SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0043-22

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

D.D.,

Defendant-Appellant,

and

E.C., III, and D.M.,

Defendants.

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IN THE MATTER OF THE
GUARDIANSHIP OF S.M.L.D.
and KY'M.M.A.D., minors.

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Submitted May 24, 2023 – Decided June 20, 2023

Before Judges Vernoia and Firko.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FG-12-0030-20.

Joseph E. Krakora, Public Defender, attorney for appellant (Steven Edward Miklosey, Designated Counsel, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Sookie Bae-Park, Assistant Attorney General, of counsel; Jessica A. Prentice, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Meredith Alexis Pollock, Deputy Public Defender, of counsel; Cory H. Cassar, of counsel and on the brief).

PER CURIAM

Defendant D.D. (Danielle)[1] appeals from a judgment of guardianship terminating her parental rights to S.M.L.D. (Sarah), born in 2016, and KY'M.M.A.D. (Kevin), born in 2017. Sarah and Kevin are half-siblings. Defendant E.C. III (Eric), Sarah's biological father, and defendant D.M. (David), Kevin's putative biological father, did not participate in the litigation and have not appealed the orders terminating their respective parental rights. Danielle

[1] We employ initials and pseudonyms to identify the parties, the children, and others to protect the children's privacy and because records relating to Division proceedings held pursuant to Rule 5:12 are excluded from public access under Rule 1:38-3(d)(12).

argues the Division of Child Protection and Permanency (Division) failed to establish by clear and convincing evidence the second part of prong three of the statutory best interests test under N.J.S.A. 30:4C-15.1(a), alternatives to termination of parental rights. Danielle contends the judge erred in failing to correctly apply the July 2, 2021 statutory amendments to the Kinship Legal Guardianship (KLG) Act,[2] and she claims the KLG amendments mandate KLG over adoption even in a situation—as here—where there is no kinship caregiver able or willing to serve in a KLG capacity and the current resource parent rejects KLG in favor of adoption. Danielle also contends the judge failed to make specific findings of fact and conclusions of law in determining that the Division properly ruled out family placement options.

Danielle does not challenge the judge's finding the children's safety, health, or development has been or will continue to be endangered by the parental relationship under prong one, or that she failed to mitigate harm under prong two, the adequacy of services under part one of prong three, or that terminating her parental rights would not do more harm than good under prong

[2] 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 read "[s]uch harm may include evidence that separating the child from [their] resource family parents would cause serious and enduring emotional or psychological harm to the child."

four. The Law Guardian seeks affirmance. We conclude, after reviewing the record in light of Danielle's arguments, that the court correctly applied the governing legal principles, and sufficient credible evidence supports the court's findings. Therefore, we affirm.

I.

We begin our discussion with the legal framework governing 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. 382, 397 (2009); In re Guardianship of J.C., 129 N.J. 1, 10 (1992). To effectuate these concerns, the Legislature established the standard 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;
>
> (3) The Division has made reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home and the [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 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[es] the specific circumstance[s] in the given case." R.G., 217 N.J. at 554 (internal quotation marks omitted) (second alteration in original) (quoting N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 280 (2007)).

II.

The Division first became involved with Danielle in the matter under review in Spring 2018 after receiving a referral that she abandoned Sarah and

Kevin.[3] Danielle was reportedly using drugs and engaged in prostitution. She left the children with her maternal grandmother, P.D. (Pat). A Division caseworker went to Pat's one bedroom apartment, which was overcrowded, dirty, had a "pungent odor," and moldy food. The children appeared unkempt, with soiled clothing.

That same day, caseworkers met with Danielle at a Walgreen's. She confirmed she was evicted from the motel where she was staying and was sleeping at a train station and bench. The Board of Social Services (BSS) reinstated Danielle's benefits allowing her and the children to return to the motel. The allegations of neglect against Danielle were "not established," but the Division opened a case to provide services.

In October 2018, Danielle contacted the Division expressing she had suicidal ideation. A caseworker transported Danielle to an emergency department for a psychiatric screen. She reported having auditory hallucinations and paranoid thoughts and explained she previously attempted suicide. She also used marijuana regularly. Danielle agreed to enter a weeklong inpatient psychiatric program at Princeton House Behavioral Health (Princeton House).

[3] Danielle also has two other children born in 2020 and 2021, who are not involved in this appeal. We sometimes refer to Sarah and Kevin as "the children" for purposes of this appeal.

She was diagnosed with major depressive disorder, bipolar I disorder, cannabis abuse, and prior suicide attempts. While receiving inpatient treatment, Danielle could not identify any family members who could care for Sarah and Kevin.

On October 23, 2018, the Division conducted an emergency removal of Sarah and Kevin.[4] The court granted the Division custody, care, and supervision of the children and ordered Danielle to comply with the Division's treatment recommendations. Princeton House scheduled Danielle for an intake appointment at Rutgers University's Behavioral Health Care (Rutgers BH), but she did not attend.

Several months later, Danielle underwent an intake assessment at Rutgers BH. She was described as "somewhat guarded and uncooperative" and claimed the Division thought she was "crazy" and "forced her" to be assessed. Danielle advised Rutgers BH that she was unemployed and living with her mother and six siblings. She stated Pat abused alcohol but had "slowed down." Rutgers BH diagnosed Danielle with mood and cannabis abuse disorders and recommended outpatient treatment, including therapy. She was advised to take prescribed

[4] "A 'Dodd removal' refers to the emergency removal of a child from the home without a court order, pursuant to the Dodd Act, which, as amended, is found at N.J.S.A. 9:6-8.21 to -8.82. The Dodd Act was authored by former Senate President Frank J. 'Pat' Dodd in 1974." N.J. Div. of Youth & Fam. Servs. v. N.S., 412 N.J. Super. 593, 609 n.2 (App. Div. 2010).

medications. After failing to attend several appointments, Rutgers BH discharged Danielle.

Throughout the three years of litigation, Danielle did not participate in court ordered mental health and substance abuse treatment services, counseling, urine screening, or parent mentoring services. She was also transient and "couch surfing" during the litigation. The Division offered to serve as a liaison between Danielle and BSS to secure public assistance, but she was not receptive.

Danielle's visitation with Sarah and Kevin was inconsistent. Although the Division provided Danielle with bus passes, she often arrived late or did not appear. When Danielle did attend, her interactions with the children were positive, but the children were disappointed when she did not show up. The Division attempted to engage Danielle in the Multicultural Community Services (MCS) visitation program and offered her a parenting mentor, but she declined.

During visits with the children, Danielle was physically and verbally assaultive toward Division staff in front of the children, requiring a police escort out of the Division's office on one occasion. Caseworker safety protocols had to be implemented. During a visit, Danielle hit Sarah across the leg causing the child to cry and yell. Kevin reacted by hitting Danielle in the face, and Danielle hit him on the hand in response. The caseworkers observed Danielle appeared

overwhelmed, cried, and talked to herself. The Division scheduled Danielle for therapeutic supervised visitation with Catholic Charities to provide structure and guidance in managing the children's behavior.

In December 2018, a caseworker asked Danielle whether her cousin "Tom" and his girlfriend "Diana" could be resource parents, but Danielle advised they lacked stable housing. In the following months, Sarah exhibited significant behavioral outbursts in the resource home. The Division set up in-home play therapy and cognitive behavioral therapy for Sarah. In February 2019, the resource parents called the child abuse hotline and reported Sarah was sexually acting out and disclosed men inappropriately touched her when she lived with her mother. Sarah indicated she did not want to see Danielle.

During a March 2019 visit, Danielle brought eight family members to the Division's office without preauthorization. The family members video recorded the caseworkers and blocked the program's exits. Inside the visitation room, Danielle stripped off Sarah and Kevin's clothing and photographed their genital areas based on her professed concern Sarah had been sexually abused in resource care. Danielle called the police and emergency medical services demanding Sarah be given a "rape kit." The next day, a pediatrician examined the children and found no evidence of sexual abuse.

In June 2019, the resource parents requested the children's removal. Sarah and Kevin were placed into K.N.'s unrelated resource home, where they remain currently. Sarah's in-home therapy was terminated, and she easily transitioned into K.N.'s home. In August 2019, a caseworker met with K.N. and discussed the differences between adoption and KLG. Catholic Charities terminated Danielle from its visitation program. The court approved the Division's permanency plan on October 10, 2019. On November 19, 2019, the Division filed a complaint for guardianship, and the protective services litigation was dismissed shortly thereafter.

In February and March 2020, the Division arranged for Alison Strasser Winston, Ph.D., to evaluate Danielle and conduct bonding evaluations with the children. Danielle complained different assessment tools administered during her evaluation asked the same questions, despite being told the measures were being administered for different purposes and the questions were different for each assessment test. Danielle stated, "that's not gonna happen" and refused to complete all of the requested tests. Dr. Winston attempted to administer the Personality Assessment Inventory, Adult-Adolescent Parenting Inventory, Child Abuse Potential Inventory, and Parenting Stress Inventory tests. The record is unclear, but Danielle refused two or three out of the four tests Dr. Winston

attempted to administer. When Dr. Winston asked Danielle why the Division removed Sarah and Kevin, she had "no idea." Dr. Winston opined that Danielle had "significant untreated mental health and substance abuse issues," and noted that she failed to comply with services, had unstable housing, and had been unemployed over the sixteen months the children were in placement. Dr. Winston concluded that removing the children from their resource home would cause them "serious and enduring harm."

During the COVID-19 pandemic, the Division converted in-person visitation to video-conferencing. Danielle was often unavailable for the arranged phone calls. In March 2020, Danielle, who was pregnant, requested the Division assess C.C. (Charlotte) as a potential resource parent. Charlotte lives in North Carolina and ostensibly is Danielle's aunt. The Division initiated an Interstate Compact on the Placement of Children (ICPC) home assessment. Ultimately, Charlotte's ICPC home assessment in North Carolina resulted in a denial to care for the children, due to financial concerns and her inadequate living arrangements.

In July 2020, the Division resumed in-person visitation outdoors to limit viral exposure. Danielle declined to attend and missed multiple outdoor visits. She brought unapproved family and friends to some of the visits. The Division

assumed supervised visitation. On July 29, 2020, Danielle gave birth to her third child. She tested positive for marijuana upon admission to the hospital. The Division conducted a Dodd removal and placed the baby with Sarah and Kevin in K.N.'s resource home.

On October 1, 2020, the judge held a permanency hearing and continued the Division's plan to terminate Danielle's parental rights followed by adoption by K.N. Eric took a paternity test, which confirmed he is Sarah's father. The Division discussed with Eric and his wife the prospect of accepting placement of not only Sarah, but Kevin and the baby as well, although they are unrelated to Eric. The Division worked towards placing Sarah with Eric by showing her pictures of him and referring her to play therapy to help the transition process. In November 2020, the Division arranged for Eric to fly to New Jersey from Louisiana to visit with Sarah, but he did not take the flight or contact the caseworker. The Division advised Sarah it was planning to move her to live with Eric in Louisiana. Danielle asked the Division to reassess Tom and Diana as resource parents. The Division continued to work to license Tom and Diana even though there were issues concerning their marijuana use, a confirmed bug infestation at their home, and their leaving Sarah unsupervised during their care.

At the December 17, 2020 case management conference, the caseworker reported Eric, who appeared virtually, was not returning communications from Louisiana caseworkers or the Division to finalize his home assessment. The Division also reported that Louisiana caseworkers did not recommend Sarah be placed with Eric due to "significant information" obtained from his criminal background check. Kevin's putative father David was never located during the proceedings and never contacted the Division.

In January 2021, a caseworker met with Tom and Diana at their home to reinitiate a potential placement for Sarah and Kevin. A bonding evaluation was arranged for Tom and Diana and the children with Dr. Winston. The Division also assessed a potential placement in North Carolina and began to reassess Pat as a placement. Dr. Winston ultimately ruled out Tom and Diana and opined Sarah and Kevin's best interests were served by continued placement with K.N., who they identified respectively as their psychological parent.

In April 2021, the Division arranged for Danielle to fly to New Jersey from Georgia, where she was residing, to visit the children at a park. Danielle was pregnant with her fourth child and told the caseworker she wanted to return to New Jersey. Danielle then moved back to Georgia. On July 10, 2021, she gave birth and tested positive for marijuana metabolites. Danielle was offered

services by Georgia's Division of Family and Children's Services (DFCS) but declined to participate. The next month, Pat withdrew her request to be a resource placement because she could not accommodate the children.

In September 2021, the Division learned Danielle moved back to New Jersey. The Division arranged for Danielle to have an in-person visit with Sarah and Kevin, but she failed to appear. Sarah indicated she did not want visits with her mother anymore. In the meantime, the Division continued to work with Tom and Diana and supervised a visit with Sarah and Kevin. But the children reported seeing bugs in their cereal at Tom and Diana's home and did not want to return there. Nonetheless, the Division pursued visits between Tom, Diana, and the children, who continued to complain about bugs. The children consistently reported they were scared to be in Tom and Diana's home and reiterated they did not want to go back there.

In February 2022, the Division paid for Danielle to fly to New Jersey to visit with Sarah and Kevin and to attend an updated psychological and bonding evaluation. She attended the visit, but did not attend the evaluation or the rescheduled evaluations her attorney arranged for her. Dr. Winston, however, spoke with Sarah and Kevin, who stated they "love" living with K.N. and wanted to stay with her. K.N. advised Dr. Winston that she was committed to adopting

Sarah and Kevin. Dr. Winston met with Tom and Diana in March 2022 for a bonding evaluation and characterized it as "chaotic."

Dr. Winston concluded that Sarah and Kevin's best interests were met by terminating Danielle's parental rights. The Division sent Tom and Diana a rule out letter, explaining that

> to remove [Sarah and Kevin] from a stable and nurturing home with a loving and consistent caregiver whom they view as their psychological parent, in order to place them with relatives whom they have only recently met, with whom they have only begun to develop a relationship, and who would be unable to provide them with the attention, supervision and structure they desperately need in light of their history of neglect and instability, would cause [Sarah and Kevin] significant emotional harm.

During a visit on March 29, 2022, Danielle "engaged" in an altercation with the caseworker, which caused adoption supervisor Sobeyda Monterrosa to intervene. Sarah and Kevin were "visibly upset." Danielle did not attend any visits thereafter.

The judge held a two-day trial. Danielle only attended the second day. Monterrosa and Dr. Winston testified on behalf of the Division. Monterrosa discussed the efforts to locate and work with the children's fathers, and she detailed the extensive services the Division offered to Danielle, none of which she completed. Monterrosa testified the Division worked closely with Georgia's

DFCS, and the services recommended were the same as those made by Princeton House and Rutgers BH. Through communication with Danielle's DFCS caseworker in Georgia, Monterrosa ascertained Danielle did not follow through with its services recommendations there and Danielle did not comply with court ordered substance screens.

Dr. Winston testified as an expert in psychology without objection. Addressing her 2020 evaluation of Danielle, Dr. Winston described Danielle as "highly guarded and inconsistently cooperative." Dr. Winston explained the impact that major depressive disorder has on parenting because individuals with the disorder "feel sad a lot of the time," have "a low level of energy," and are "not really motivated to do things for themselves." Dr. Winston clarified that Danielle's untreated mental illness would negatively impact Sarah and Kevin because they would "sense when their mother is depressed," and would feel it might be "something they did, that their parent doesn't love them, or is angry at them because [she] isn't providing them with the attention and the nurturing that they need when it has nothing to do with" them. Dr. Winston opined that Danielle "would have significantly improved her ability to provide for her children's needs" if she engaged in the recommended therapy and medication management.

Danielle testified on her own behalf. She claimed she had a job, was successfully raising her two younger children, and underwent two psychological evaluations that concluded "there was nothing wrong" with her. Danielle stated two new psychological assessments, not provided to the Division or her attorney, did not recommend treatment, and she asserted the only reason the Division and Georgia's DFCS recommended treatment was because the services were court ordered. Danielle then contradicted herself and stated she did not receive the results from the Division's assessment and confirmed Georgia DFCS recommended she engage in services.

Danielle acknowledged being uncooperative during Dr. Winston's 2020 evaluation because she felt uncomfortable talking about "certain situations." According to Danielle, she "only missed a couple" visits and she "got fired so many times just from [dealing] with [the Division] because [she] can't call out as often as [it] would like [her] to." She also testified she recently obtained housing and employment. Danielle did not present any other fact or expert witnesses. The Law Guardian did not present any evidence but joined in the Division's request to terminate Danielle's parental rights as to Sarah and Kevin.

III.

Subsequent to the presentation of the evidence and closing arguments of counsel, the judge issued an oral decision summarizing the matter's procedural history and making factual findings as to each of the required elements of the best-interests-of-the-child standard set forth in N.J.S.A. 30:4C-15.1(a). Based on those findings, the court determined the Division sustained its burden of proving by clear and convincing evidence it was in Sarah and Kevin's best interests to terminate Danielle's parental rights.

In his opinion, the judge found Monterrosa's testimony to be "very" credible and that she was "responsive to questions posed" and "familiar with the file." The judge highlighted the Division's efforts to assess potential relative placements but found Sarah and Kevin "expressed a preference for 'Auntie,' which is the name given to the resource parent [K.N.] they have been with for years." The judge found Monterrosa's testimony credible that the Division caseworkers discussed KLG with K.N. "on numerous occasions, but the resource parent is committed to adoption."

The judge also credited Dr. Winston's testimony that "the children are comfortable with the resource parent," and considered her testimony related to "psychological parenting and the differences between [Danielle] and the

resource parent." The judge determined that Danielle was "not credible," and "blamed all of her failures on [the Division], including, but not limited to her erratic job history." The judge also described Danielle's demeanor in the courtroom as "aggressive to the Deputy Attorney General and the Division."

More particularly, the judge found Danielle engaged in a long-term and consistent failure to: make herself available to provide Sarah and Kevin with the care, secure home, and parental attention they deserve and need; remediate her drug use and address her mental health issues; make herself available to participate in services offered by the Division; and provide Sarah and Kevin with the permanency to which they are entitled. The court found those failures caused Sarah and Kevin harm, and endangered their safety, health, and development.

The judge also determined that although the Division attempted to provide reasonable services, Danielle demonstrated a disinterest and an unwillingness to address or remediate the harm that necessitated Sarah and Kevin's removal. The judge further found the evidence established that termination of Danielle's rights in favor of the permanent and secure home available through adoption by K.N. will not do more harm than good.

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.

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. D.M.H., 161 N.J. 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)).

Under prong one, the judge found Sarah and Kevin's safety, health, and welfare will be endangered by a continued relationship with Danielle due to her failure to remediate her substance abuse, engage in mental health therapy, obtain

stable housing and employment, and engage in services. There was substantial credible evidence in the record to support the judge's findings under prong one.

The court need not wait until children are "irreparably impaired" by parental abuse or neglect. D.M.H., 161 N.J. at 383. "The State has a parens patriae responsibility to protect children from the probability of serious physical, emotional, or psychological harm resulting from the action or inaction of their parents." N.J. Div. of Youth & Fam. Servs. v. C.S., 367 N.J. Super. 76, 110 (App. Div. 2004). There is no basis for us to disturb the court's finding that the Division satisfied prong one as against Danielle by clear and convincing evidence.

Regarding prong two, which overlaps with prong one, the judge found Danielle was unwilling or unable to eliminate the harms described, notwithstanding she had years to do so. The judge emphasized that Danielle made no real effort to rectify her parental inadequacies and refused to take responsibility for her actions. There is substantial credible evidence in the record to support the judge's findings under prong two.

With respect to prong four, the judge found that the Division established by clear and convincing evidence termination of the biological parents' rights will not do more harm than good, because the children are entitled to

permanency with a secure home. The judge acknowledged the need for permanency of placement and placing limits on the time for the biological parents to correct conditions in anticipation of reuniting with the children. The judge stressed that Sarah and Kevin have waited long enough for a permanent home.

IV.

In Point I of her brief, Danielle contends the judge erred in holding that there is no presumption in favor of placing Sarah and Kevin with relatives, thereby tainting the second part of the prong three analysis. We are unpersuaded.

KLG allows a relative to become the child's legal guardian and commit to care for the child until adulthood, without terminating parental rights. N.J. Div. of Youth & Fam. Servs. v. P.P., 180 N.J. 494, 508 (2004). The Legislature created this arrangement because it found "that an increasing number of children who cannot safely reside with their parents are in the care of a relative or 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)). As such, "when a caretaker . . . 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 amended N.J.S.A. 3B:12A-6(d)(3) and removed the statutory requirement that adoption be "neither feasible nor likely," making KLG an equally available permanency plan for children in the Division's custody. However, the Legislature did not delete paragraph (d)(4) of the KLG statute, which requires a court to find "awarding [KLG] is in the child's best interest," N.J.S.A. 3B:12A-6(d)(4), before it can order KLG. Thus, the amended KLG statute simply ensures a resource parent's willingness to adopt no longer forecloses KLG. But the amendment to N.J.S.A. 3B:12A-6(d)(3) does not affect the trial court's application of the best interests test for parental termination cases as codified under N.J.S.A. 30:4C-15.1(a)(1) to (4).

Substantial credible evidence in this record supports the judge's findings that the Division thoroughly explored alternatives to termination of parental rights. N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008). Danielle's assertion that L. 2021, c. 145 ("2021 amendments") compel KLG is unsupported by the overriding purpose of child protection laws. See N.J. Div. of Child Prot. & Perm. v. D.C.A., 474 N.J. Super. 11 (App. Div. 2022). The children's best interests are the polestar of any termination decision. D.H., 398 N.J. Super. 333, 338 (App. Div. 2008).

The third prong of the best interests test requires evidence that "the Division has made reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home and the [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).

"An 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. 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 in visitation, inform the parent of the child's progress in foster care and inform the parent of the appropriate measures [they] 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., 161 N.J. at 390-91.

Here, in holding that there were no alternatives to termination of parental rights, the judge cited language from N.J. Div. of Youth & Family Servs. vs. K.L.W., 419 N.J. Super. 568, 580 (App. Div. 2011), stating the Division "is obligated to investigate relatives as options for placement." The judge then erred by declaring, "there is no presumption of favor placed on the child with relatives." To support her argument, Danielle cites to D.C.A., 474 N.J. Super.

at 27, which states that the 2021 Legislation was drafted to "reflect a preference for viable kinship guardians and fit parents over unrelated foster caretakers."

In D.C.A., we rejected a claim the 2021 amendment to the second prong of the statutory standard under N.J.S.A. 30:4C-15.1(a)(2) barred the court's consideration of "all evidence concerning a child's relationship with [the] resource caregiver . . . even in the context of the other prongs of the best-interests standard." 474 N.J. Super. at 25-26. And, we explained, "the Legislature did not alter the other components of the best interest standard," and we rejected an interpretation of "the amendments to prong two to mean that such a bond may never be considered within any part of the best interests analysis." Ibid.

Further, we held "the statute still requires a finding that '[t]ermination of parental rights will not do more harm than good,'" id. at 26 (quoting N.J.S.A. 30:4C-15.1(a)(4)), and stated, "[t]he court must make an evidentiary inquiry into the status of children in placement, to determine whether the child[ren are] likely to suffer worse harm in foster or adoptive care than from termination of the biological parental bond." Ibid. We noted the amendments to the KLG statute were intended "to make it clear . . . that the judge should be considering the totality of the circumstances in every case in evaluating facts and making a

particularized decision based on the best interests of each child." Id. at 28 (citation omitted).

Additionally, we explained a court should not limit its focus to "the harm from separation from foster families . . . at the exclusion of other factors." Ibid. (citation omitted). We concluded the modification to N.J.S.A. 30:4C-15.1(a)(2) "requires a court to make a finding under prong two that does not include considerations of caregiver bonding, and then weigh that finding against all the evidence that may be considered under prong four—including the harm that would result from disrupting whatever bonds the child has formed." Id. at 29.

Here, the judge properly addressed Sarah and Kevin's bond with K.N. under the totality of the circumstances, considering how that bond could satisfy their need for permanency. See ibid. We acknowledge the significance and value of "restoring and sustaining sibling relationship." N.J. Div. of Youth & Fam. Servs. v. S.S., 187 N.J. 556, 561 (2006). Dr. Winston provided unrebutted, credible, and competent testimony upon which the judge relied, concluding it was in Sarah and Kevin's best interests to be adopted by K.N.

We reject Danielle's argument the 2021 amendments limit the Division's "ability to rule out relatives only to instances where the relative is unwilling or unable to accept the placement." The goal of the 2021 amendments was not to

create a statutory trigger that presumes a child's best interests is met merely because a relative is available, as Danielle asserts.

In N.J. Div. of Youth & Family Servs. v. J.S., the defendant argued that the Division lacked the authority to rule out two relatives on a best interests basis. 433 N.J. Super. 69 (App. Div. 2013). In affirming the trial court's termination of the defendant's parental rights, J.S. held that the applicable statutory provision, N.J.S.A. 30:4C-12.1, gave the Division authority to rule out a relative on "best-interests" grounds, regardless of the relative's willingness or ability to care for a child. Id., at 75. J.S. also recognized that the Division's rule-out authority is subject to the Family Part's ultimate assessment of a child's best interests. Ibid.

The 2021 amendments did not alter the KLG provisions relied upon in J.S. that authorize the Division to rule out relatives if they are unwilling or unable to assume care, or, alternatively, to pursue guardianship if the Division determines termination of parental rights serves the child's best interests. N.J.S.A. 30:4C-12.1(b) and (c). The related regulations are also unaltered, providing that a ruled out relative "can appeal a Division action that the relative is either unwilling or unable to care for a child," but "does not have a right to

appeal, as a status issue, a Division action that it is not in a child's best interest to be placed with a relative." N.J.A.C. 3A:5-3.1(b).[5]

We do not read the amendments as imposing on the Division an additional burden to pursue KLG contrary to the wishes of the eligible caregiver and its own determination as to the child's best interests. Likewise, the KLG appointment statute continues to require the court, when awarding KLG, to clearly and convincingly determine that doing so is in the child's best interests. N.J.S.A. 3B:12-6(d)(4).

In the matter under review, the record is replete with multiple conversations K.N. had with Division caseworkers about being "adamant" regarding adoption over KLG. On April 27, 2021, two caseworkers met with K.N. to discuss the possibility of entering into a KLG arrangement, but the following month, K.N. advised she wanted to adopt the children. The caseworkers raised the possibility of KLG again with K.N. a few months later, and she again declined.

The judge relied on Dr. Winston's credible testimony that Danielle's relatives displayed "nothing but problems." Therefore, we conclude any

[5] In J.S., we addressed the former Administrative Code in effect at the time, N.J.A.C. 10:120A-3.1(b). Effective June 6, 2016, the Division recodified the provision (without change) as N.J.A.C. 3A:5-3.1(b), effective June 6, 2016.

misstatement made by the judge concerning KLG is harmless error and does not warrant reversal because there is no kinship caregiver able or willing to serve as KLG, and K.N. rejects KLG and wants to adopt the children. And, any further delay in permanency would add further harm to Sarah and Kevin.

V.

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." N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448-49 (2012) (citing N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008)). "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, 189 (App. Div. 1993); and then quoting C.B. Snyder Realty, Inc. v. BMW of N. Am., Inc., 233 N.J. Super. 65, 69 (App. Div. 1989)).

We are satisfied the judge correctly determined the Division presented clear and convincing evidence establishing 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 arguments, we conclude that they lack 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