

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-0968-21
A-1227-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

A.G.,

Defendant-Cross-Appellant/
Respondent,

and

T.S.,

Defendant-Respondent.

IN THE MATTER OF THE
GUARDIANSHIP OF T.S.,
a minor,

Appellant/Cross-Respondent.

NEW JERSEY DIVISION

OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Appellant/
Cross-Respondent,

v.

A.G.,

Defendant-Cross-Appellant/
Respondent,

and

T.S.,

Defendant-Respondent.

IN THE MATTER OF THE
GUARDIANSHIP OF T.S.,
a minor,

Cross-Appellant.

Argued July 18, 2023 – Decided August 9, 2023

Before Judges Whipple, Susswein, and Gummer.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Union County, Docket
No. FG-20-0015-21.

Julie Goldstein, Assistant Deputy Public Defender,
argued the cause for appellant/cross-respondent in A-
0968-21 and cross-appellant in A-1227-21 minor T.S.

(Joseph E. Krakora, Public Defender, Law Guardian, attorney; Meredith A. Pollock, Deputy Public Defender, of counsel; Julie Goldstein and Melissa R. Vance, Assistant Deputy Public Defenders, of counsel and on the briefs).

Mary L. Harpster, Deputy Attorney General, argued the cause for respondent in A-0968-21 and appellant/cross-respondent in A-1227-21 New Jersey Division of Child Protection and Permanency (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Mary L. Harpster and Salima E. Burke, Deputy Attorneys General, on the briefs).

Amy M. Williams, Designated Counsel, argued the cause for respondent T.S. (Joseph E. Krakora, Public Defender, attorney; Amy M. Williams, on the briefs).

PER CURIAM

In these consolidated appeals brought by the Division of Child Protection and Permanency (Division) and the minor child, T.S.¹ (Tina), we consider a November 10, 2021 order in which the Family Part denied the termination of the parental rights of defendants T.S. (Trudy) and A.G.² We reverse and remand.

¹ We use initials to protect the parties' privacy and preserve the confidentiality of these proceedings. R. 1:38-3(d)(17). We use pseudonyms for minor T.S. and her mother, also T.S., for ease of reference.

² A.G. filed protective cross-appeals but dismissed both after entering an identified surrender of Tina to her resource family.

The record informs our decision. Tina is Trudy's and A.G.'s biological daughter. She was born in November 2019 and required two and a half weeks of care in a neonatal intensive care unit due to her low birth weight and undeveloped lungs. Trudy admitted to using several illegal substances and drinking alcohol daily during her pregnancy. Trudy also has a long history of untreated mental illness, requiring psychiatric hospitalization in the past; she informed the Division she had stopped taking her medication. A.G., moreover, has a criminal background of child sexual abuse and also has substance abuse issues. In response to these circumstances, the Family Part granted custody of Tina to the Division in December 2019.

Since that time, Tina has been exclusively raised by her maternal cousin—Trudy's niece—H.M. The record indicates Tina is doing well in H.M.'s care, has met developmental milestones, and refers to H.M. as her mother. After a year of caring for Tina, H.M. told the Division in November 2020 she was fully committed to formally adopting the child.

In December 2020, the Family Part approved the Division's permanency plan of termination of parental rights followed by relative home adoption by H.M., because Trudy and A.G. were both homeless and suffered from unaddressed substance abuse and mental health issues. H.M. specifically told

the Division she wanted to adopt Tina; she was less interested in kinship legal guardian (KLG) status because she worried about future interactions with Tina's parents. H.M. would later testify at trial that Trudy was "very angry" at her for "taking" Tina, and Trudy would "get very violent" when around her. In H.M.'s view, in the first two years of Tina's life, neither parent had "tried to learn [about Tina] or know who she is or anything."

Trudy, prone to violent outbursts, was barred from visiting Tina in April 2021 following an incident where she stormed into her mother's home, smashed the television, and brandished a knife while Tina was in the home. Trudy was ordered to undergo a psychiatric evaluation as a result of this incident but refused to attend her appointments. A.G., meanwhile, was incarcerated for various crimes, including aggravated assault of a police officer and failure to register as a Megan's Law offender.

A guardianship trial took place over two days in November 2021. Trudy did not appear at trial but was represented by counsel. A.G. remained incarcerated but was present and represented. The Division produced the following witnesses: Elizabeth Stillwell, Psy.D.; H.M.; Division permanency worker Karem Maxis; and adoption worker Modeline Mentor. Tina and A.G. did not present any witnesses or evidence.

Dr. Stillwell testified as an expert in psychology, attachment, and bonding. She recommended adoption, explaining that Tina viewed H.M. as her psychological parent, and she had been in H.M.'s care her entire life. Dr. Stillwell made this recommendation despite the alternative of KLG, explaining in her professional experience, KLG was most appropriate when it would provide parents an "opportunity to remedy their parenting deficits" so they may eventually vacate the KLG and resume a parental role for the child at some point in the future. In her professional opinion, based on her review of the record, Trudy and A.G. were not involved in Tina's life, and their parenting deficits were unlikely to improve. Her testimony was un rebutted.

The trial judge, however, disagreed with this recommendation and instead entered an order denying the termination of parental rights. In doing so, he reasoned that recent legislation—L. 2021, c. 154—which amended parts of N.J.S.A. 30:4C-15.1(a) and the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-1 to -7, had altered the applicable legal standard such that "parental rights must be protected and reserved whenever possible." As such, the judge viewed the 2021 amendments to confer "at least equal" status to KLG as to adoption and proceeded to "surmise" that the statutory changes were rooted in the history of slavery in the United States. First noting the "stigma which

attaches to a human-being whose parental rights have been terminated," the judge then turned to the four-pronged "best interests of the child" standard under N.J.S.A. 30:4C-15.1(a), which forms the central legal inquiry in termination-of-parental-rights cases.

In applying that test, the judge found the Division had met its burden by clear and convincing evidence as to the first and second prongs: neither parent had been or would be able to provide a safe and stable home for Tina. N.J.S.A. 30:4C-15.1(a)(1)-(2). The judge also found the Division had made reasonable efforts to provide defendants the tools and services to rectify the problems that posed a risk of harm to Tina, a component of prong three. 30:4C-15.1(a)(3). However, in the judge's view, the Division had failed to establish the remaining inquiries. He did not "consider[] alternatives to termination of parental rights[,]" the other inquiry in prong three, because the Division had not sought KLG status prior to terminating parental rights. Furthermore, the judge determined the Division had not shown by clear and convincing evidence that "a termination of parental rights would do more harm than good" —the standard delineated in prong four. The judge reasoned "the fourth prong is specifically not met based upon the letter and the thrust of the new statute."

The judge noted H.M.'s testimony had been "especially moving" and

found H.M. was clearly attached to Tina and wanted to adopt her. He also acknowledged that H.M. preferred to keep a distance from Trudy "due to her erratic nature" and violent, destabilizing tendencies. Nevertheless, the judge concluded "[a]ssuming [KLG] goes forward, any change in [Tina's] permanent status would require the court to find by clear and convincing evidence that even the slightest contact with the biological parent is in the best interest of the child."

These appeals, brought by both the Division and Tina's law guardian, followed.

"Parents have a constitutionally protected right to maintain a relationship with their children." N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 279 (2007). However, this right is not absolute. Ibid. When the State brings a petition to terminate parental rights under its *parens patriae* authority, courts are charged with applying the statutory best-interests-of-the-child standard, in order to "achieve the appropriate balance between parental rights" and the State's responsibility to ensure the welfare of children. Id. at 280. That standard is codified at N.J.S.A. 30:4C-15.1(a), and requires the State to establish:

- (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.

These factors overlap to inform a more general inquiry that the termination of parental rights is in a child's best interests. N.J. Div. of Child Prot. & Permanency v. R.L.M., 236 N.J. 123, 145 (2018). "The question ultimately is not whether a biological mother or father is a worthy parent, but whether a child's interest will best be served by completely terminating the child's relationship with that parent." N.J. Div. of Child Prot. & Permanency v. D.C.A., 474 N.J. Super. 11, 26 (App. Div. 2022) (quoting N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 107 (2008)), certif. granted, __ N.J. __ (2023). "[P]arental fitness is the key to determining the best interests of the child." N.J. Div. of Youth & Fam. Servs. v. I.S., 202 N.J. 145, 170 (2010) (quoting In re Guardianship of K.H.O., 161 N.J. 337, 348 (1999)).

Like a number of our recent cases concerning the termination of parental rights, this case revolves around recent amendments made by L. 2021, c. 154,

which became effective on July 2, 2021. That legislation modified prong two of the best-interests standard by removing the sentence: "Such harm may include evidence that separating the child from his foster parents would cause serious and enduring emotional or psychological harm to the child." L. 1995, c. 416, § 3. As we explained in D.C.A., the revised prong two calls for courts to make a more limited inquiry, focused on the parent in question. 474 N.J. Super. at 29. It now asks: Is the parent unwilling or unable to eliminate the harm facing the child, or unwilling or unable to provide a safe and stable home for the child, and will a delay in a permanent placement add to that harm? N.J.S.A. 30:4C-15.1(a)(2). This is the only amendment to the operative statutory language governing the termination of parental rights; the other aspects of the test, including a finding under prong four that "the termination of parental rights will not do more harm than good[,]" remain unchanged.

We uphold a trial judge's "factual findings . . . when supported by adequate, substantial, and credible evidence[,]" and we "defer to the trial court's credibility determinations." N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 552 (2014). "[G]reater deference is owed to a denial of an application to terminate parental rights than to a grant of an application because a termination of parental rights is final and cannot be re-visited by the court." Id. at 553.

However, we review issues of law—such as the interpretation of statutory language—de novo, and as such a "trial court's interpretation of the . . . legal consequences that flow from established facts [is] not entitled to any special deference." Id. at 552-53 (quoting Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995)).

Here, as a factual matter, the judge concluded that prongs one and two were met. "Neither parent has been able to provide a safe and stable home for the child and most certainly delaying a permanent placement will add to the harm." This finding was proper and abundantly supported by the evidence.

Therefore, to justify the decision to preserve parental rights despite this ongoing risk of harm presented to Tina, the judge based his conclusion on prongs three and four. Regarding prong three, the judge found the Division had "sincerely made reasonable efforts to get the parents to come forward and be able to try to be a part of this child's life" Nevertheless, the judge concluded the "new statute requires me to consider [alternatives to termination of parental rights] . . . [and] the Division has not met its burden of proof." No further explanation was provided.

However, the statutory inquiry as to prong three was not altered by the recent amendments. Prong three remains unchanged—it requires the Division

to make reasonable efforts to assist the parents and explore possibilities other than the termination of parental rights. Here, the evidence supports only a finding the Division met this bar. It explored several options for resource placement, including the maternal grandparents, before placing Tina with H.M., the only viable option and a close maternal relative. The Division explored the nature of KLG status with H.M., who repeatedly requested full custody of Tina, citing supported concerns the birth parents would continue to be a disruptive force in Tina's life going forward. H.M. testified at trial, and the judge found her to be a fit, loving parent, "wise beyond her years[,] " and considered her testimony "especially moving." There is no evidentiary basis to support a conclusion the alternatives to adoption were not explored; therefore, a failure to meet the requirements of prong three cannot undergird the outcome of this case.

Turning to prong four, the judge then considered the legislative declarations in section one of L. 2021, c. 154. Those preliminary declarations state "parental rights must be protected and preserved whenever possible." Running with this directive, the judge emphasized the stigma that attaches to an individual who has lost parental rights and made observations about the horrific injustices inflicted upon enslaved families during earlier portions of this country's history. For these reasons, the judge concluded that it was essentially

impossible to demonstrate that a "termination of parental rights will not do more harm than good."

"A court may turn to a statute's preamble as an aid in determining legislative intent." DiProspero v. Penn, 183 N.J. 477, 496 (2005) (citing Bass v. Allen Home Improvement Co., 8 N.J. 219, 225 (1951)). "The preamble, however, should be read in harmony with the statute that it introduces . . ." and must "give way" if at odds with the clear language of the operative portion of the law. Ibid.

Although it is true recent amendments express a preference for kinship caregivers, N.J.S.A. 30:4C-15.1(a) and our well-established caselaw clearly state that the termination of parental rights is to be based on a finding that doing so is in a child's best interests. Consideration of any stigma that might attach to a biological parent as a result of that decision necessarily lies largely outside of that inquiry. In other words, we reiterate: the welfare of the child is the key. Where the Division has established ongoing harm to the child, which is unlikely to be remedied by the biological parents after services have been provided to them, and alternative arrangements have been thoroughly explored, a denial of termination cannot be justified on the basis that doing so would have a negative effect on the parent.

Finally, we also observe here, H.M. has a "kinship relationship" with Tina as defined by N.J.S.A. 3B:12A-2, because she has a "biological or legal relationship with the child." The statutory preamble specifically states:

Kinship care is the preferred resource for children who must be removed from their birth parents because use of kinship care maintains children's connections with their families. There are many benefits to placing children with relatives . . . such as increased stability and safety as well as the ability to maintain family connections and cultural traditions.

[N.J.S.A. 30:4C-83.]

By concluding that Trudy's and A.G.'s rights should be terminated, we effectuate the legislative intent of L. 2021, c. 154 by clearing the way for H.M., a family member, to formally adopt and care for Tina. The necessity for this is clear. Should H.M. instead be conferred KLG status, a biological parent would not need to make an application to the court for visitation, because the court would have to set a parenting time schedule—an arrangement which would pose a high risk of harm to Tina. N.J.S.A. 3B:12A-6(e)(4). Instead, H.M. and Tina may now someday decide—of their own initiative—to connect with Trudy and A.G., should the biological parents overcome their current issues.

Reversed, vacated, and remanded for entry of an order of terminating defendants' parental rights consistent with this opinion. We do not retain

jurisdiction.

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



CLERK OF THE APPELLATE DIVISION