

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3687-19

NEW JERSEY DIVISION OF  
CHILD PROTECTION AND  
PERMANENCY,

Plaintiff-Respondent,

v.

S.S.C.,

Defendant-Appellant,

and

A.A.F.D.,

Defendant.

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IN THE MATTER OF THE  
GUARDIANSHIP OF N.A.F.C.  
and A.M.C., minors.

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Argued October 17, 2022 – Decided November 22, 2022

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Morris County,  
Docket No. FG-14-0025-19.

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

Susan J. Saraiva, Deputy Attorney General, argued the  
cause for respondent (Matthew J. Platkin, Attorney  
General, attorney; Donna Arons, Assistant Attorney  
General, of counsel; Susan J. Saraiva, on the brief).

Todd Wilson, Designated Counsel, argued the cause for  
minor A.M.C. (Joseph E. Krakora, Public Defender,  
Law Guardian, attorney; Meredith Alexis Pollock,  
Deputy Public Defender, of counsel; Todd Wilson, on  
the brief).

#### PER CURIAM

Appellant S.S.C. (Sam) appeals from the judgment of guardianship terminating his parental rights to his two children, N.A.F.C. (Nicole), born in April 2004, and A.M.C. (Amanda), born in December 2008. Defendant A.A.F.D. (Anna) is the children's mother. Her parental rights were also terminated under the May 12, 2020 order. She does not appeal from the judgment. After a careful review of appellant's contentions and the record in light of the applicable principles of law, we affirm.

## I.

The Division of Child Protection and Permanency (Division) first became involved with Anna in 2006 when she was arrested for the possession of cocaine. Anna admitted to using cocaine and tested positive for the drug and opiates. Sam was not living with the family at that time. In 2013, the Division learned Anna had not been home in a week and was using crack cocaine. The children were living with Anna, Sam and an unknown "female roommate." In 2015, the Division's investigation of allegations of abuse by Anna were "not established."

Anna was charged with driving under the influence as well as possession of illegal substances in 2016. During the next year, there were reported instances of domestic violence between Anna and several boyfriends. Sam was arrested in 2017 for possession of marijuana. At the time, he did not have overnight visitation with the children and he only saw them in the presence of his mother or sisters.

In January 2018, a reporter informed police that Anna and a new boyfriend were selling drugs out of their house while the children were present. Following the narcotics investigation, Anna was arrested and charged with multiple counts of drug-related offenses. The Division investigator found Anna's house was dirty with food on the floor, drugs, and drug paraphernalia strewn about. The

children were staying with a family friend, N.C. (Nancy). The Division was unable to locate Sam.

When the Division finally reached Sam by phone, he said the children had been staying with Nancy for several months. Sam was unable to take the children because he could not transport them to and from school.

Although the Division informed Sam the children could not stay with Nancy because she was not an approved caregiver and was living in a house she rented from Anna, Sam stated he agreed with Anna that the girls should remain with Nancy. Eventually Sam agreed to have the children live with him. The Division also spoke with Nancy who expressed her desire to be considered as a foster parent.

Sam tested positive for marijuana use in April and May 2018. The Division also received a report that Sam was driving the children while intoxicated. In addition, the children were living with Nancy because Sam was thrown out of his house after an altercation with a family member. Sam was out of contact with the Division for the next month.

The Division spoke with Nancy about a final restraining order that was entered against her. Nancy said it was filed by an ex-partner, but they were now friends and shared custody of their daughter. The Division explained they had

to remove the children from Nancy's home because of the restraining order. The children were taken to a foster home.

In May 2018, the court granted the Division custody and care of Nicole and Amanda. After the restraining order was dismissed against Nancy, the children were placed with her. Sam refused to tell the Division where he was living.

In July 2018, Nicole, then fourteen, was admitted to St. Clare's Hospital with suicidal thoughts. She was diagnosed with "[m]ajor depressive disorder, recurrent, severe without psychotic features; anxiety disorder, unspecified; parent-child relational problem."

The Division reached out to numerous relatives of Anna and Sam inquiring whether they could provide a safe home for the children. In considering reunification with Sam in July 2018, the Division found that although he visited the children, he did not have stable housing and was struggling with sobriety. The Division also noted the children did not want to live with him, "he was not consistently parenting or there for them," he often screamed at them, and had hit Nicole in the past. Sam was not complying with random urine drug screens and had tested positive for alcohol and marijuana.

The Division found "the parents ha[d] not made any progress . . . addressing their substance abuse and addiction needs."

The Division also ruled out Anna's mother, Dolores, because she did not want to care for the children and she was living with Anna. The Division was concerned that Dolores enabled Anna.

Sam continued to test positive for alcohol, missed visits with the children without explanation or warning, and did not attend review meetings with the Division. When Sam was offered supervised visitation, he was annoyed with the location and format of the visit. He also missed counselling and evaluation appointments. Sam did not have employment or housing. He often refused to undergo urine screens.

## II.

Trial took place over several dates in December 2019 and January 2020. On the third day of trial, the court noted that Sam had not yet attended the proceedings. Counsel stated he was not present because he was at employment-required training.

At the time of trial, Sam was again attending substance abuse treatment after being discharged for noncompliance and five positive drug screens. He did not provide the Division with a parenting plan and only wanted visits with

the children. Sam refused to acknowledge Nicole's psychiatric needs, and he could not provide the children with appropriate housing.

The Division presented Frank J. Dyer, Ph.D., who conducted psychological evaluations of Anna and Sam, and bonding assessments of the children with Sam, Anna, Dolores, and Nancy. He opined that neither Anna nor Sam "possess[ed] adequate parenting capacity at [the] present time and that the prognosis for each in terms of acquiring adequate parenting capacity within the foreseeable future is poor."<sup>1</sup>

After evaluating Sam, the doctor diagnosed him with anxiety disorder, not otherwise specified; depressive disorder, not otherwise specified; cannabis-use disorder, remission status unclear; alcohol-use disorder, remission status unclear; and personality disorder, not otherwise specified with borderline and narcissistic features.

Dr. Dyer testified that the

anxiety disorder and depressive disorders, as long as they're adequately controlled with medication, should not impact parenting capacity at all. The drug and alcohol aspects of the diagnosis are, I think, of considerable . . . importance because both of the children characterize [Sam] generally being a nice

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<sup>1</sup> Because Anna has not appealed from the order terminating her parental rights, we need not further discuss any of the psychological evaluations or bonding assessments of her.

person, generally being a lot of fun except when he drinks and when he drinks he turns violent and sometimes he drinks to the point of endangering others, as for instance, in the incident in May of 2018 where [Sam] was driving both children in his car and was so impaired that he had to pull off the road and he fell asleep and he was arrested for this. So . . . the drug and alcohol aspects do have a major significance with respect to parenting capacity. The personality disorder with the borderline and narcissistic features also have significance with respect to parenting capacity in that the . . . borderline designation, borderline features designation refers to the extreme emotional volatility that [Sam] has exhibited that has really terrorized the children at times. And the narcissistic features, that specification refers to the . . . overall attitude of [Sam] being one of placing a high priority on his own needs without really being able to place the needs of his children or his romantic partner above his own needs.

Dr. Dyer stated that Sam did not take any responsibility or accept any blame for the removal of the children from his care. Sam also did not have a plan for the children's care. The expert concluded that Sam's "prognosis for acquiring any kind of adequate parenting capacity within the foreseeable future [was] poor."

In turning to the bonding assessment between Sam and the children, Dr. Dyer found

[Amanda] continues to have a . . . very strong positive emotional tie to her father. [Nicole] also has a—a strong positive tie to her father, not quite at the level of [Amanda's], but [Nicole], who had at one time rejected

him because he was so abusive to her, now states that she has forgiven her father and that she loves her father. So there's a positive connection between both children and [Sam].

The Law Guardian presented Rachel Jewelewicz-Nelson, Ph.D. as an expert witness to opine whether Anna and Sam were fit to parent their children. The expert also conducted bonding evaluations.

Dr. Jewelewicz-Nelson testified that Nicole "has very strong opinions, and they are that she wants to be adopted by the foster mother, that she wants nothing to do with her parents." The doctor stated further that Nicole "is very concerned that once everybody looks the other way and the case is closed, [Anna] will revert to old patterns, and she is extremely worried that that will happen."

The doctor noted that Amanda had a different experience because both Anna and Nancy had been in her life from the time she was born. When things did not go well with her mother, Amanda had Nancy to take care of her. Amanda said she would be sad if she could not live with her mother, but she was happy living with Nancy. The psychologist described the sibling relationship as "very strong and healthy." She also said that "separating the girls from each other would be a devastating loss for each of them."

In meeting with Sam, Dr. Jewelewicz-Nelson stated he was angry at having to attend the evaluation and

he was of the opinion that the only reason he didn't have custody of his children is that he didn't have appropriate housing for them, and the only reason he didn't have appropriate housing for them was that he couldn't keep a job because he had so many appointments to keep in regard to this case.

She continued, stating

[h]e minimized, and was quite dismissive, of all the other issues that the record indicates with him in terms of a past criminal history, past history with alcoholism, with non-compliance with attending programs, with sporadic and inconsistent visits with his children. One of the most salient things for me was that he essentially acknowledged that he would come to visit his children before this case began and would see their mother behave in strange ways, and yet he never contacted the Division, he never sought to protect his children from her because he was too afraid that if he complained then the Division would become involved, and—and the police might become involved, and he didn't want to do that. He wanted to avoid that. So he was protecting himself at the expense of his children.

The doctor said the bonding session was very awkward. When she interviewed the girls later, they stated "they had absolutely no interest in ever going back with their father." She explained that Nicole "was quite clear that [Sam] is the trigger to very serious PTSD symptoms for her," describing an incident when her father almost choked her. Nicole also recalled the altercation that occurred when the girls were placed in Sam's care after Anna was arrested, resulting in Sam's family kicking Sam and the girls out of the family's home.

And Nicole recounted the events of Sam being intoxicated and sleeping while driving with them. The doctor stated that Nicole "doesn't trust him at all."

Dr. Jewelewicz-Nelson concluded that the girls did not "have a—a healthy and strong attachment to their father, and neither one would be harmed if that relationship was severed." She found that Sam lacked the insight "to address any of the issues . . . he . . . ha[d] in terms of parenting." She testified that "there's no question in my mind, without any hesitation, that for [Nicole] clearly terminating parental rights and leaving her with her foster mother would be in her best interest, and that in my professional opinion it would similarly be in [Amanda's] best interest to be left with the foster mother." The doctor was aware of Nancy's plans to move to California with the girls if she were permitted to adopt them. She had family ties and job opportunities in California.

### III.

On May 12, 2020, Judge Michael Paul Wright issued a comprehensive well-reasoned oral decision. He summarized the family's history with the Division and, pertinent to this appeal, the judge noted Sam's substance abuse and anger issues; the missed visits with his children; his physical and verbal abuse toward others, including his children; examples of his lack of self-

awareness regarding parenting; dismissiveness of his children's mental health issues; and the denial of his own substance abuse problem.

Judge Wright made detailed findings of fact and conclusions of law regarding the four statutory prongs under N.J.S.A. 30:4C-15.1(a). He found the testimony presented by the Division caseworkers, and Drs. Dyer and Jewelewicz-Nelson credible.

In discussing the first prong, the judge opined that Nicole and Amanda had "been subjected to inconsistent, neglectful, and, at times, abusive parenting by the defendants." He outlined the harm suffered by the children that was a direct result of Sam's "parenting deficienc[ies]," including Sam's delay and unwillingness to partake in services, his denial of a substance abuse problem, and his "low frustration tolerance."

Judge Wright found Sam "failed to provide even minimal parenting to his children and he has repeatedly [abdicated] all parental responsibilities to others." The judge concluded that Sam's "failure to provide nurture and care for his children is in itself a cognizable harm."

In addition, the judge found Sam was verbally and physically abusive to the children. Judge Wright cited to Dr. Dyer's testimony regarding the harm Amanda had suffered as a result of Sam's behaviors. He concluded that the

Division had shown clear and convincing evidence that the children's "safety and health [was] . . . harmed by . . . the parental relationship and . . . both children will continue to be endangered by the parental relationship with either parent."

The judge also found the Division had established the second prong—both defendants were unable to eliminate the harm to the children or provide them with a "safe and stable home" within the foreseeable future. As the findings regarding the second prong overlapped with those described under the first prong, the judge again noted that Sam refused to acknowledge or address the issues that resulted in the removal of the children. The court also relied on the experts' testimony that Sam lacked the capability of changing his behaviors to eliminate the harm.

Judge Wright specifically noted Dr. Dyer's testimony that Sam was "firmly entrenched in his position of rigid denial with respect to any failures as a parent and with respect to the impact of his behaviors on his children." The judge also relied on Dr. Jewelewicz-Nelson's conclusions that Sam "minimized his substance abuse and criminal history," "the harm suffered by his children," and "his failure to protect" the children from Anna's drug abuse. Both experts opined that without acknowledging his parenting deficiencies resulting from his

behavior and abuse, it was unlikely Sam would modify his behaviors in the near future.

In considering the third prong, the judge noted the multitude of services offered and provided by the Division to Sam: individual therapy, family team meetings, parental assessments, transportation, parenting skills classes, supervised visitation, psychological evaluations, bonding evaluations, information regarding temporary housing, urine drug screens, and placement assessments for relatives.

Sam did not dispute that the services were offered, but instead argued he was not provided with housing assistance. However, Judge Wright noted that when Sam first lost his housing, he did not inform the Division of the circumstances. Moreover, Sam had nowhere to live because he had an altercation with a family member resulting in his removal along with the children from the family home. Once the Division learned of Sam's lack of housing, it provided him with "a list of community services and shelters and information for the Office of Temporary Assistance." Furthermore, Sam did not lose his children due to his lack of housing. They were removed from his care because he was reported to have driven with them while intoxicated.

The judge concluded that the Division provided Sam with "reasonable" and "specifically tailored" services, although unsuccessful due to Sam's own actions. The Division also investigated relatives for placement, though none were found suitable or were uninterested. Moreover, Sam did not provide the Division with his relatives' contact information; the children did.

The court further noted that Kinship Legal Guardianship (KLG) was considered but was not appropriate because Nancy was fully committed to adopting the children. The judge concluded the Division satisfied the third prong.

In considering the fourth prong, Judge Wright discussed the harm the children had already endured, their feelings toward their placement, and their attachment to their biological parents and resource parent. The court noted Nicole "stated categorically and unconditionally that she wants to be adopted." All experts agreed termination of the parental relationship would "clearly not do more harm than good for [Nicole]."

In turning to Amanda, the court found she was attached to her mother but had a "dual loyalty" to Anna and Nancy "because they both have been in her life since infancy." While Amanda preferred to live with her mother, she also expressed that she wanted to remain with Nancy permanently if returning to her

mother was not possible. As to Sam, neither child expressed any desire to reside with him. The court noted that all the experts found separating the children "would not be in their best interest."

The court concluded that termination of defendants' parental rights would not do more harm than good. Therefore, all four prongs were established, and Anna's and Sam's parental rights were terminated. The court also denied defendants' request to restrict Nancy from moving to California with the children pending appeal.

After the entry of the judgment of guardianship, Nancy relocated to California with both girls. Three months later, seventeen-year-old Nicole ran away from Nancy's home and returned to New Jersey. She was placed in Dolores' care with a plan of independent living. All parties consented to vacate the order terminating Sam's rights to Nicole.

#### IV.

On appeal, Sam does not seek to be Amanda's custodial parent. He contends that Amanda's circumstances "changed so dramatically" post-trial because of Nicole returning to New Jersey that this court must reverse the judgment and remand for reconsideration of alternatives to adoption. The

Division and the Law Guardian assert Nicole's move does not affect the court's order terminating Sam's parental rights to Amanda.

We defer to the trial court's findings of fact, which are binding on appeal, "when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). We accord particular deference to a family court's factfinding "[b]ecause of the family courts' special jurisdiction and expertise in family matters." Id. at 413; see also Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016). However, our review of a court's interpretation of legal issues is de novo. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019).

Parents have a "fundamental liberty interest . . . in the care, custody, and management of their child," which "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." Santosky v. Kramer, 455 U.S. 745, 753 (1982). Further, parents maintain this right even when a child is placed in foster care. In re Guardianship of J.C., 129 N.J. 1, 9 (1992) (citing Santosky, 455 U.S. 745). The New Jersey Legislature has set forth that "[t]he preservation and strengthening of family life is a matter of public concern as being in the interests of the general welfare." In re Guardianship of K.H.O., 161 N.J. 337, 347 (1999) (quoting N.J.S.A. 30:4C-1(a)).

Still, parental rights are not absolute. Ibid. The State has a "parens patriae responsibility to protect the welfare of children." J.C., 129 N.J at 10. The state may intervene in the parent-child relationship and terminate parental rights if the relationship will continue to harm the child. See In re Guardianship of D.M.H., 161 N.J. 365, 377 (1999).

"The balance between parental rights and the State's interest in the welfare of children is achieved through the best interests of the child standard[,]" which is named in N.J.S.A. 30:4C-15(c) and elaborated in N.J.S.A. 30:4C-15.1(a) as four prongs. K.H.O., 161 N.J. at 347-48. They are:

- (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;
- (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).]

The Division must prove each prong by clear and convincing evidence. N.J. Div. of Youth & Fam. Servs. v. A.W., 103 N.J. 591, 611 (1986). The prongs "are not discrete and separate; they relate to and overlap with one another to provide a comprehensive standard that identifies a child's best interests." K.H.O., 161 N.J. at 348. The court may not make presumptions against parents in termination of parental rights cases, and all doubts which arise must be resolved against termination of rights. Id. at 347.

Our careful review of the record reflects that Nicole's return to New Jersey has no effect on the court's thorough findings regarding prongs one and two under N.J.S.A. 30:4C-15.1(a). Judge Wright found Sam's parenting was "inconsistent, neglectful, and, at times, abusive." Moreover, he delayed participating in or refused to participate in offered services, he denied having substance abuse issues and admitted he was angry and had a low frustration tolerance. In short, the judge said Sam did not care for nor nurture his children.

The credible evidence supports the judge's determination that Sam's alcohol use, anger issues and lack of parenting harmed Amanda. Moreover, Sam refused to acknowledge his behaviors or the negative impact they had on Amanda. Therefore, he did not, and was not willing to eliminate the harm he caused Amanda.

Addressing prong three, Sam contends adoption is no longer feasible for Amanda because she and Nicole are now separated. And all the experts agreed the sisters should stay together. Therefore, the case should be remanded for the Division to reconsider KLG.

We recognize circumstances changed when Nicole left Nancy and returned to New Jersey. And that the experts found the sibling bond was strong and the girls should be together. But circumstances have not changed regarding the permanency plan for Amanda: to be adopted by Nancy. As the Court has stated, KLG is "not meant to be a substitute for the permanency of adoption." N.J. Div. of Youth & Fam. Servs. v. P.P., 180 N.J. 494, 510 (2004). We discern no reason to disturb the court's findings regarding the third prong.

We turn then to whether the changed circumstances affect the court's finding on prong four. Sam refers to the expert testimony that Amanda would suffer "a more devastating loss than . . . termination of parental rights" if separated from her sister. We note the uncontroverted testimony that Amanda did not want to live with Sam. And Dr. Jewelewicz-Nelson opined that no harm would result to Amanda from the termination of Sam's parental rights.

Although the experts and the judge found it paramount to protect the sibling relationship, that finding did not affect the court's ultimate determination

that no harm would come to Amanda if Sam no longer had parental rights. There was no relationship between Sam and Amanda. Nicole's decision to return to New Jersey did not change the court's sound underlying findings regarding its decision to terminate Sam's parental rights to Amanda. Amanda requires permanency that can be satisfied through adoption by Nancy and Sam has demonstrated no ability to care for her. We are satisfied the court's findings regarding prong four remain unassailable.

We are satisfied the Division presented sufficient credible evidence to support all of the statutory prongs to warrant the termination of Sam's parental rights.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION