

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1939-21

NEW JERSEY DIVISION  
OF CHILD PROTECTION  
AND PERMANENCY,

Plaintiff-Respondent,

v.

S.P.,<sup>1</sup>

Defendant-Appellant.

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IN THE KINSHIP MATTER  
OF J.P., a minor.

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Submitted March 15, 2023 – Decided April 14, 2023

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Bergen County,  
Docket No. FL-02-0029-22.

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<sup>1</sup> We use initials and pseudonyms to refer to the parties. R. 1:38-3(d)(12).

Joseph E. Krakora, Public Defender, attorney for appellant (Mark E. Kleiman, Designated Counsel, on the briefs).

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Meredith Alexis Pollock, Deputy Public Defender, of counsel; Linda Vele Alexander, Designated Counsel, on the brief).

#### PER CURIAM

Defendant S.P. (Sarah) appeals from a February 10, 2022 judgment establishing kinship legal guardianship (KLG) as the best permanency plan for her daughter, J.P. (Jen), born in 2007. We affirm.

The Division of Child Protection and Permanency (Division) first became involved with Sarah in 2005. In 2011, after substantiating allegations of neglect against Sarah, the Division removed her four children, Z.H. (Zach), H.C. (Hannah), Si.P. (Silvia), and Jen,<sup>2</sup> and placed them in resource homes. In December 2012, the Division filed for guardianship of the children.

From September 2017 to June 2019, Jen was placed with a non-relative resource parent, D.F. (Dawn). In late 2019, Jen lived with her maternal

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<sup>2</sup> This appeal is limited to the KLG order regarding Jen.

grandmother until the grandmother was unable to care for her. Jen returned to Dawn's care in January 2020.

In October 2020, the Division filed a complaint for guardianship of Jen. A year later, the Division amended the complaint seeking KLG placement of Jen with Dawn. At that time, the Family Part judge provided additional time for Sarah to consider Jen's KLG placement and continued the case until the next hearing, scheduled for December 3, 2021. Sarah failed to appear at the December hearing and the judge listed the matter for a KLG trial on February 9, 2022.

#### Trial Testimony

During the two-day trial, the judge heard testimony from the Division's caseworker, Lakeisha Dennis-Reyes, and the Division's psychological and bonding expert, Frank Dyer, Ph.D. Dennis-Reyes testified regarding the Division's reasons for obtaining custody of Jen, Sarah's numerous interactions with the Division, and Jen's relationship with Dawn. Dr. Dyer testified regarding his 2019 and 2021 psychological evaluations of Sarah and his bonding evaluations for Sarah and Jen and Dawn and Jen. Sarah presented no witnesses.

Division's Caseworker Lakeisha Dennis-Reyes

Dennis-Reyes described the relationship between Jen and Dawn as "adorable," "loving," and "open." She testified that Dawn provided critical emotional support for Jen. According to Dennis-Reyes, Jen thrived under Dawn's care. She explained that since living with Dawn, Jen did well in high school and participated in various extracurricular activities, including cheerleading. Dennis-Reyes testified Jen and Dawn expressed their desire for KLG placement to allow Jen to maintain contact with her biological family, including Sarah.

Dennis-Reyes testified that from the time the Division obtained custody of Sarah's children through the date of trial, Sarah visited with Jen sporadically. The caseworker listed the various social service programs which the Division offered Sarah during that time, including parenting classes, anger management, substance abuse treatment, psychiatric evaluations, family team meetings, housing assistance, and job training. However, Sarah failed to follow through with the Division's offered programs. Despite Sarah's noncompliance with the offered programs, the Division continued its efforts to assist her.

Additionally, the Division's caseworker expressed concerns regarding Sarah's mental health. Dennis-Reyes testified that Sarah was diagnosed with

bipolar disorder, depressive disorder, post-traumatic stress disorder, and anger management issues. According to Dennis-Reyes, based on Sarah's noncompliance with the offered services, and her ongoing mental health and substance abuse issues, the Division found Sarah's ability to provide the necessary care and support for Jen was unlikely to change in the foreseeable future.

The Division's caseworker also testified regarding Jen's placement options. Jen told Dennis-Reyes that she wanted to be placed with Dawn under the KLG option rather than be adopted. The Division discussed KLG with Dawn. Because Dawn served as a resource parent for over thirty years, she understood the difference between KLG and adoption. Dawn expressed her willingness to comply with the KLG requirements and agreed to encourage Jen to maintain a relationship with her mother and siblings. Because Sarah was unable to remove the risk of harm, the Division concluded Jen's best interests was KLG with Dawn.

Dennis-Reyes also testified regarding the May 2019 assessment by the Preferred Behavioral Health Child Protection Substance Abuse Initiative (PBHCP), which assessed Sarah for substance abuse issues. According to the caseworker, the PBHCP's assessment found Sarah did not "meet [the] DSM[-]5

criteria for substance [ab]use disorder." Thus, PBHCP did not recommend any treatment programs for Sarah.

Dr. Frank Dyer

Dr. Dyer provided expert testimony in the areas of psychology, bonding, and parental fitness. He conducted psychological evaluations of Sarah in 2019 and 2021. After both evaluations, Dr. Dyer found Sarah defensive, guarded, and unable to take responsibility for her situation. He found she "displayed no insight into the kinds of psychological and behavioral problems that had been identified in previous reports" and noted she deflected blame for her children's removal. During the evaluations, Sarah told Dr. Dyer that she complied with the Division's offered services, did not suffer any impairments that would interfere with her ability to adequately parent her children, and believed the Division harbored animus toward her. Sarah also informed Dr. Dyer that she understood her compliance with the Division's services was necessary to regain custody of her children but insisted she either completed the services or nearly completed them.

Dr. Dyer further testified that Sarah lacked the ability to independently care for her children in a safe, stable, and nurturing environment. According to Dr. Dyer, Sarah functioned at "the borderline of clinically diagnosable mental

impairment" and she was incapable of making judgments related to her children's safety.

In his 2021 reevaluation, Dr. Dyer diagnosed Sara with "bipolar disorder, depressive disorder not otherwise specified," "anxiety disorder not otherwise specified," "borderline intellectual functioning," "alcohol use disorder, remission status unclear," and "cannabis use disorder, remission status unclear." The doctor explained that his use of the qualifying language "status unclear" was the result of Sarah's failure to cooperate with necessary services to ascertain the extent of her substance abuse issues.

According to the doctor, Sarah's poor judgment and denial of any impairment prevented her from accepting help. He further testified that Sarah's limitations hindered her ability to recognize the needs of her children and respond accordingly. Additionally, due to her defensiveness and volatility toward the Division and its staff, Dr. Dyer recommended the Division cease efforts to work with Sarah.

Dr. Dyer also testified regarding his bonding evaluations. He explained that Jen had a residual emotional attachment to her mother but did not view Sarah as "a primary parenting figure."

In contrast, he testified that Jen's bond with Dawn was secure and healthy. He found Dawn's parenting approach to be realistic and concluded Dawn would provide the necessary emotional support, guidance, and structure that Jen required. Because Jen had "a type of child-parent attachment" to Dawn, Dr. Dyer opined it was in Jen's "best interest to remain with [Dawn] for the foreseeable future." Dr. Dyer also recommended any KLG order permit continued contact between Jen and Sarah.

On February 10, 2022, the Family Part judge issued an oral decision, granting KLG placement of Jen with Dawn. The judge found the Division's witnesses, Dennis-Reyes and Dr. Dyer, credible. Based on the credible and uncontroverted testimony, the judge found Sarah's mental health issues rendered her unable to care for Jen. He noted Sarah's ability to support Jen was unlikely to change in the foreseeable future based on her failure to complete the services offered by the Division. The judge found Sarah failed "to participate in full treatment services" and lacked insight "as to her shortcomings or challenges regarding parenting." In rendering his decision, the judge focused on Sarah's mental health issues and failure to participate in the Division's offered services, not her suspected substance abuse problems.



The judge also found that the Division explored possible placement with other relatives. However, those relatives were unable, incapable, or unwilling to care for Sarah's children. Based on the evidence, the judge concluded Dawn was able to meet Jen's parental needs. After finding the Division satisfied all four prongs of the best interests test by clear and convincing evidence, the judge issued a KLG judgment, placing Jen with Dawn.

On appeal, Sarah challenges the judge's findings on prongs one, two, and four under N.J.S.A. 3B:12A-6(d). As to prongs one and two, Sarah argues KLG may not be based solely on parental incapacity and the judge based his findings primarily on her mental health and substance abuse issues. Under the fourth prong, Sarah contends the judge improperly based his decision on Dawn's caretaking abilities instead of focusing on Sarah's parental relationship with Jen. We are not persuaded by these arguments.

Our review of the Family Part judge's decision is limited. Cesare v. Cesare, 154 N.J. 394, 413 (1998). We are bound by the judge's factual findings so long as the findings are supported by sufficient credible evidence. N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 279 (2007) (citing In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)). "[W]e [also] rely on the trial court's acceptance of the credibility of the expert's testimony

and the court's fact-findings based thereon, noting that the trial court is better positioned to evaluate the witness' credibility, qualifications, and the weight to be accorded [his or] her testimony." In re Guardianship of D.M.H., 161 N.J. 365, 382 (1999) (citing Bonoco Petrol, Inc. v. Epstein, 115 N.J. 599, 607 (1989)).

KLG allows a person to become a child's legal guardian, and care for that child until adulthood, without terminating the rights of the biological parents. N.J. Div. of Youth & Fam. Servs. v. P.P., 180 N.J. 494, 508 (2004). KLG is designed "to address the needs of children who cannot reside with their parents due to their parents' incapacity or inability to raise them." N.J. Div. of Youth & Fam. Servs. v. S.F., 392 N.J. Super. 201, 209 (App. Div. 2007). A kinship legal guardian has the same rights and responsibilities as the parent and is "entitled to make all decisions relating to the care and well-being of the child." N.J. Div. of Youth & Fam. Servs. v. D.H., 398 N.J. Super. 333, 340 (App. Div. 2008).

Under the Kinship Legal Guardian Act, N.J.S.A. 3B:12A-1 to -7, the Division must satisfy the factors under N.J.S.A. 3B:12A-6(d) for appointment of a kinship legal guardian. The court shall appoint a kinship legal guardian if it finds the Division has proven the following prongs by clear and convincing evidence:

(1) each parent's incapacity is of such a serious nature as to demonstrate that the parents are unable, unavailable or unwilling to perform the regular and expected functions of care and support of the child;

(2) the parents' inability to perform those functions is unlikely to change in the foreseeable future;

(3) in cases in which the [D]ivision is involved with the child as provided in [N.J.S.A. 30:4C-85(a)], the [D]ivision exercised reasonable efforts to reunify the child with the birth parents and these reunification efforts have proven unsuccessful or unnecessary; and

(4) awarding kinship legal guardianship is in the child's best interests.

[N.J.S.A. 3B:12A-6(d).]

Prongs one and two

Sarah challenges the judge's finding that (1) she was unable, unavailable, or unwilling to perform the regular and expected functions of care and support for Jen and that (2) her inability to perform those functions was unlikely to change in the foreseeable future. N.J.S.A. 3B:12A-6(d)(1)-(2). She contends the judge erroneously reached his decision on these prongs based on her substance abuse and mental health issues, contrary to N.J.S.A. 3B:12A-(6)(c), which "expressly prohibits a grant of KLG based on parental incapacity alone." Sarah further asserts the Division's position related to her substance abuse was unsupported by the evidence and contrary to the PBHCP's assessment.

Sarah also argues the judge erred in relying on Dr. Dyer's diagnosing Sarah with "cannabis use disorder, remission status unclear." She asserts a "parent's status as a recreational marijuana user cannot suffice as the sole or primary reason to terminate that parent's rights under Title 30, unless the Division proves with competent, case-specific evidence that the marijuana use endangers the child." N.J. Div. of Child Prot. & Permanency v. D.H., 469 N.J. Super. 107, 113 (App. Div. 2022).

Based on the unrefuted testimony of Dr. Dyer and the Division's caseworker, the judge found Sarah's unresolved mental health issues, rather than any possible substance abuse issue, supported, in part, the Division's satisfaction of its burden under prongs one and two of the KLG statute. Because Sarah denied suffering from any mental health issues, even after Dr. Dyer's follow-up evaluation in 2021, the judge concluded she had significant shortcomings in her judgment and basic parenting skills. Additionally, the judge explained Sarah's visits with Jen were sporadic and she failed to complete court-ordered services provided through the Division. The judge further found that Sarah's "failure to participate in full treatment services and her denial as testified to by Dr. Dyer only confirms the fact that she's unable to recognize and properly treat [her] shortcomings." Thus, after considering the evidence and witness testimony, the

judge concluded Sarah was "not ready, willing, or able to perform parental functions" and the situation was unlikely to change in the foreseeable future.

Having reviewed the record, we discern no abuse of discretion in the judge's finding that the Division satisfied its burden under prongs one and two of the KLG statute. The Division presented clear and convincing evidence regarding Sarah's parental limitations, her denial of any shortcomings regarding parenting skills, and her inability to complete programs to assist her with parenting and other life skills to properly parent her daughter.

Prong four

Under the fourth prong of the KLG statute, the Division must prove that awarding kinship legal guardianship is in the child's best interests. N.J.S.A. 3B:12A-6(d)(4). In determining the child's best interests, the court shall not award KLG of the child solely because of a parent's incapacity. N.J.S.A. 3B:12A-6(c). In determining whether to appoint a specific caregiver as a kinship legal guardian, the Family Part judge must consider the following factors:

- (1) if proper notice was provided to the child's parents;
- (2) the best interests of the child;
- (3) the kinship caregiver assessment;

- (4) in cases [of Division involvement,] the recommendation of the [D]ivision, including any parenting time or visitation restrictions;
- (5) the potential kinship legal guardian's ability to provide a safe and permanent home for the child;
- (6) the wishes of the child's parents, if known to the court;
- (7) the wishes of the child if the child is 12 years of age or older, unless unique circumstances exist that make the child's age irrelevant;
- (8) the suitability of the kinship caregiver and the caregiver's family to raise the child;
- (9) the ability of the kinship caregiver to assume full legal responsibility for the child;
- (10) the commitment of the kinship caregiver and the caregiver's family to raise the child to adulthood;
- (11) the results from the child abuse record check conducted pursuant to [N.J.S.A. 30:4C-86]; and
- (12) the results from the criminal history record background check and domestic violence check conducted pursuant to [N.J.S.A. 30:4C-86].

[N.J.S.A. 3B:12A-6(a)].

Here, the judge examined the factors under N.J.S.A. 3B:12A-6(a) and found the Division demonstrated, through clear and convincing evidence, that KLG was in Jen's best interests and she should remain in Dawn's care.

The judge found Sarah received proper notice of court proceedings. She appeared at and participated in the court hearing on February 9. However, despite knowing the trial would continue the following day, Sarah failed to appear in court on February 10. As for the biological father's notice of the court proceedings, the judge noted the father's parental rights to Jen were terminated on May 19, 2014.

The judge concluded "it [was] in [Jen]'s best interest to remain in [Dawn]'s care" based on the uncontroverted evidence and testimony presented during the trial. The judge noted Dawn cared for Jen since January 2020 and was responsible for Jen's "day-to-day needs and medical care and [was the] primary point [person] and advocate for the child [at] school." As a result of Dawn's involvement in Jen's life, the judge explained, Jen performed well in school and participated in extracurricular activities. The judge found Dawn "[had] been providing proper care and a loving and stable environment," was "attuned to the child's needs," "provide[d] love and a nurturing environment," and that "[Jen] [was] thriving under her care." In relying on Dr. Dyer's testimony, the judge further found that removing Jen from Dawn's care "would be detrimental" because Sarah was "not in a position to properly provide any care going forward."

Regarding the kinship legal caregiver's assessment, the judge found "no concerns" and noted there were no records of abuse or criminal history regarding Dawn. He also acknowledged Sarah's objection to KLG. However, he stated that Jen, who was fifteen years old at the time of trial, told her attorney and the Division's caseworker that she wished to remain with Dawn under the KLG option rather than adoption. On the suitability of Dawn to raise Jen, the judge found Dawn "devoted her . . . recent life to the child [and] had advocated for services for her and assistance for her going forward." The judge reiterated his findings that Jen thrived under Dawn's care and Dawn fully attended to Jen's needs, including "academic, social, medical, and emotional." The judge stated Dawn "has been the advocate and champion for this child and provide[d] every possibility for the child to be happy and successful going forward." He found Dawn was "completely committed to rais[ing] the child to adulthood and . . . agreed to a KLG."

After evaluating the factors for the appointment of Dawn as Jen's kinship legal guardian, the judge found "by clear and convincing evidence that awarding kinship legal guardianship to [Dawn was] in [Jen]'s best interest." Accordingly, the judge entered an order appointing Dawn as the kinship legal guardian for Jen and allowed Sarah "one[-]hour after[-]school visits twice a month, on the first



and third Wednesday[] of each month, supervised by [Dawn]." The order also allowed for additional visits between Sarah and Jen at Dawn's discretion.

Having reviewed the record, we are satisfied the judge appropriately focused on Sarah's lack of fitness to parent her daughter, while acknowledging the benefits of maintaining a birth parent-child relationship, in rendering his KLG decision. There was ample credible evidence in the record regarding Sarah's continuing limitations to properly parent her child, failure to participate in the Division's offered services, and lack of parental fitness supporting the judge's award of KLG placement of Jen with Dawn.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION