RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2962-20

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

C.G.,

Defendant-Appellant,

and

C.R.,

Defendant.

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IN THE MATTER OF THE
GUARDIANSHIP OF
A.E.R., a minor.

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Submitted March 9, 2022 – Decided April 5, 2022

Before Judges Whipple, Geiger and Susswein.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Ocean County, Docket No. FG-15-0012-20.

Joseph E. Krakora, Public Defender, attorney for appellant (Daniel A. DiLella, Designated Counsel, on the briefs).

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Meredith Alexis Pollock, Deputy Public Defender, of counsel; Julie Goldstein, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant C.G. (Cara)[1] appeals from the judgment of guardianship entered in favor of the Division of Child Protection and Permanency (Division) terminating her rights to her daughter A.E.R. (Ann). Having carefully reviewed the record, we affirm primarily for the reasons expressed in the thorough opinion of Judge James M. Blaney issued from the bench on June 3, 2021.

Defendant raises the following issues on appeal:

[1] We use the pseudonyms from the Law Guardian's brief to protect the parties' privacy and preserve the confidentiality of these proceedings. R. 1:38-3(d)(13).

THE JUDGMENT OF GUARDIANSHIP SHOULD BE REVERSED BECAUSE THE COURT ERRED IN FINDING THAT [THE DIVISION'S] EVIDENCE SUPPORTED THE FOUR PRONGS OF N.J.S.A. 30:4C-15.1(a) BY CLEAR AND CONVINCING EVIDENCE SUFFICIENT TO TERMINATE C.G.'S PARENTAL RIGHTS.

A. The judgment terminating C.G.'s parental rights should be reversed because the trial court failed to consider kinship legal guardianship as a possible alternative to termination of parental rights to satisfy prong three.

B. C.G. is entitled to a reversal because the trial court erred in deciding that the evidence presented supported a finding that that the delay of permanent placement will add to the harm.

Ann is the biological child of Cara and C.R. (Craig). In October 2018, the Division received a referral that Cara receives Social Security benefits for a mental health diagnosis, has a history of depression, tested positive for narcotics, and left the hospital after having Ann. Cara returned on October 29, and the hospital discharged her the next day. Cara suffers from significant mental health disorders, which impair her ability to function as a parent. Cara had an extensive history with the Division and previously had her rights to another child terminated.

On October 30, 2018, the Division removed Ann from Cara via a Dodd removal order,[2] N.J.S.A. 9:6-8.21 to -8.82, and placed her with a non-relative resource parent. Cara planned for Ann to live with Craig because he and his mother were willing to care for Ann together. However, Craig's cognitive limitations raised concerns about his ability to parent on his own, and his mother's history with the Division prevented her from being approved for Ann's placement.

The court approved the Division's Dodd placement at a November 1, 2018 hearing. When a caseworker met with Cara that day, her speech rambled as she made bizarre allegations and threats – saying, for example, that if her mother was near her child, this would spread the "crack rock and . . . make her want to crack the child's skull open." While at the courthouse, Cara stated she was going to kill little white children; further, she swatted at a child. Two weeks later the Division learned Cara was hospitalized for homicidal thoughts against Craig and for medication non-compliance. Later that month, Cara was reported to be homeless. Cara attended a November 26, 2018 visit with Ann but was agitated

[2] The Dodd Act authorizes the emergent removal of children without court order pursuant to N.J.S.A. 9:6-8.29. N.J. Div. of Youth & Fam. Servs. v. P.W.R., 205 N.J. 17, 26 n.11 (2011).

and eventually left because the Division, concerned about Ann's safety, would not let Cara touch her.

Cara made threats and concerning statements about and against her children, her mother, Craig, and her other child's resource parents and was psychiatrically hospitalized from January 1 to January 14, 2019. After her discharge, the trial court suspended visits, noting that her "mental health is not stable at this time and there are allegations of threats to kill the child." Cara tested positive for phencyclidine (PCP) at a February 2019 assessment. She also failed to attend parenting classes.

On February 8, 2019, the Division placed Ann with Craig's sister, D.R. (Deborah), which the court approved. Deborah was authorized to supervise Ann's visits with Craig but not with Cara. Deborah received training on the differences between kinship legal guardianship and adoption as part of the process of becoming a licensed resource parent, and the caseworker later reviewed these differences with her. She consistently expressed commitment to adoption.

Cara continued to struggle with mental health concerns and substance abuse. On April 12, 2019, Cara sought treatment for suicidal ideations and was recommended for outpatient treatment. She called the Division worker and said

she was at an in-patient alcohol and drug treatment program. Later that month, she was again homeless and had left her treatment program. Cara was unable to complete any of the several programs for mental health and substance abuse treatment that were offered.

The Division filed a guardianship complaint to terminate her parental rights on October 29, 2019. On May 3, 2021, Craig executed a voluntary identified surrender of his parental rights for Ann to Deborah.

Judge Blaney conducted the guardianship trial on May 25 and 26, 2021. The Law Guardian joined the Division in arguing for termination of parental rights. Two Division caseworkers and Deborah testified for the State, addressing incidents and services described above. The Division also called Dr. David Brandwein, an expert in the field of psychology. Neither Cara nor the Law Guardian presented any witnesses. The Division's exhibits were moved into evidence without objection. The night before trial, Cara left a message with the caseworker saying she would not attend trial, and the court called and left a message noting her attorney would be present. Her attorney took no position on the Division's guardianship petition.

On June 3, 2021, Judge Blaney issued an oral opinion which terminated Cara's parental rights to Ann and entered a judgment of guardianship. Judge

Blaney gave thoughtful attention to the importance of permanency and stability from the perspective of Ann's needs, and he found the Division had established by clear and convincing evidence all four prongs of the best-interests test, N.J.S.A. 30:4C-15.1(a), which, in the best interest of the child, permits termination of parental rights. In re Guardianship of K.H.O., 161 N.J. 337, 347-48 (1999). This appeal followed.

In this appeal, 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, 411-13 (1998), and 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).

Parents have a constitutionally protected right to raise their biological children. In re Guardianship of J.C., 129 N.J. 1, 9-10 (1992) (citing Santosky v. Kramer, 455 U.S. 745, 753 (1982)). The state may act to protect the welfare of the children, but this is a limited authority, applying to circumstances where the parent is unfit, or the child has been harmed. Id. at 10. In New Jersey, to prevail in a proceeding to terminate parental rights, the Division must establish, by clear and convincing evidence, each element of the "best interests test." See ibid. At the time of trial and the court's order, the applicable statute provided:

> (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 [her] resource family parents would cause serious and enduring emotional or psychological harm to the child;
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> (3) The [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; and
>
> (4) Termination of parental rights will not do more harm than good.
>
> [N.J.S.A. 30:4C-15.1(a) (2021) (amended July 2021).]

Cara argues the amendment, removing the second sentence of prong two, should be applied retroactively because the law provides that the amendment is to "take effect immediately." L. 2021, c. 154, § 10. This argument was not raised below and we reject Cara's argument outright. Moreover, applying the amendment retroactively would not change the outcome.

"Settled rules of statutory construction favor prospective rather than retroactive application of new legislation." Pisack v. B & C Towing, Inc., 240

N.J. 360, 370 (2020) (quoting James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 563 (2014)). Whether a court should apply a statue retroactively requires the court to first determine whether the Legislature intended to give the statue retroactive application. Legislative intent for retroactivity can be demonstrated: (i) when the Legislature expresses its intent that the law apply retroactively, either expressly, in the statute or pertinent legislative history, or implicitly, such as where retroactive application may be necessary to make the statute workable or provide the most sensible interpretation; (ii) when an amendment is curative, and thus designed to carry out or explain the intent of the statute; or (iii) when the parties' expectations warrant that interpretation. Johnson v. Roselle EZ Quick, LLC, 226 N.J. 370, 387 (2016). The second determination considers whether retroactive application will be an unconstitutional interference or prevent manifest injustice. Ibid.

Cara offers no convincing legal argument to support retroactive application. Moreover, Cara's case would arguably have the same outcome because the court did and still could consider the relationship with the resource parent when the biological parent cannot mitigate the harm.

Moreover, Cara has not refuted the finding of potential harm with her as a parent nor the ruling-out of alternative placements. She has not indicated an

alternative placement that the Division failed to consider. We conclude the factual findings of Judge Blaney are fully supported by the record and the legal conclusions drawn therefrom are unassailable.

Affirmed.