RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-3217-20
A-3227-20

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

K.K.W.[1] and D.W.,

Defendants-Appellants,

and

H.D.M.,

Defendant.

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IN THE MATTER OF A.W.M.
and A.W., minors.

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Submitted May 31, 2022 – Decided June 9, 2022

[1] We utilize the parties' initials and pseudonyms to assure confidentiality pursuant to Rule 1:38-3(d)(13).

Before Judges Vernoia and Firko.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FG-07-0060-20.

Joseph E. Krakora, Public Defender, attorney for appellant K.K.W. (Marc D. Pereira, Designated Counsel, on the briefs).

Joseph E. Krakora, Public Defender, attorney for appellant D.W. (Kathleen Gallagher, Designated Counsel, on the briefs).

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Meredith Alexis Pollock, Deputy Public Defender, of counsel; Randi Mandelbaum, Designated Counsel, on the brief).

PER CURIAM

In these back-to-back appeals, which have been consolidated for the purpose of writing one opinion, defendant K.K.W. (Katherine) appeals from a June 22, 2021 Family Part order terminating her parental rights to A.K.W. (Amanda), born in June 2011, and A.W.M. (Adam), born in July 2013. Katherine is the biological mother of Amanda and Adam. Defendant D.W. (David), the biological father of Adam, also appeals the June 22, 2021 order

terminating his parental rights.[2] Katherine argues that the Division of Child Protection and Permanency (Division) failed to prove by clear and convincing evidence each prong of the statutory best interests tests under N.J.S.A. 30:4C-15.1(a). David also contends the Division failed to prove each of the four prongs of the standard.[3] The Law Guardian seeks affirmance. We disagree with defendants' arguments and affirm substantially for the reasons given by the judge in his comprehensive oral opinion.

I.

We begin our discussion with the legal framework regarding the termination of parental rights. Parents have a constitutionally protected right to the care, custody, and control of their children. Santosky v. Kramer, 455 U.S. 745, 753 (1982); In re Guardianship of K.H.O., 161 N.J. 337, 346 (1999). That right is not absolute. N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 553 (2014). At times, a parent's interest must yield to the State's obligation to protect children from harm. N.J. Div. of Youth & Fam. Servs. v. G.M., 198 N.J.

[2] Defendant H.D.M. (Henry) is the biological father of Amanda. The June 22, 2021 order also terminated Henry's parental rights to Amanda. However, Henry is not a party to this appeal.

[3] In his brief, David does not point to any specific deficiency in the Division's proofs with regard to the first three prongs of the standard. Nonetheless, we will address all four prongs in our opinion.

382, 397 (2009); In re Guardianship of J.C., 129 N.J. 1, 10 (1992). To effectuate these concerns, the Legislature created a test for determining when parental rights must be terminated in a child's best interests. N.J.S.A. 30:4C-15.1(a) requires the Division prove by clear and convincing evidence the following four prongs:

> (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;[4]
>
> (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 [judge] has considered alternatives to termination of parental rights; and
>
> (4) Termination of parental rights will not do more harm than good.

The four prongs are not "discrete and separate," but "relate to and overlap with one another to provide a comprehensive standard that identifies a child's

[4] We are aware that on July 2, 2021, the Legislature enacted L. 2021 c. 154, deleting the last sentence of N.J.S.A. 30:4C-15.1(a)(2), which reads "[s]uch harm may include evidence that separating the child from his [or her] resource family parents would cause serious and enduring emotional or psychological harm to the child."

best interests." K.H.O., 161 N.J. at 348. "The considerations involved in determinations of parental fitness are 'extremely fact sensitive' and require particularized evidence that address the specific circumstances in the given case." Ibid. (quoting In re Adoption of Child. by L.A.S., 134 N.J. 127, 139 (1993)).

II.

A. Katherine

We first address Katherine's argument that the judge erred in finding the Division proved by clear and convincing evidence each of the four prongs under the best interests test. In February 2011, when Katherine was five-and-a-half months pregnant, she was admitted to Newark Beth Israel Medical Center (NBIMC) for respiratory distress resulting from an asthma attack and a highly elevated serum alcohol level. She admitted to drinking beer on occasion and smoking cigarettes daily.

In March 2011, after undergoing a substance abuse assessment, Katherine was diagnosed with alcohol abuse, tested positive for cocaine, and was recommended outpatient treatment. When Amanda was born three months later, she was diagnosed with fetal alcohol syndrome, but Katherine and the baby's toxicology screens tested negative for alcohol. Amanda was discharged three

days after her birth to Katherine's care, and the Division had no safety or risk concerns at that time. Katherine complied with outpatient treatment, and the Division closed its case on September 27, 2011.

In November 2011, Katherine was arrested for shoplifting after placing the stolen items at the bottom of Amanda's stroller while she was in it. The Division learned Katherine was homeless and provided her with motel assistance, housing advocacy, budgeting skills, a parent aide, recommended psychological evaluations, and parenting skills classes. Based upon observation of a black eye, the Division also referred Katherine for domestic violence counseling.

On February 28, 2012, Dr. Brianna Cox conducted a psychological evaluation of Katherine. Dr. Cox concluded a risk of harm or neglect could not be ruled out at that time, and she recommended Katherine undergo a substance abuse evaluation, participate in parenting skills classes, and anger management therapy. The Division referred Katherine to these services. Following a March 2012 substance abuse assessment, Katherine was advised to seek intensive outpatient treatment. The following month, Katherine called her alcohol and drug counselor and advised she had been "drinking" and "needed help." The counselor notified the Division and on April 23, 2013, it conducted a Dodd

removal of Amanda.[5] On June 6, 2012, the parent aide reported Katherine was incoherent on the phone and was intoxicated the previous day.

The caseworkers went to Katherine's apartment and observed: (1) blood on Henry's hands; (2) a large knife on the kitchen table; and (3) that Katherine had two black eyes, a swollen face, old bruises on her neck and arms, and a bleeding ear. A strong smell of alcohol emanated from her breath. The Division substantiated Katherine with inadequate supervision/lack of supervision and conducted another Dodd removal of Amanda. On June 8, 2012, the Division was granted custody of Amanda. The Division assessed relatives for placement, and Katherine was granted supervised visitation.

In July 2013, Katherine gave birth to Adam, who was diagnosed with: (1) fetal alcohol exposure; (2) feeding problems; (3) a cleft palate; and (4) pelviectasis. Subsequently, Adam developed: (1) hearing loss; (2) ptosis; and (3) craniosynostosis. After Adam was discharged from the newborn intensive care unit, the Division was granted custody of him on August 1, 2013. Katherine refused to identify Adam's father at that time.

[5] A "Dodd" removal refers to the emergency removal of a child from the home without a court order, as authorized by N.J.S.A. 9:6-8.29 of the Dodd Act, N.J.S.A. 9:6-8.21 to -8.82.

In February 2014, the Division reunited Katherine and Amanda; Adam was gradually transitioned to Katherine's care due to his myriad of medical conditions. A year later, the litigation was dismissed but the case remained open for services and oversight. On February 17, 2016, Rutgers Medical School reported Katherine missed several medical appointments for Adam, including an office visit to receive his hearing aids. That month, Katherine tested negative for alcohol and illicit substances.

On July 20, 2017, Katherine was arrested after stabbing a male acquaintance. The incident occurred in the presence of the children. Amanda and Adam were subsequently removed and placed in separate resource homes. Katherine then identified David as Adam's father. No criminal charges were filed against Katherine for the assault, but the Division substantiated her for neglect based on family violence. On November 13, 2017, Katherine tested positive for alcohol.

On November 29 and December 1, 2017, Dr. Jonathan Mack conducted a neuropsychological and psychological evaluation of Katherine. On January 28, 2018, Dr. Mack recommended she participate in a substance abuse evaluation, individual psychotherapy, parenting classes, a medication consultation, and a

neurological evaluation. The Division subsequently referred Katherine to The Bridge Program for substance abuse treatment.

On April 26, 2018, The Bridge reported:

> [Katherine] does not attend as scheduled and is consistently absent on Friday[,] which is the day she is to attend her individual session.[6] The individual session is where [Katherine] would be referred to the higher level of care; process the situations and circumstances of her alcohol use and anything else that would be beneficial to the establishment and maintenance of abstinence.
>
> . . . .
>
> [Katherine] has not made any progress toward entering a higher level of care and has not made herself available to make the referral to short term residential treatment and get the process in motion. Instead she arrives wreaking of alcohol and under the influence, which she vehemently denies. . . .
>
> . . . .
>
> . . . [Katherine] reports her motivation for treatment as wanting to resolve the [Division] case and reunify with her children. However, her actions and failure to attend treatment as scheduled contradict this assertion.

Katherine was also referred to the Turning Point inpatient treatment program, which she did not attend.

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[6] Katherine requested a referral to a program closer to home but declined to attend.

In April 2018, Katherine missed all of her supervised visits with Amanda and Adam claiming "she was not feeling well and was hospitalized." On May 3, 2018, Katherine missed her supervised visit. She claimed she had "forgot to confirm." The Division noted, however, Katherine's speech was "slurred" and "it was hard to fully understand her." On May 10, 2018, Katherine missed another supervised visit, this time stating she had been in a fight with an ex-paramour. The Division again noted her speech was "slurred" and "she continued to repeat that she got into a fight over and over." When the Division suggested she contact the police and file a complaint and restraining order against her ex-paramour, Katherine "denied feeling threaten[ed]."

On May 16, 2018, a Division caseworker transported Katherine to a psychiatric evaluation with Dr. Samiris Sostre. The Division caseworker reported smelling alcohol. "According to [Katherine][,] she did drink . . . this morning because of her religion and its Ramadan." During the evaluation:

> [Katherine] acknowledged that inpatient substance abuse treatment was recommended to her. However, she said that she did not feel that it was necessary. She said that when she drinks it is because "I think about my babies, when the kids are at home I do not drink."
>
> [Katherine] did acknowledge that "I have been overdoing it, (with alcohol) what am I supposed to do" explaining that she has to drink because the children are not at home with her.

In response, Dr. Sostre recommended enrollment in "an inpatient program, where her substance abuse and her mental health issues can be addressed simultaneously," psychiatric treatment, counseling services, medication monitoring, and neuropsychological testing. On May 30, 2018, Katherine underwent a substance abuse evaluation and tested positive for alcohol. Katherine was subsequently referred to Greater Essex Counseling Services for intensive outpatient treatment, which she did not attend.

B. The First Guardianship Litigation

On July 12, 2018, the Family Part approved the Division's permanency plan of termination of parental rights followed by adoption, noting the Division had provided reasonable efforts to reunification, including "[p]sychological evaluation, neuropsychological evaluation, psychiatric evaluation, transportation[,] and referrals to substance abuse programs." The Family Part highlighted Katherine's continuous "fail[ure] to complete any services recommended in her evaluations." On August 27, 2018, the Division filed for guardianship. On October 1, 2018, Amanda was placed with her current resource parents.

Subsequent to the Family Part's approval of the Division's permanency plan, Katherine started alcohol abuse treatment at St. Michael's Medical Center

and individual therapy at the Youth Development Clinic (YDC). However, she continued to test positive for alcohol, missed several sessions, and refused a higher level of care. Katherine's therapist reported her "condition appeared to deteriorate over the past few months as she admitted to continuing to drink alcohol, and her resistance to entering an inpatient detox program. [She] often appeared confused and would not remember events week to week." On March 9, 2019, YDC closed Katherine's case based on her questionable "excuses for missing her appointments."

On March 4, 2019, paternity testing confirmed David is Adam's biological father. On March 6 and 7, 2019, Katherine and David submitted to psychological evaluations with Dr. Eric Kirschner. Dr. Kirschner conducted a bonding evaluation between Katherine and her children but did not conduct a bonding evaluation between David and Adam because the Division felt David had not been involved in Adam's life based on Katherine's representations. On March 22, 2019, Dr. Kirschner reported:

> [Katherine] is not fit to parent [Amanda] or [Adam] at this time as she lacks the psychological resources to independently meet a child's needs adequately for safety, stability, nurturance and guidance, let alone [Adam]'s special needs. Reunification is not recommended at this time. Furthermore, given the combination of the chronic nature of [Katherine]'s cognitive functioning, mental health, substance abuse,

> physical health and non-compliance with services, her level of functioning, particularly as it pertains to her fitness to parent, is not expected to significantly change in the foreseeable future. As such, her prognosis to become fit to parent and provide [Amanda] and [Adam] with permanency is poor. [Katherine]'s contact with [Amanda] and [Adam] should remain supervised. Independent of the issue of reunification, [Katherine] remains in need of intensive outpatient treatment for her co-occurring mental health and substance abuse disorders, including both individual/ group treatment and psychotropic medication management.

Dr. Kirschner also reported:

> [David] is not fit to parent [Adam] at this time as he lacks the psychological resources to independently meet a child's needs adequately for safety, stability, nurturance and guidance, let alone his son's special needs. Moreover, [David] has failed to maintain a consistent presence in [Adam]'s life, let alone demonstrate a commitment to him. Reunification is not recommended at this time. Furthermore, given the chronic nature of [David]'s cognitive and intellectual limitations, his level of functioning, particularly as it pertains to his fitness to parent, is not expected to significantly change in the foreseeable future. As such, his prognosis to become fit to parent and provide [Adam] with permanency is poor. Independent of the issue of reunification, [David] may benefit from a referral to the Department of Developmental Disabilities (DDD) to gain access to the supportive services. Any contact between [David] and [Adam] should remain supervised.

In conclusion, Dr. Kirschner opined the termination of Katherine and David's parental rights would not do more harm than good to Amanda and Adam.

Furthermore, "[s]elect home adoption . . . would offer the children an opportunity to attain permanency that does not currently exist with their biological parent[s] at this time nor in the foreseeable future." On April 10, 2019, Katherine enrolled in Greater Essex Counseling Services's (Greater Essex) substance abuse program and tested positive for alcohol that same day.

C. The First Guardianship Trial

The Family Part conducted the first guardianship trial on April 23 and May 7, 2019. On May 23, 2019, the Family Part denied the Division's complaint for guardianship finding the Division failed to prove the second and fourth prongs of the best-interest test, pursuant to N.J.S.A. 30:4C-15.1(a). Regarding the second prong, a parent's willingness or ability to eliminate the harm facing the children, the court held the Division had not referred Katherine to all recommended services, specifically a neurological evaluation and treatment by a psychiatrist. Therefore, the judge concluded the Division was unable to establish Katherine is unable or unwilling to eliminate the harm to the children.

Regarding the fourth prong, the harm that will result from the termination, the judge held the question was untimely because there were no proposed adoptive parents. Additionally, the Division's failure to submit a bonding evaluation report between David and Adam meant the court could not conclude

that termination of David's rights would not do more harm than good to Adam. Therefore, the Family Part denied the Division's complaint for guardianship and reinstated the protective services litigation. On June 26, 2019, the Family Part ordered: (1) Katherine "shall comply with Greater Essex and any and all service recommendations, including but not limited to substance abuse treatment, psychiatric evaluation, medication monitoring, individual psychotherapy, [and] neurological evaluation"; (2) Katherine shall attend a neurological evaluation at NBIMC on September 12, 2019, which the Division shall provide transportation for and "make certain that all collaterals are provided for the neurological evaluation"; and (3) Dr. Kirschner shall conduct a bonding evaluation between David and Adam.

D. The Protective Services Litigation

Thereafter, the Division referred Katherine for the court-ordered neurological evaluation at NBIMC, which had to be rescheduled twice for Katherine. The evaluation, however, required a referral from Katherine's primary care physician, which the Division explained to her, but she never obtained. Therefore, Katherine never completed the court-ordered neurological evaluation. She also missed four scheduled psychological reevaluations with Dr. Kirschner.

The Division did not refer Katherine for the court-ordered psychiatric evaluation, however, because Greater Essex's substance abuse program provided "psychiatric evaluations and medication if needed." The Division advised Katherine of her obligation to attend a psychiatric evaluation with Greater Essex. On June 6, 2019, Katherine underwent a substance abuse evaluation and tested positive for alcohol. Detoxification and inpatient treatment were recommended. On October 22, 2019, Greater Essex discharged Katherine based on her continued absences.

E. The Second Guardianship Trial

On January 2, 2020, the Division filed a second guardianship complaint. On May 5, 2020, Adam was reunited with Amanda under the care of their current resource parents. The Family Part conducted the guardianship trial on April 22, 28, May 5, and June 8, 2021. Division adoption caseworkers Franchesca Fernandez and Shelya Fields, as well as Drs. Kirschner and Mack, testified on behalf of the Division. Dr. Rachel Jewelewicz-Nelson testified on behalf of Adam. Katherine testified on her own behalf.

Fernandez testified Katherine: (1) has been hospitalized "numerous times" due to her severe asthma; (2) continues to smoke cigarettes despite warnings as to the impact on her asthma; (3) is "terrible" at managing her

medications; (4) failed to take Adam to at least seven medical appointments; and (5) had "sporadic" visitations despite the Division's assistance with transportation, including providing her with a car and bus tickets, and giving her rides. In addition, Fernandez testified that the Division assessed and ruled out family members suggested by Katherine for the possible placement of Amanda and Adam.

Fields reiterated much of Fernandez's testimony and added Division workers transported Katherine door-to-door and assisted her with Uber rides. Fields testified Katherine suffered a seizure in August 2020 and claimed she needs an oxygen tank at all times. During the COVID-19 pandemic, Katherine's care was transitioned to virtual assistance. Fields stated that Amanda requires individual therapy, medication monitoring, and an individualized education plan (IEP), for her Attention Deficit Hyperactivity Disorder (ADHD). Adam requires an IEP for his ADHD and communication impairment. He has also been diagnosed with cognitive and developmental delays and sleep apnea. Fields further testified that the resource parents are "proactive" in dealing with the children's needs, which have improved. According to Fields, the resource parents are committed to adopting Amanda and Adam and are not interested in Kinship Legal Guardianship (KLG).

Dr. Kirschner testified that Katherine downplayed her inconsistent attendance at services and was in denial about Amanda and Adam's special needs. According to Dr. Kirschner, Katherine suffers from: (1) bipolar disorder; (2) alcohol-related disorder; (3) post-traumatic stress disorder; (4) mild cognitive disorder; and (5) ADHD. He concluded she lacks the psychological resources to meet the children's needs and is incapable of providing them with a safe and permanent home.

F. David

On March 9, 2019, Dr. Kirschner conducted a psychological evaluation of David. Dr. Kirschner testified David "had a disheveled quality to him," speaking in a slow pace and appearing confused at times. David explained to Dr. Kirschner he receives social security disability benefits, which are paid to his brother. Dr. Kirschner diagnosed David with a mild intellectual disability based on the results of two psychological tests, the Wide Range Achievement Test (WRAT) and the Wechsler Adult Intelligence Scale (WAIS).

Dr. Kirschner opined David presents a significant and chronic impairment of cognitive and intellectual functioning, which impacts his ability to manage his own life and to parent a child, especially one with special needs. Furthermore, because no treatment or service can alter David's prognosis, his

cognitive limitations will not improve in the foreseeable future. Dr. Kirschner concluded David is also incapable of providing Adam with a safe and permanent home.

G. Bonding Evaluations

In January 2020, Dr. Kirschner conducted a bonding evaluation between Amanda and the resource parents. He testified their relationship was healthy and positive, which created a "severe and enduring" risk of psychological harm if the relationship was terminated.

Dr. Mack testified regarding his evaluations of Katherine in 2017 and 2019. Based upon cognitive testing, Dr. Mack opined Katherine intellectually functions "below-average to lower-average" with a marked decrement in functioning resulting from drinking alcohol or other factors. He testified she is "easily distracted," and has a "huge problem with short-term memory." Dr. Mack concluded Katherine suffers from significant neurocognitive dysfunctions, chronic significant brain damage, and organic personality syndrome, which makes her incapable of safely parenting Amanda and Adam.

Dr. Jewelewicz-Nelson testified regarding her 2020 psychological evaluations of defendants and Adam and their respective bonding evaluations. She testified Katherine denied "she had a substance abuse problem" and "did not

consider alcohol a substance that she abused." In Dr. Jewelewicz-Nelson's opinion, Katherine puts her needs ahead of the children's needs and presents a "very significant risk [of] neglect and harm" especially for Adam, who has "extreme" medical, emotional, and psychological needs.

Dr. Jewelewicz-Nelson testified David is essentially "homeless" and can barely take care of himself. She concluded David is not "emotionally, psychologically[,] or intellectually" able to assume parenting responsibility of Adam and admitted to same. And, Dr. Jewelewicz-Nelson testified David's relationship with Adam is "superficial" and the child would not suffer from harm if his relationship with David was severed.

As to the bonding evaluation between the children and the resource parents, Dr. Jewelewicz-Nelson described normal family interaction. She testified the resource parents "have a capacity to provide [Adam] with nurturing, protection, stability, and guidance" and can "mitigate whatever minor sadness [Adam] might experience if [defendants'] parental rights are severed."

H. Katherine's Testimony

Katherine testified she lives in a one-bedroom apartment but claims if reunited with her children, she would be eligible for a three-bedroom apartment. She also testified her medical needs would not affect her ability to parent.

Katherine admitted she was discharged from the Summit Oaks outpatient program but claimed it was because of her oxygen tank, which she no longer requires. Katherine stated she is not in a substance abuse program; she has an Alcoholics Anonymous sponsor; and has not had a drink in approximately two years. Katherine testified she does not currently have an alcohol abuse problem.

III.

Here, the judge concluded—relying on the credible evidence the Division and Law Guardian provided—that it was in the children's best interests to terminate Katherine and David's parental rights. Regarding prong one, Katherine and David contend the Division failed to meet is evidentiary burden. Katherine avers she was able to provide Amanda and Adam with a safe environment free from abuse and neglect and that the children witnessed her engage in "self-defense, not domestic violence." In addition, Katherine contends she "never abdicated her parent[al] duties" and at no time "placed her own needs above those of her children." We disagree.

A.

The first prong of the best interests test requires the Division demonstrate that the "child's safety, health, or development has been or will continue to be endangered by the parental relationship." N.J.S.A. 30:4C-15.1(a)(1); see

K.H.O., 161 N.J. at 352. The concern is not only with actual harm to the child but also the risk of harm. In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999) (citing N.J. Div. of Youth & Fam. Servs. v. A.W., 103 N.J. 591, 616 n.14 (1986)). The focus is not on a single or isolated event, but rather "on the effect of harms arising from the parent-child relationship over time on the child's health and development." K.H.O., 161 N.J. at 348. However, a judge does not need to wait "until a child is actually irreparably impaired by parental inattention or neglect" to find child endangerment. D.M.H., 161 N.J. at 383 (citing A.W., 103 N.J. at 616 n.14).

The Court has explained a parent's withdrawal of nurture and care for an extended period is a harm that endangers the health of a child. Id. at 379 (citing K.H.O., 161 N.J. at 352-54). When children "languish in foster care" without a permanent home, their parents' "failure to provide a permanent home" may itself constitute harm. Id. at 383 (second quotation citing N.J. Div. of Youth & Fam. Servs. v. B.G.S., 291 N.J. Super. 582, 591-93 (App. Div. 1996)).

The judge detailed the Division has been involved with this family since 2011 and

> the Division's continued involvement with the family relationship due to concerns about substance abuse, which led to the first removal and then subsequent abuse coupled with domestic violence in the home.

> [Katherine] has not maintained sobriety for an extended period of over ten years that the Division has been involved with this family, despite continuing in countless services, and the offers of services. I'm satisfied [Katherine]'s continued alcoholism has caused harm to both [Amanda] and [Adam].

Katherine ignores the fact that both children were born with fetal alcohol syndrome and despite the numerous services provided over the ten years since the Division's first involvement with her, she has consistently failed to complete services, and she continues to have an alcohol abuse issue. The judge's finding as to prong one was based upon substantial credible evidence in the record. Moreover, the experts agree Katherine is incapable of caring for the children and will not be able to do so in the foreseeable future. The delay in permanency resulting from Katherine's inability to address her alcohol problem supports the judge's finding under prong one.

As to David, the judge found he harmed Adam by: (1) failing to take steps to unify with him; (2) failing to plan for Adam's care; and (3) wanting Adam to be placed with Katherine even though he knows she is still abusing alcohol. Moreover, the judge highlighted that a parent's plan to reunite his or her child with a harmful parent absent a viable plan to protect the child from the parent's destructive tendencies constitutes a harm. And, the judge correctly noted the harm a child suffers when removed from the resource parents. The

uncontradicted evidence of David's significant cognitive difficulties renders him wholly and permanently incapable of caring for Adam. There is no basis for us to disturb the judge's finding that the Division satisfied prong one as against Katherine and David by clear and convincing evidence.

B.

The second prong of the best interest determination "in many ways, addresses considerations touched on in prong one." N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 451 (2012). Evidence supporting the first prong may also support the second prong "as part of the comprehensive basis for determining the best interests of the child." D.M.H., 161 N.J. at 379 (citing K.H.O., 161 N.J. at 348-49). This prong "relates to parental unfitness," K.H.O., 161 N.J. at 352, and "the inquiry centers on whether the parent is able to remove the danger facing the child." F.M., 211 N.J. at 451 (citing K.H.O., 161 N.J. at 352).

The Division can satisfy this inquiry by showing the parent or parents cannot provide a safe and stable home and that the child or children will suffer substantially from a lack of stability and permanent placement. N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 281 (2007) (quoting K.H.O., 161 N.J. at 363). Because the Legislature placed "limits on the time for a birth parent

to correct conditions in anticipation of reuniting with the child[ren][,] [t]he emphasis has shifted from protracted efforts for reunification with [the] birth parent[s] to an expeditious, permanent placement to promote the child[rens'] well-being." N.J. Div. of Youth & Fam. Servs. v. C.S., 367 N.J. Super. 76, 111 (App. Div. 2004) (citing N.J.S.A. 30:4C-11.1; D.M.H., 161 N.J. at 385; K.H.O., 161 N.J. at 357-59).

Katherine asserts the evidence does not show she is unwilling or unable to become fit and she should be given an opportunity for six more months of treatment. We reject Katherine's argument. Her claim is belied by the expert testimony that her mental health issues also impede her ability to care for the children. The judge determined the experts were "credible" and found Katherine testified she "has not had any medication for her seizure disorder, mental health disorders, depression, and COPD."[7] Although Katherine made some improvement through the years, it was insufficient progress toward familial stability because of her inconsistent treatment and lack of motivation.

As we have stated, "[k]eeping the child in limbo, hoping for some long[-] term unification plan, would be a misapplication of the law." N.J. Div. of Youth & Family Servs. v. A.G., 344 N.J. Super. 418, 438 (App. Div. 2001) (citing In

[7] COPD stands for Chronic Obstructive Pulmonary Disease.

re P.S., 315 N.J. Super. 91, 121 (App. Div. 1998)). Here, the judge concluded Katherine was "unable or unwilling to remedy the circumstances" and therefore, was not likely to become a viable parent. Based on the evidence, the judge found Katherine lacks the capacity to take care of Amanda and Adam. As to David, based on the unrefuted expert testimony of Dr. Kirschner and Dr. Jewelewicz-Nelson, the judge concluded he was unfit to parent Adam because of his cognitive limitations. The record supports the judge's conclusions.

C.

The third prong requires evidence that "[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 [judge] has considered alternatives to termination of parental rights." N.J.S.A. 30:4C-15.1(a)(3). "Reasonable efforts may include consultation with the parent, developing a plan for reunification, providing services essential to the realization of the reunification plan, informing the family of the child's progress, and facilitating visitation." M.M., 189 N.J. at 281 (internal quotation marks omitted).

Katherine argues the Division failed to show by clear and convincing evidence that it provided reasonable services with the goal toward reunification

and "instilled self-defeat when it failed to assist [her] with the technological issues she was having when her program switched to remote due to the COVID-19 pandemic." Katherine also asserts the Division did not help her obtain "the necessary insurance coverage" for her treatment regimen.

"[A]n evaluation of the efforts undertaken by [the Division] to reunite a particular family must be done on an individualized basis." D.M.H., 161 N.J. at 390 (citing L.A.S., 134 N.J. at 139). The evaluating court must also consider "the parent's active participation in the reunification effort." Ibid. In any situation, "[t]he services provided to meet the child's need for permanency and the parent's right to reunification must be 'coordinated' and must have a 'realistic potential' to succeed." N.J. Div. of Youth & Fam. Servs. v. L.J.D., 428 N.J. Super. 451, 488 (App. Div. 2012) (quoting N.J. Div. of Youth & Fam. Servs. v. J.Y., 352 N.J. Super. 245, 267 n.10 (App. Div. 2002)).

This requires the Division to "encourage, foster and maintain the parent-child bond, promote and assist visitation, inform the parent of the child's progress in foster care and inform the parent of the appropriate measures he or she should pursue . . . to . . . strengthen their relationship." R.G., 217 N.J. at 557 (alterations in original) (internal quotation marks omitted) (quoting D.M.H., 161 N.J. at 390). What constitutes reasonable efforts varies with the

circumstances of each case. D.M.H., 151 N.J. at 390-91. However, the Division is not required to be successful in its efforts to provide services, id. at 393, or to provide services at all when it is not in the children's best interests, see L.J.D., 428 N.J. Super. at 488.

In the matter under review, the judge credited the Division's efforts to provide Katherine with services and referrals for psychological evaluations, visitation, parenting classes, therapy, and transportation in its ongoing efforts at reunification. Moreover, the record shows the Division provided numerous services to Katherine—therapy, detox and treatment programs, anger management, and rental assistance—over the course of a decade to address the issues that prevented Katherine from caring for her children. Indeed, the Division attempted to engage Katherine in alcohol abuse services at The Bridge, Greater Essex, St. Michael's Medical Center, and Summit Oaks.

We are not convinced the Division was in a "rush" to terminate Katherine's parental rights, and we disagree the Division failed to provide her with "actual help" based upon our review of the record. Her pulmonologist reported to the Division that Katherine "seems to be able to function." The record is bereft of any evidence as to whether Katherine requested assistance from the Division to rectify any technological access issues. Instead, Katherine's history is replete

with evidence of her defiant and unmotivated engagement in the reunification process. We therefore find no merit to Katherine's contentions regarding prong three.

Under prong three, David contends the judge failed to consider alternatives to termination. An alternative to termination of parental rights is KLG, which allows a relative to become the child's legal guardian and commit to care for the child until adulthood, without stripping parental rights. N.J. Div. of Youth & Fam. Servs. v. P.P., 180 N.J. 494, 508 (2004). The Legislature created KLG because it found "that an increasing number of children who cannot safely reside with their parents are in the care of a relative or a family friend who does not wish to adopt the child or children." N.J. Div. of Youth & Fam. Servs. v. L.L., 201 N.J. 210, 222-23 (2010).

Prior to July 2, 2021, KLG was considered "a more permanent option than foster care when adoption '[was] neither feasible nor likely.'" P.P., 180 N.J. at 512 (emphasis added) (quoting N.J.S.A. 3B:12A-6(d)(3) to (4)). Consequently, "when a caregiver . . . unequivocally assert[ed] a desire to adopt," the standard to impose a KLG was not satisfied because the party seeking a KLG arrangement would not be able to show that adoption was neither feasible nor likely. N.J. Div. of Youth & Fam. Servs. v. T.I., 423 N.J. Super. 127, 130 (App. Div. 2011).

In other words, when permanency through adoption was available to a child, KLG could not be used as a defense to the termination of parental rights. N.J. Div. of Youth & Fam. Servs. v. D.H., 398 N.J. Super. 333, 341 (App. Div. 2008).

On July 2, 2021, however, the Legislature enacted L. 2021, c. 154, which, in part, removed the KLG requirement that adoption be "neither feasible nor likely." P.P., 180 N.J. at 512 (emphasis added) (quoting N.J.S.A. 3B:12A-6(d)(3) to (4)). As such, KLG may now remain a valid defense to the termination of parental rights. D.H., 398 N.J. Super. at 341. Here, David asserts the Division failed to prove "it explored alternatives such as KLG by clear and convincing evidence." We disagree. A KLG defense requires a valid KLG alternative, which was not presented by David (or Katherine). D.H., 398 N.J. Super. at 341.

Here, Fernandez testified after the first guardianship trial that the Division continued to assess relatives for Amanda and Adam's placement. Moreover, she testified the Division effectively ruled out all relatives suggested by Katherine and David, all of whom were provided "rule out" letters of the Division's decision. See N.J. Div. of Youth & Fam. Servs. v. K.L.W., 419 N.J. Super. 568, 582 (App. Div. 2011) (holding the Division is not obliged to consider relatives unidentified by the parents). In his decision, the judge noted, "Since May of

2019, there's been several attempts for family members . . . to provide care for either or both children." Based upon our review of the record, we conclude the judge properly evaluated whether the Division fully explored relative placements for KLG, and we reject David's argument.

Finally, David argues the judge "relied on hearsay evidence that Adam's resource parents are committed to adopting him." We have stated it is not unusual for the resource parents not to testify in guardianship litigation. N.J. Div. of Child Prot. & Perm. v. M.M., 459 N.J. Super. 246, 266 (2019). And, evidence of "the communications by and with [the resource parents] concerning adoption and KLG are all hearsay statements." Ibid.

Furthermore, a belated objection to a resource parent's hearsay statements "is barred by the invited error doctrine." N.J. Div. of Child Prot. & Perm. v. J.D., 447 N.J. Super. 337, 348 (App. Div. 2016). The invited error doctrine "operates to bar a disappointed litigant from arguing on appeal that an adverse decision below was the product of error." N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 340 (2010) (quoting Brett v. Great Am. Recreation, 144 N.J. 479, 503 (1996)). The belated objection would otherwise deprive the litigant's adversary the opportunity to: (1) overcome the objection; (2) take steps to satisfy the evidentiary requirements needed to admit the evidence; or (3)

present alternative evidence. Id. at 341. We will not reverse the evidence's admission unless a litigant establishes the admission constituted plain error. J.D., 447 N.J. Super. at 349-50 (citing R. 2:10-2).

"[H]earsay[,] subject to a well-founded objection[,] is generally evidential if no objection is made." Id. at 348-49. We have recognized:

> [A] party is free to waive objection to the admission of hearsay evidence. In some cases, parties may have no reason to question the accuracy of such hearsay, or may make "a strategic decision to try the case based on the documents, instead of possibly facing a witness's direct testimony."
>
> [Id. at 349 (quoting N.J. Div. of Child Prot. & Perm. v. N.T., 445 N.J. Super. 478, 503 (App. Div. 2016)).]

Therefore, a party who fails to object to the admittance of evidence effectively consents to its admission. M.C. III, 201 N.J. 341-42, 350; see also J.D., 447 N.J. Super. at 350 (affirming the Family Part's consideration of embedded hearsay in evidence admitted without objection by defense counsel). We presume the Family Part "appreciates the potential weakness of such proofs, and takes that into account in weighing the evidence." J.D., 447 N.J. Super. at 349.

Here, David failed to object to the testimony of Fields, Dr. Kirschner, and Dr. Jewelewicz-Nelson. All three witnesses testified as to the resource parents' commitment to adopt both Amanda and Adam. In essence, David consented to

the admittance of the testimonial evidence, including the resource parents' hearsay statements. M.C. III., 201 N.J. at 341-42. Therefore, David is now barred from arguing on appeal that the admission of these statements constituted error. M.C. III, 201 N.J. at 340 (quoting Brett, 144 N.J. at 503).

D.

The fourth prong of N.J.S.A. 30:4C-15.1(a)(4) serves as "a 'fail-safe' inquiry guarding against an inappropriate or premature termination of parental rights." F.M., 211 N.J. at 453 (citing N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 609 (2007)).

> [T]he fourth prong of the best interests standard cannot require a showing that no harm will befall the child as a result of the severing of biological ties. The question to be addressed under that prong is whether, after considering and balancing the two relationships, the child will suffer a greater harm from the termination of ties with [his or] her natural parents than from the permanent disruption of [his or] her relationship with [his or] her foster parents.
>
> [K.H.O., 161 N.J. at 355.]

"The crux of the fourth statutory subpart is the child's need for a permanent and stable home, along with a defined parent-child relationship." N.J. Division of Youth & Fam. Servs. v. H.R., 431 N.J. Super. 212, 226 (App. Div. 2013) (citing C.S., 367 N.J. Super. at 119). "If one thing is clear, it is that

the child deeply needs association with a nurturing adult. Since it seems generally agreed that permanence in itself is an important part of that nurture, a court must carefully weigh that aspect of the child's life." A.W., 103 N.J. at 610. Therefore, "to satisfy the fourth prong, the State should offer testimony of a 'well qualified expert who has had full opportunity to make a comprehensive, objective, and informed evaluation' of the child's relationship with both the natural parents and the foster parents." M.M., 189 N.J. at 281 (quoting J.C., 129 N.J. at 19).

"It has been 'suggested that [a] decision to terminate parental rights should not simply extinguish an unsuccessful parent-child relationship without making provision for . . . a more promising relationship . . . [in] the child's future.'" N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 108 (2008) (alterations in original) (quoting A.W., 103 N.J. at 610). "[C]ourts have recognized that terminating parental rights without any compensating benefit, such as adoption, may do great harm to a child." Id. at 109 (citing A.W., 103 N.J. at 610-11).

Katherine challenges the judge's prong four findings arguing termination of her parental rights will do more harm than good. She contends the judge erroneously relied on Dr. Nelson's expert testimony that only a "superficial" bond existed between her and the children and disregarded Dr. Kirschner's

expert testimony the children were "enthusiastic about spending time with their mother." Having thoroughly reviewed the record under our standard of review and the applicable law, we conclude Katherine's arguments as to prong four lack merit.

The judge weighed the expert testimony presented by the Division and the Law Guardian. Both experts had the opportunity to conduct bonding evaluations between Katherine and the children, as well as between the children and their resource parents. Acknowledging Dr. Kirschner's bonding evaluation, the judge noted a bond does in fact exist between Katherine and the children, but they cannot achieve permanency with their mother. As to David, the judge found no parental relationship exists between him and Adam. In contrast, the judge emphasized a real parental relationship exists between the children and the resource parents, which supports the children's need for permanency. And, the resource parents are committed to adopting Amanda and Adam. The record supports that finding under prong four.

IV.

Our review of a family judge's factual findings is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). "It is not our place to second-guess or substitute our judgment for that of the family court, provided that the record

contains substantial and credible evidence to support the decision to terminate parental rights." F.M., 211 N.J. at 448-49 (citing E.P., 196 N.J. at 104). "We invest the family court with broad discretion because of its specialized knowledge and experience in matters involving parental relationships and the best interests of children." Id. at 427. Although our scope of review is expanded when the focus is on "'the trial judge's evaluation of the underlying facts and the implications to be drawn therefrom,' . . . . even in those circumstances we will accord deference unless the trial court's findings 'went so wide of the mark that a mistake must have been made.'" M.M., 189 N.J. at 279 (first quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188-89 (App. Div. 1993); then quoting Snyder Realty, Inc. v. BMW of N. Am., Inc., 233 N.J. Super. 65, 69 (App. Div. 1989)). We are satisfied the Division has proven all four prongs of the best interests standard under both the old and amended version of N.J.S.A. 30:4C-15.1(a).

To the extent we have not addressed any other argument, we conclude that they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.