the boy's wishes. Laura Dee wanted to adopt Kevin and Neil but testified she would let the judge decide on a plan that would reflect the best interest of the children.

The guardianship trial took place over four non-consecutive days in October 2020. The Division's caseworkers, Tiffany Kinnery and Leonard Cusumano, testified. The caseworkers told the judge why the Division took custody of the children, explained the children's development in the six years leading up to trial, and described the children's positive experiences with their resource families.

In addition, Cusumano testified regarding the permanency plan options available to the children. When asked about the possibility of long-term foster care, Cusumano explained that with "long-term foster care, with custody, everything kind of just comes to a screeching halt at 18-years-old." Cusumano also testified he had not seen long-term foster care for children younger than sixteen years old because children that age or younger were either adopted or granted KLG status.

The Division presented the testimony of several experts. Dr. Brett Biller testified regarding his 2013 psychological evaluation of Dorothy. Based on his evaluation, the doctor diagnosed Dorothy with narcissistic personality disorder because she had difficulty accepting responsibility for her actions. He further stated, "she lacked an understanding of developmental needs, as well as nurturing skills."

Dr. Latisha Callender testified regarding her May 2018 psychological evaluation of Dorothy as well as a bonding evaluation for Dorothy and the children. Additionally, Dr. Callender performed bonding evaluations for the resource parents and all three children. She opined the children had an insecure bond with Dorothy but had healthy and secure bonds with their respective resource families.

Dr. Karen Wells testified regarding her bonding and psychological evaluations of the children and their resource parents. Dorothy failed to attend her scheduled psychological and bonding evaluations with Dr. Wells. Dr. Wells described the children as thriving under the care of the resource parents. She reaffirmed the bond between the children and the resource parents was strong and concluded the resource parents could ameliorate any emotional harm that severing Dorothy's parental rights might cause the children.

Kristin Brady, Kevin's therapist, testified Kevin and Neil had become open to adoption by the Dee family provided they could maintain a connection to their biological family through visits and communications. According to Brady, neither Kevin nor Neil expressed an interest in KLG.

Laura Dee testified she understood the difference between adoption and KLG. Laura Dee explained she initially misunderstood the availability of continued medical benefits if the boys were adopted as opposed to being placed in long-term foster care. She subsequently learned the boys remained eligible for medical insurance if adopted by her family.

At trial, Laura Dee confirmed her family's desire to adopt Kevin and Neil. However, she believed the boys preferred the KLG or APPLA option because those options would not sever their relationships with Dorothy. She also told the judge if the boys could not be reunited with Dorothy, they wanted to be adopted. If adopted, Laura Dee confirmed she would allow Kevin and Neil to have contact with Dorothy and other members of the boys' biological family. Laura Dee reiterated her family's desire to adopt Kevin and Neil but told the judge he should decide which option would be best for the children.

On November 19, 2020, Judge Brown rendered a decision from the bench terminating Dorothy's parental rights. He concluded the Division presented

overwhelming evidence, including the testimony of several expert witnesses, establishing Dorothy's parental unfitness by clear and convincing evidence under all four statutory prongs of N.J.S.A. 30:4C-15.1(a).

Under prong one, Judge Brown found there was "no dispute that the safety, health, and development of [Neil, Steven, and Kevin] has been and will continue to be endangered" by their relationships with Dorothy. He concluded the children suffered "unstable housing, parental inattention to their education, hygiene, and healthcare, and overall neglect."

Under prong two, the judge found Dorothy did not "even attempt[] to address the issues that led to the children's removal six years ago" In refusing to participate in treatment and other programs, he concluded Dorothy lacked the ability to "eliminate the harm facing her children"

Under prong three, Judge Brown held the Division "sought to provide numerous services . . . on numerous occasions to assist [Dorothy] in correcting the circumstances" that led to the Division taking custody of the children. The judge noted while Laura Dee initially preferred long-term foster care, she later expressed, both in writing and during her testimony, her family's desire to adopt Kevin and Neil and rejected KLG. Judge Brown found Cusumano's testimony regarding Laura Dee's decision to reject KLG after the Dee family had a negative

experience with Dorothy to be credible. According to Judge Brown, the Dee family's only hesitation related to adoption was a desire to avoid upsetting Kevin and Neil.

Judge Brown rejected the request by the law guardians for Kevin and Neil to allow the boys to remain with the Dee family under APPLA because they were too young. He concluded adoption was the most appropriate plan to achieve permanency for the boys. While the judge acknowledged Kevin and Neil wanted to be reunified with their mother, Dorothy "ha[d] done nothing so as to facilitate a plan of reunification" Therefore, the judge rejected leaving Neil and Kevin in resource placement "holding out hope that at some point in the future, [Dorothy] will get herself together." Judge Brown further found Dorothy made no effort to facilitate reunification with her children, having failed to secure housing, attend therapy, or participate in parenting groups. Because the resource families reiterated their firm commitment to adoption, the judge concluded adoption was in the children's best interest.

Under the fourth prong, Judge Brown relied on the opinions offered by Drs. Callender and Wells, concluding Dorothy was at fault for the children's "insecure and ambivalent attachment" to her. He also credited the doctors' testimony the children should not be removed from their resource parents,

because "they had the potential . . . to develop healthy relationships with them and . . . should be given that opportunity."

Based on the evidence, Judge Brown concluded termination of Dorothy's parental rights was in the children's best interests, and fully explained the bases for his determinations under each prong.

On appeal, Dorothy disputes the Division satisfaction of all four prongs under the best interests test, N.J.S.A. 30:4C-15.1(a). In their cross-appeal, Kevin and Neil argue the judge erred in not granting the option of KLG or APPLA instead of terminating Dorothy's parental rights. Kevin and Neil also dispute the Division's satisfaction of prong four that termination of Dorothy's parental rights would not cause more harm than good. We reject these arguments.

Based on our review of the record and applicable law, we are satisfied the evidence soundly supports the decision to terminate Dorothy's parental rights. Accordingly, we affirm for the reasons stated by Judge Brown in his thorough and comprehensive opinion. We add the following brief comments.

Our review of the judge's decision is limited. We defer to his expertise as a Family Part judge. Cesare v. Cesare, 154 N.J. 394, 413 (1998). We are bound by his factual findings so long as they are supported by sufficient credible

evidence. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (citing In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)). "[W]e [also] rely on the trial court's acceptance of the credibility of the expert's testimony and the court's fact-findings based thereon, noting that the trial court is better positioned to evaluate the witness' credibility, qualifications, and the weight to be accorded [his or] her testimony." In re Guardianship of DMH, 161 N.J. 365, 382 (1999) (citing Bonuco Petrol, Inc. v. Epstein, 115 N.J. 599, 607 (1989)).

Applying these principles, we conclude that Judge Brown's factual findings under all four-prongs of N.J.S.A. 30:4C-15.1(a) are fully supported by the record. Based on those findings, the judge's legal conclusions are unassailable.

We briefly address the arguments raised by Kevin and Neil concerning the judge's rejection of KLG and APPLA as alternatives to terminating Dorothy's parental rights.

N.J.S.A. 3B:12A-6(d) originally provided a preference for adoption over KLG. In 2021, the Legislature amended the statute to remove the "adoption . . . is neither feasible nor likely" requirement. However, the statute was not amended until well after Judge Brown's November 19, 2020 judgment of

guardianship terminating Dorothy's parental rights. Nothing in the statute suggests the 2021 amendment was to be applied retroactively. To the contrary, case law provides newly enacted laws are applied prospectively. James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 556 (2014). Moreover, the Legislature expressly stated the amended statute "take effect immediately." L. 2021, c. 154, § 10, supporting prospective application of the revised statute. Because adoption was both feasible and likely, Judge Brown correctly rejected a KLG plan for the boys.

In support of their arguments for application of KLG, the law guardians for Kevin and Neil rely on New Jersey Division of Child Protection and Permanency v. M.M., 459 N.J. Super. 246, 264 (App. Div. 2019) (holding a caregiver's consent to adopt must "be not only informed, but also unconditional, unambiguous, and unqualified" to satisfy N.J.S.A. 3B:12A-6). Kevin and Neil argue the Dee family was not fully informed regarding the choice between KLG and adoption, citing Laura Dee's confusion about continued medical insurance for Neil and Kevin if adopted. But, as Laura Dee told the judge, she came to learn medical coverage for the boys remained unchanged under a plan for adoption or KLG. After clarifying her concern regarding medical insurance for Neil and Kevin, Laura Dee testified the Dee family wanted to adopt the boys.

Nor did the Dee family make ambiguous or inconsistent statements about KLG. Laura Dee told Judge Brown her family wanted what was best for Kevin and Neil. After the Division informed the Dee family about adoption and KLG, and Laura Dee further researched the KLG option, she realized the family did not want KLG. In a June 19, 2019 letter, Laura Dee advised the Division of her family's decision to reject KLG. Because Laura Dee recognized the boys "would prefer not to be adopted if [they] could go home to live with [their] mom," she selflessly asked Judge Brown to decide the best plan for Kevin and Neil.

Having reviewed the record, we reject the argument by the law guardians for Kevin and Neil that the Dee family's decision to adopt was anything other than unconditional, unambiguous, and unqualified. The uncontroverted evidence and testimony reflect Laura Dee's absolute and unequivocal willingness to adopt Neil and Kevin and permanently raise them as part of the Dee family.

Nor did Judge Brown err in determining APPLA was not a viable alternative for the boys. See 42 U.S.C. § 675(5)(c)(i).⁴ First, the APPLA is not

⁴ The law guardians for Neil and Kevin seek the equivalent of long-term foster care as an option to termination of Dorothy's parental rights. However, "[l]ong-term foster care is the exception to the general rule favoring adoption, and is available under only very limited circumstances" In re Guardianship of

a recognized permanency plan because public policy in New Jersey favors reunification or adoption over long-term foster care. See In re Guardianship of K.H.O., 161 N.J. 337, 360 (1999). In fact, the Long-Term Foster Care Custody Act, N.J.S.A. 30:4C-26.10 to -26.19, was repealed effective September 1, 2005. See L. 2004, c. 130, § 128.

Second, APPLA requires children be at least sixteen years old at the time of the permanency hearing. None of the boys were sixteen at the time of the guardianship judgment terminating Dorothy's parental rights.

Third, APPLA applies only when other options, such as reunification, relative placement, adoption, or KLG have been ruled out. As we previously stated, Judge Brown found the resource families stood ready, willing, and able to adopt the boys and adoption offered the best plan to achieve permanency for Kevin, Neil, and Steven. Based on his findings, Judge Brown correctly ruled out APPLA as an option.

K.H.O., 161 N.J. 337, 360 (1999). Those limited circumstances are not present here. The law guardians failed to cite any unusual circumstance warranting long-term foster care for Neil and Kevin. Nor did the law guardians offer any expert testimony explaining why long-term foster care presented a better alternative for Kevin and Neil.

To the extent we have not addressed other arguments raised by Dorothy, Kevin, and Neil, we are satisfied those arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION