

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0850-22

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

M.A.S.,

Defendant-Appellant,

and

M.J.G.,

Defendant.

IN THE MATTER OF THE
GUARDIANSHIP OF
A.J.A.S-G. and E.A.S-G.,
minors.

Submitted September 26, 2023 — Decided October 13, 2023

Before Judges Mawla and Chase.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Cape May County,
Docket No. FG-05-0010-21.

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

Matthew J. Platkin, Attorney General, attorney for
respondent (Melissa H. Raksa, Assistant Attorney
General, of counsel; Meaghan Goulding, Deputy
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Joseph E. Krakora, Public Defender, Law Guardian,
attorney for minors (Meredith Alexis Pollock, Deputy
Public Defender, of counsel; Noel C. Devlin, Assistant
Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant M.A.S. (Mary)¹ appeals from an October 27, 2022
guardianship judgment terminating her parental rights to her daughters A.J.A.S.-
G. (Alice) and E.A.S.-G. (Ellen), who were seven and five years old,
respectively.² We affirm.

The facts were adduced at a two-day trial before Judge Rodney
Cunningham, at which the Division of Child Protection and Permanency (the

¹ We use initials and pseudonyms pursuant to Rule 1:38-3(d)(12).

² The children's father M.J.G. (Mitch) executed an identified surrender to the
resource parents prior to trial and is not a part of this appeal.

Division) presented testimony from a psychological expert and a Division caseworker. The Division also moved forty-three exhibits into evidence. Defendant presented no witness testimony or evidence. The law guardian supported the Division's plan of termination of parental rights followed by adoption and continues to do so on appeal.

The Division received its first referral involving the family in December 2015 due to concerns of drug abuse and domestic violence between Mary and Mitch. A second referral occurred in April 2016, because Mitch was intoxicated at home alone with Alice, in violation of a restraining order barring him from the residence. The Division offered Mary services after the second referral.

A third referral occurred in July 2016 when Mary claimed to be living in Pennsylvania, but had in fact returned to New Jersey with the children. Her whereabouts were unknown, so the Division enlisted the help of police who contacted Mary, but she would not divulge Alice's whereabouts. Mary then told the Division Alice was in Pennsylvania with her father, but the child was not there. She gave the Division another Pennsylvania address, but the child could not be located there either. Mary ultimately told the Division Alice was at a family friend's house.

When the Division located Alice, she was wearing a dirty outfit and diaper. The Division removed then ten-month-old Alice and placed her in a non-relative resource home. Following the Division's investigation, which administratively substantiated its findings, the Division offered the family mental health and substance abuse services, parenting classes, and therapeutic visitation services. Mary only completed the mental health and substance abuse treatment services.

Ellen was born in 2017 and went home with Mary and Mitch. Alice was reunified with her sister and parents three months later. Mary continued to comply with services, including intensive outpatient (IOP) treatment, individual counseling, relapse prevention, urine screens, and parenting courses. As a result, the Division closed the family's case.

The Division received a referral in June 2019 stating Mary was neglecting the children and abusing drugs, but the matter was dismissed. In March 2020, the Division received a referral stating Mary, who was then living with the children in her father's home, had gone to a neighbor's house after claiming she saw men outside of her home with knives and a shotgun threatening the home and the children. Mary was brandishing a knife. Police found no evidence of the men.

Although Mary denied using drugs, police believed she was "having hallucinations." Further, her home was dirty, and the children were sleeping on couch cushions on the floor. Because of Mary's condition, she agreed the children would spend the night with her sister S.S. (Susannah).

The following morning, Mary went to Susannah's house, threw clothing into an electric fireplace, and started a fire while the children were sleeping. She also claimed she saw a man with a gun on the roof. Police took Mary to the hospital for a psychological evaluation. A Division caseworker interviewed Mary at the hospital, and she claimed people wanted to kill her because her parents deeded her property. She saw three armed men outside her window and took a knife with her to find them. Mary denied taking drugs, but told the caseworker she had taken kratom³ and smokes marijuana to treat her anxiety. A nurse informed the caseworker Mary tested positive for marijuana, amphetamines, and benzodiazepines.

The caseworker observed both children were unclean and in need of a bath. She also reported "[b]oth girls appeared to be delayed in speech."

The Division removed the children and placed them with their paternal aunt, M.L. (Myra). The court granted the Division custody of the children on

³ Mary described kratom as "natural marijuana."

March 5, 2020. Mary was permitted in-person, telephone, and video visits with the children. However, the children's stay with Myra was short-lived. Mary made multiple referrals to the Division for baseless welfare checks on the children, and, during one visit, screamed at Myra and the children. As a result, Myra contacted the Division and requested the children's removal.

The Division unsuccessfully attempted to locate other relatives who could care for the children. Mary's mother lived out of state and failed to complete the Interstate Compact on the Placement of Children process. The caseworker explained that even if she completed the process, she would not qualify as an adoptive home because her state required married couples to jointly adopt children. The maternal grandmother was married but separated, living with a paramour, and refused to get a divorce. Susannah was ruled out because she had a criminal history and a personal history with the Division. Mary had another sister, who also ruled herself out.

On June 16, 2020, the children were removed from Myra's care and placed with the non-relative resource parents, where they have remained. The caseworker explained the Division provided an array of services during the litigation, including: substance abuse, mental health, and psychological evaluations; visitation; family team meetings; parenting classes; urine screens;

and transportation assistance. However, Mary did not complete all services provided, including follow-up treatment. She continued to test positive for drugs, including marijuana, morphine, and cocaine. Mary also behaved inappropriately during visitations and scared the children.

The caseworker explained the children are thriving in the care of their resource parents. The parents address the children's needs, have them engaged in activities, and have enrolled them in ongoing therapy. The caseworker described the children's interactions with the resource parents as loving and positive. She said the children are comfortable in the resource home and want to stay there. The Division educated the resource parents regarding the differences between kinship legal guardianship (KLG) and termination of parental rights. They are steadfast in their desire to adopt.

The Division's expert performed a psychological evaluation of Mary.⁴ He spoke with the caseworker, reviewed collateral information, conducted a clinical interview of Mary, and performed psychological testing. During the interview, Mary relayed she had a lengthy history with the Division and had been uncooperative, "essentially hinder[ing] their investigation" She claimed

⁴ Mary did not appear for her second evaluation.

someone drugged her four days prior to the incident leading to the children's removal.

Mary told the expert she suffers from psychosis. The expert noted hospital records showed Mary was acting erratically and believed a physician was one of the men lurking outside her home. The psychiatrist who saw Mary at the hospital concluded she was psychotic and provisionally diagnosed her with drug-induced psychosis. She tested positive for marijuana, amphetamines, and benzodiazepines. She claimed several men with weapons had sexually and physically assaulted her in front of the children.

By the time the expert evaluated Mary, she had stopped participating in most of the services offered by the Division. She was discharged from parenting classes for non-compliance and stopped taking her prescription medication. She acknowledged a history of dependency on alcohol and opioids and told the expert she regularly used marijuana and kratom, despite being instructed by treatment staff "to stop these substances altogether." The expert explained kratom is a legal herbal supplement, which provides energy, sharpness, and focus, "more or less like caffeine." However, "[i]t can cause physical . . . and psychological addiction, and . . . psychosis." Furthermore, "marijuana can cause psychosis, and it can contribute [to] or exacerbate psychosis."

The expert concluded Mary had substance abuse issues and needed to have "a zero tolerance approach to substances [because] even milder substances like marijuana and kratom" were likely to cause her psychosis. When she is psychotic, her behavior is "erratic[,] . . . unpredictable[,] . . . dangerous[,] . . . [a]nd it poses a risk to the girls' safety."

The expert opined psychosis is not inherently dangerous and does not prevent a person from parenting their children, because it can be managed with medication and treatment. He explained a psychotic person "is either on an ongoing basis or intermittently losing touch with reality. They are having experiences that are objectively not happening, but they genuinely believe that they're happening."

The Division's records revealed there was an occasion when Mary came to "the Division office and didn't recognize her caseworker who she has had on her case for at least a year." The expert concluded Mary's psychosis put the children at risk of harm because she believed the children were assaulted by the men and "were part of a sex-trafficking ring. . . . When that delusion includes someone like her daughters, there's a risk that she's going to act on those irrational beliefs." He noted Mary had "threatened to abscond with the girls to keep them safe. . . . And so there's a risk of her acting with the girls in ways

that could be erratic, unpredictable, scary to the girls, even dangerous in terms of . . . physical harm."

The expert diagnosed Mary with opioid use disorder, cannabis use disorder, substance use disorder, stimulant use disorder (rule out), and a provisional diagnosis of drug-induced psychotic disorder.⁵ Mary's refusal to comply with treatment and her medication regimen, her ongoing substance abuse contributing to psychosis, the inability to manage the children's behavior, and unstable housing put the children in danger and Mary could not parent them.

The expert's initial evaluation concluded Mary's prognosis was very poor for reunification. When he issued an addendum one year later, he downgraded the prognosis to "dismal" because she began drinking heavily and daily, using marijuana daily, and used cocaine and methamphetamine. He noted he completed hundreds of psychological evaluations and only gave a dismal prognosis "[m]aybe five to ten times" He explained the prognosis as follows: "[E]ven if [Mary] were given more time, connected with more services,

⁵ The expert explained a "provisional" or "rule out" diagnosis indicates it was under consideration, but not assigned because additional information, or further assessment was necessary to assign or rule out the diagnosis with certainty. However, as we noted, Mary did not appear for further assessment.

and [made] genuine efforts, it is near impossible to see a successful outcome . . . for [her]" The prospects for a safe and healthy reunification were unlikely.

The expert concluded "[t]erminating [Mary's] parental rights would give the girls the best available chance at settling into a safe, truly permanent home as soon as possible." He emphasized an "adoption under any circumstances as opposed to continuing to try for reunification" was in the children's best interests.

Judge Cunningham found both witnesses credible and made detailed credibility findings. He concluded the Division proved all four prongs of the best interests test, N.J.S.A. 30:4C-15.1(a), by clear and convincing evidence.

The Division proved prong one evidencing Mary endangered, and would continue to endanger, the children's safety, health, and development because her ongoing substance abuse and failure to address her mental health made her psychotic and put them at risk. The judge cited the several referrals involving Mary's erratic and dangerous conduct, and the fact the children remained in the Division's custody following their removal as evidence of her inability to parent.

The Division proved prong two because Mary admitted she was not able to provide a safe and stable home for the children, and the evidence showed she could not eliminate the harm preventing her from being an adequate caregiver

for the foreseeable future. More so than the domestic violence and lack of stable housing, the judge concluded Mary could not reunify with the children because of her ongoing drug use and dismal prognosis for success. She made little progress in IOP, despite the Division providing more than two years of services.

The judge found the Division proved prong three by reciting the litany of services provided to both parents, especially Mary, dating back to 2016. However, Mary failed to complete the services and acted inappropriately during visits and outside of visits, showing she had made little progress in managing her substance use or her mental health. Moreover, the Division considered alternatives to the termination of parental rights by assessing relative placements and discussing KLG with the resource parents. Because neither option was viable, the judge concluded "at this point there are no alternatives to a termination of parental rights."

The judge found the Division proved a termination of parental rights will not do more harm than good under prong four because the evidence showed the children were thriving in the resource home; "they appear happy . . . [and] their needs are being responded to." Mary's inability to remedy the causes for the removal and the children's need for permanency, which they would get with the

resource parents, convinced the judge a termination of parental rights was in the children's best interests.

On appeal, Mary challenges the judge's prong two, three, and four findings. She argues the judge could not terminate parental rights without a bonding evaluation because he had no means of determining whether Mary was unwilling or unable to eliminate the harm facing the children. The judge could not determine if adoption would do more harm than good without such an evaluation. She concedes bonding evaluations are not mandatory, but claims the judge never ruled one was unnecessary, and the Division had scheduled one, but then canceled it. She asserts the fact she did not raise the bonding evaluation issue at trial is not grounds to dismiss the issue as invited error because the judge made a mistake of law, which is not entitled to our deference. The judge erred by relying on the caseworker's hearsay testimony to determine the caregiver's preference for adoption over KLG.

Our review of a termination of parental rights is limited. N.J. Div. of Child Prot. & Permanency v. C.J.R., 452 N.J. Super. 454, 468 (App. Div. 2017). We will not reverse the trial "court's termination decision 'when there is substantial credible evidence in the record to support the court's findings.'" Ibid. (quoting N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008)).

We defer to the trial court's fact-findings and credibility determinations. N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 552-53 (2014). Deference is accorded to the trial court's findings of fact because "the Family Part 'possess[es] special expertise in the field of domestic relations" Id. at 553 (alteration in original) (quoting Cesare v. Cesare, 154 N.J. 394, 412-13 (1998)). The trial court has "the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand; it has a 'feel of the case' that can never be realized by a review of the cold record." E.P., 196 N.J. at 104 (quoting N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 293 (2007)).

"Only when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' should an appellate court intervene and make its own findings to ensure . . . there is not a denial of justice." Ibid. (quoting N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007)). No deference is given to the trial court's interpretation of the law, which is reviewed de novo. D.W. v. R.W., 212 N.J. 232, 245-46 (2012).

In guardianship proceedings, the court applies the statutory best interests test, which require it to consider:

- (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 the four prongs by "clear and convincing" evidence. N.J. Div. of Youth & Fam. Servs. v. A.W., 103 N.J. 591, 611-12 (1986). The prongs "enumerated in the best interests standard 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." In re K.H.O., 161 N.J. 337, 348 (1999). These considerations are fact-sensitive and require particularized evidence addressing the specific circumstances. Ibid.

We reject Mary's assertion that a bonding evaluation was required for the judge to adjudicate any of the best interests prongs in her case. At the outset, we note a bonding evaluation is required to assess only prong four. N.J. Div. of Youth & Fam. Servs. v. A.R., 405 N.J. Super. 418, 436-37 (App. Div. 2009).

Moreover, one is not required where termination "[is] not predicated upon bonding, but rather reflect[s] [the child's] need for permanency and [the parent's] inability to care for [the child] in the foreseeable future[.]" N.J. Div. of Youth & Fam. Servs. v. B.G.S., 291 N.J. Super. 582, 593 (App. Div. 1996).

Here, during a pre-trial conference, the Division advised it was not securing a bonding evaluation. Therefore, it was no surprise there would be no such evaluation. More importantly, the evidence shows the Division's case was not based on bonding, but rather Mary's inability to provide a safe and stable home for the children and protect them from harm. Our review of the record shows the judge's determination that termination of parental rights would not do more harm than good was unassailable. A bonding evaluation would not have disproved this fact.

Mary did not object to the Division caseworker's testimony regarding discussions with the resource parents about KLG and adoption. Therefore, we review Mary's argument the judge erred in permitting this testimony for plain error and consider whether it was "clearly capable of producing an unjust result." R. 2:10-2.

We are unconvinced the Division had to produce the resource parents to testify and explain their desire to adopt the children. The caseworker explained

her conversations with the parents and their desire to adopt. As we noted, the judge found the caseworker credible. There is no evidence in the record showing the resource parents harbored any doubts about adoption or that they were of different minds on the subject to give the judge pause in assessing the fourth best interests prong. The facts and circumstances show the resource parents cared for the children for over two years, and they were thriving. The caseworker's testimony on this issue was not clearly capable of producing an unjust result.

Finally, we note Rule 5:12-4(d) states "the Division . . . shall be permitted to submit into evidence, pursuant to N.J.R.E. 803(c)(6) and 801(d), reports by staff personnel or professional consultants. Conclusions drawn from the facts stated therein shall be treated as prima facie evidence, subject to rebuttal."

The caseworker testified as the Division's custodian of records for this case. Her testimony was based on her personal knowledge and the Division's records in evidence, which clearly reflected the resource parents were committed to the children and wished to adopt them. Mary did not rebut this evidence.

For these reasons, we discern no basis to second-guess Judge Cunningham's findings that termination of parental rights was in the children's

best interests. To the extent we have not addressed an argument raised on the appeal, it is because it lacks 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