

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2004-21

NEW JERSEY DIVISION  
OF CHILD PROTECTION  
AND PERMANENCY,

Plaintiff-Respondent,

v.

J.B.,

Defendant-Appellant,

and

P.P.,

Defendant.

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IN THE MATTER OF THE  
GUARDIANSHIP OF J.B., a minor.

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Submitted April 26, 2023 – Decided May 24, 2023

Before Judges Accurso, Vernoia, and Firko.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Bergen County,  
Docket No. FG-02-0043-21.

Joseph E. Krakora, Public Defender, attorney for  
appellant (Patricia Nichols and John A. Albright,  
Assistant Deputies Public Defender, of counsel and on  
the briefs).

Matthew J. Platkin, Attorney General, attorney for  
respondent (Melissa H. Raksa, Assistant Attorney  
General, of counsel; Julie B. Colonna, Deputy Attorney  
General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian,  
attorney for minor (Meredith Alexis Pollock, Deputy  
Public Defender, of counsel; Julie Goldstein, Assistant  
Deputy Public Defender, of counsel and on the brief).

#### PER CURIAM

Defendant J.B. (Joy)<sup>1</sup> appeals from a judgment of guardianship  
terminating her parental rights to J.B. (Jim), who was born in November 2013.  
Defendant P.P. (Phil), the child's father, does not appeal the termination of his  
parental rights.<sup>2</sup> Joy argues the Division of Child Protection and Permanency

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<sup>1</sup> We employ initials and pseudonyms to identify the parties, the child, and  
others to protect the child'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).

<sup>2</sup> Prior to the trial in this matter, the court accepted Phil's identified surrender  
of his parental rights to the paternal grandparents, K.P. (Kathy) and S.P. (Steve).

(Division) failed to establish by clear and convincing evidence prong one of the statutory best interests test under N.J.S.A. 30:4C-15.1(a). Joy does not challenge her failure to mitigate harm under prong two, the adequacy of services under prong three, or that terminating her parental rights would not do more harm than good under prong four. Rather, Joy contends the court erred in failing to comply with the July 2, 2021 statutory amendments to the Kinship Legal Guardianship (KLG) Act;<sup>3</sup> the court improperly admitted evidence; her counsel was ineffective; and she was deprived of due process protections. The Law Guardian seeks affirmance. We conclude, after reviewing the record in light of Joy's arguments, that the trial 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 regarding 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.

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<sup>3</sup> 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."

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 created a test 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 became involved with Joy while she was pregnant with Jim due to allegations of her drug abuse. Joy disclosed she suffered from stress and depression. After briefly moving with Jim to Florida after he was born, Joy and Jim returned to New Jersey in May 2014 and resided with Phil. During a home visit, the Division worker reported Joy had "sunken," "glazed" eyes and appeared to be under the influence.

### A. Protective Services Litigation

In August 2015, the Division again became involved with Joy based on allegations of domestic violence inflicted upon her by Phil and drug use. In October 2015, the Division filed an order to show cause (OTSC) and a verified

complaint based on allegations of abuse and neglect of Jim.<sup>4</sup> The court ordered Joy and Phil to allow the Division to inspect their home. The court further ordered Joy to attend a substance abuse evaluation and submit to urine screens and a hair follicle test. Joy did not comply with the substance abuse evaluation or drug screens.

On December 15, 2015, the Division conducted an emergency removal of Jim and requested custody, care, and supervision of the child under docket number FN-02-0151-16.<sup>5</sup> Two days later, the court returned Jim to Joy's custody but granted the Division continued care and supervision of Jim. That day, Joy tested positive for amphetamines and approximately two weeks later, her hair follicle test was positive for amphetamines, opiates, and oxycodone.

The following year, Joy's drug abuse continued. Joy was directed to undergo outpatient treatment at Care Plus for severe opioid use disorder. She

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<sup>4</sup> Docket number FN-02-0106-16.

<sup>5</sup> The court dismissed the verified complaint for investigation under docket number FN-02-0106-16. The court noted, however, that if Joy failed to attend the scheduled substance abuse evaluations, the Division may execute a Dodd removal in accordance with N.J.S.A. 9:6-8.29. "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).

successfully completed treatment in April 2016. In January 2017, the litigation under docket number FN-02-0151-16 was terminated, but Joy's case with the Division remained open until December 21, 2017.

In April 2018, the Division received a report from the police indicating that Phil threatened Joy with an empty pellet gun and stun gun. Phil was arrested and incarcerated. Joy obtained a final restraining order against Phil as a result of the incident. The next month, Jim was classified as having a disability and an individualized education program was implemented for him. In July 2018, the Division closed Joy's case.

The next month, the Division received a referral from Joy's neighbor that Joy committed fraud by allowing multiple individuals to stay in her subsidized housing and receiving mail for other individuals. The neighbor reported Joy and other adults were using illicit drugs, and Jim previously knocked on the neighbor's door naked and alone.

When a Division worker arrived that day, Joy initially agreed to undergo a urine screen but became too emotionally distraught to comply. The caseworker observed the apartment was "incredibly cluttered;" the apartment's exits were blocked; and "the living room amounted to a safety hazard." Joy denied using illicit substances and claimed she was prescribed certain

medications. She denied anyone else lived in the apartment with her except for Jim. Joy explained that Jim left the apartment when she was preparing a bath for him and taking out the garbage.

On August 13, 2018, Joy submitted a urine screen, which tested positive for prescribed medications and unprescribed medications, including buprenorphine (suboxone). Joy admitted to using suboxone because she did not want to use heroin. Three days later, a caseworker went to Joy's apartment to deliver a notice for a substance abuse evaluation. Joy did not answer the door, and the caseworker observed Jim at the top of the building's hallway stairs dressed in his pajamas, sobbing, red-faced, with mucus around his nose, dirt around his mouth, and tear stains on his cheeks. Jim stated his mother was gone for a "long, long time."

The police were notified and arrived at the scene. They found Joy sleeping in the bathroom with her pants around her ankles. Joy claimed she fell asleep because she was "up all night moving furniture." The apartment was in disarray. Joy underwent a urine screen and tested positive for amphetamines and unprescribed suboxone. The Division conducted an emergency removal of Jim, which the court upheld on August 20, 2018.



After unsuccessful attempts to place Jim with family members, he was placed in an unrelated resource home. Thereafter, Joy texted a caseworker that she planned on committing suicide, but Joy later claimed her statement was merely a "figure of speech." The caseworker arranged for Joy to be transported to Bergen New Bridge Medical Center (New Bridge) where she was involuntarily committed and underwent emergency mental health services. Joy voluntarily extended her stay. After being discharged, Joy was referred for outpatient mental health services, a substance abuse evaluation, urine screens, parenting skills classes, and psychological and psychiatric evaluations. She attended supervised weekly visits with Jim.

In October 2018, Joy completed a psychological evaluation with Dr. Pamela Brodie. Dr. Brodie is an expert in the fields of psychology and substance abuse. Dr. Brodie expressed concern that Joy's combined use of prescribed and illicit drugs placed her at risk of "acute toxicity." Dr. Brodie noted Joy failed to disclose to her psychiatrist, Dr. Judith Gurfein, her psychiatric admission to New Bridge or her prescription drug abuse history. Based on her evaluation, Dr. Brodie diagnosed Joy with depression, anxiety, attention deficit hyperactivity disorder (ADHD), sedative hypnotic or anxiolytic use disorder, and stimulant use disorder.

Dr. Brodie opined that due to her lack of insight into her "substance-involvement," Joy's ability to parent Jim was impaired, which placed him at risk of harm. Dr. Brodie noted Joy filled Phil's prescriptions while he was incarcerated, further evidencing her abuse of drugs. Dr. Brodie recommended Joy participate in a partial hospitalization program (PHP) for mental health and substance abuse issues, participate in a sleep study for narcolepsy, and comply with drug screens.

In October 2018, Jim was diagnosed with autism. The Division referred Joy to Care Plus for a PHP, individual and group parenting education, and weekly therapeutic visits with Jim. Joy fell asleep during many of her visits with Jim. Joy continued to test positive for amphetamines and suboxone. She missed several PHP appointments.

On December 3, 2018, Joy admitted to the court she left Jim unattended in August 2018 and that she suffered from mental health and substance abuse issues.<sup>6</sup> The following months, Joy tested positive for amphetamines and

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<sup>6</sup> Joy waived her right to a hearing on the established neglect finding. Her admission was sufficient for a finding of neglect pursuant to N.J.S.A. 30:4C-12. Joy knowingly, willingly, and voluntarily admitted that Jim needed services to ensure his health or safety. Thus, the Division withdrew its complaint under Title 9 and proceeded under Title 30.

unprescribed Xanax. In March 2019, the Division placed Jim with Kathy and Steve, Jim's paternal grandparents, after assessing and ruling out other relative placements. The Division learned that Joy consulted eight different doctors and thirteen pharmacies to fill prescriptions.

In April 2019, Joy completed her PHP at Care Plus. She also attended a substance abuse evaluation with Preferred Behavioral Health (PBH). PBH diagnosed Joy with moderate Xanax use disorder and recommended continued outpatient treatment. In May 2019, Joy was negatively discharged for non-attendance, and the Division directed Joy to reengage in treatment.

Joy failed to appear for a drug screen on June 21, 2019, but submitted to a test three days later, which was positive for amphetamines, suboxone, and methamphetamines. After missing several appointments, Joy completed an updated substance abuse evaluation in August 2019 and was recommended for a PHP for severe opiate use disorder and moderate benzodiazepine use disorder the following month.

During this time, the Division discussed adoption and KLG with Kathy and Steve with the aid of a Polish-speaking worker. Kathy and Steve indicated they preferred to adopt Jim. The court approved the Division's permanency plan

to terminate Joy's parental rights followed by adoption by the paternal grandparents.

B. The First Guardianship Litigation

In August 2019, the Division filed a complaint for guardianship.<sup>7</sup> She continued to test positive for fentanyl. The next month, Joy began treatment with Dr. Disha Patel for narcolepsy but was inconsistent with her appointments. Joy then transferred to the mental illness and chemical addiction program at Care Plus.

In November 2019, Dr. Karen Wells conducted a psychological and bonding evaluation of Joy, Jim, and the paternal grandparents. Dr. Wells opined that Jim was securely bonded to Joy, and she showed progress in addressing her drug and mental health issues. For these reasons, Dr. Wells recommended Joy be given additional time to comply and that the Division pursue KLG concurrently with a reunification plan. Dr. Wells noted Jim would suffer severe psychological harm if his relationship with Joy was severed. In the meantime, Joy admitted taking Adderall contrary to her psychiatrist's and Dr. Patel's instructions. The Division provided Kathy and Steve with instructions written in Polish explaining the differences between KLG and adoption.

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<sup>7</sup> Docket number FG-02-0031-20.

On January 8, 2020, the court terminated the guardianship matter and reinstated the prior child protection matter. The paternal grandparents consented to KLG. The court approved the Division's permanency plan of KLG on February 11, 2020. Joy did not agree to KLG. In February 2020, she missed two drug screens and four months later, tested positive for amphetamines, methamphetamines, and unprescribed Xanax. The Division arranged for family therapy with Joy and Kathy, but Joy's attendance was inconsistent. The Division referred Joy for an updated substance abuse evaluation and recommended she continue with the Strive Health intensive outpatient program, which she ultimately completed.

In September 2020, Dr. Wells recommended a gradual reunification plan given Joy's progress with services. Joy continued to test positive for the drugs previously noted. On October 15, 2020, the court accepted an updated permanency plan of reunification within a six-month timeframe. Joy was late for visits with Jim, which had a negative impact on him. She also fell asleep during a visit. In December 2020, Joy completed a step-down outpatient drug treatment program at Strive Health. In January 2021, Joy again tested positive for fentanyl, amphetamines, and methamphetamines.

### C. The Second Guardianship Litigation

On February 19, 2021, the Division learned Joy was arrested for credit card fraud, identity theft, and forgery. Five days later, Joy became unresponsive during a supervised visit with Jim and claimed she had a panic attack. Her visitation schedule was reduced. Joy attended another substance abuse evaluation and was diagnosed with moderate methamphetamine use disorder, severe opiate use disorder, and moderate Xanax use disorder. Joy was referred to in-patient treatment but refused. Kathy asserted adoption would be in Jim's best interest.

On March 25, 2021, the court approved the Division's permanency plan of termination of parental rights followed by adoption. The Division could not reach Joy until a month later. She tested positive again for amphetamines and methamphetamines. Joy was evicted from her subsidized apartment and missed a month of therapy sessions.

On May 6, 2021, the Division filed its second complaint for guardianship, which is the subject of the matter under review. The court held a seven-day trial. Adoption caseworker Kimberly Megnin, Dr. Wells, Dr. Samiris Sostre,

Dr. Brodie, and Thomaskutty Thomas<sup>8</sup> testified on behalf of the Division. Dr. Elizabeth Smith and Kathy testified on behalf of the Law Guardian. Dr. Kinya Swanson testified on behalf of Joy.

Megnin testified that Joy provided inaccurate explanations for Jim's removal to her treatment providers throughout the case. Megnin also stated that Joy had not engaged in court-ordered substance abuse treatment, arrived late to visits with Jim, and appeared impaired. Due to his autism, Megnin testified Jim's schedule needed structure and Joy's behaviors were highly distressing for him. In addition, Megnin explained the Division was concerned Joy was not managing her narcolepsy, which raised safety concerns. According to Megnin, the paternal grandparents were loving and dedicated caregivers to Jim and want to adopt him.

Dr. Wells testified that Joy failed to remediate issues dating back to 2019, in addition to new concerns relating to fentanyl use and the pending criminal charges, making her unable to safely parent. Dr. Wells found Jim viewed his paternal grandparents as "his primary psychological parents" and removal from their care "would adversely impact" Jim's overall functioning. Dr. Wells

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<sup>8</sup> Thomas testified as an expert in toxicology, as well as drug screens and analysis. He testified that only fentanyl would produce a positive test result for fentanyl, and confirmatory testing eliminates a false positive test result.

concluded that Jim needed permanency and recommended termination of Joy's parental rights, even in the event Joy did not continue visiting Jim.

Dr. Sostre, a psychiatrist, recommended Joy be prescribed non-habit-forming medications for ADHD and anxiety, but Joy refused to change medications. Dr. Brodie testified that Joy's substance abuse issues prevent her from parenting Jim. Dr. Smith conducted a psychological evaluation and comparative bonding evaluations. Dr. Smith testified that Jim had a strong but "highly anxious" attachment to Joy and a "secure" attachment to his paternal grandparents. In Dr. Smith's opinion, Joy has a personality disorder that reduces her insight and awareness. Dr. Smith recommended adoption because Jim has autism and he was "thriving" under his paternal grandparents' care and that KLG would have a disruptive impact on him.

Kathy testified she wanted to adopt Jim and was not interested in KLG as an alternative to adoption. She represented she would "never end" Jim's relationship with Joy post-adoption and invited Joy to see Jim on Halloween and his birthday.

Dr. Swanson noted she was concerned about Joy's "insight/judgment, substance abuse, mental health, employment and finances, and her ability to consistently provide a safe and stable parenting environment" for Jim. In Dr.



Swanson's opinion, Joy's parenting capacity was "slightly impaired." Dr. Swanson testified Jim was securely bonded to Joy and his paternal grandparents and opined KLG or plan for reunification contingent on medication monitoring, drug testing, and a safety plan addressing Joy's narcolepsy, would be in Jim's best interests.

### III.

Subsequent to the presentation of the evidence and closing arguments of counsel, the court issued a detailed and thorough written decision summarizing the matter's procedural history and making detailed 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 Jim's best interests to terminate Joy's parental rights.

More particularly, the court found Joy engaged in a long-term and consistent failure to: make herself available to provide Jim with the care, secure home, and parental attention he deserves and needs; remediate her drug use and address her physical and mental health issues; make herself available to participate in services offered by the Division; and provide Jim with the permanency to which he is entitled. The court found those failures caused Jim

harm and endangered his safety, health, and development. The court also determined that although the Division attempted to provide reasonable services, Joy demonstrated a disinterest and an unwillingness to address or remediate the harm that necessitated Jim's removal. The court further found the evidence established that termination of Joy's rights in favor of the permanent and secure home available through adoption by the paternal grandparents 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)).

Regarding prong one, Joy contends the Division failed to meet its evidentiary burden. Additionally, Joy argues the court's reasoning is unsupported by the record and Rule 1:7-4(a) findings of fact and conclusions of law were not made. We disagree and briefly address prong two, which overlaps with prong one.

During a supervised visit with Jim in February 2020, Joy was unresponsive to him, her apartment was cluttered, and unsafe. Moreover, the court highlighted that Jim's autism exacerbated his vulnerability, and he was emotionally distraught. Giving weight to the credible testimony of Dr. Wells and Dr. Sostre, the court found Jim continued to be endangered by Joy in the foreseeable future. There was substantial credible evidence in the record to support the court's finding that Joy failed to remediate her drug use and housing instability, and she engaged in criminal activity.

Joy's own expert, Dr. Swanson shared the conclusion reached by the Division's and Law Guardian's experts that she has no insight into the issues that

prevent her from being capable of parenting Jim. And, the court did not find Dr. Swanson credible because she was "unaware of a significant amount of necessary information which called into question her ultimate opinion and recommendations," and made assumptions that were unreasonable in light of the evidence, such as Joy's refusal to participate in inpatient drug treatment, her unresponsiveness to Jim at a February 2020 visit, and positive fentanyl testing.

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 Joy by clear and convincing evidence.

#### IV.

In Point I of her brief, Joy contends the Division filed the guardianship complaint on May 6, 2021, but never amended the complaint to reflect the KLG Act. She claims there was "no harm here from the parental relationship" with Jim. And, since any harm from Jim's removal from the caregivers' relationship cannot be considered by the court, it was error for the court to compare Jim's

bonding to his paternal grandparents and Joy. Joy asserts the court improperly weighed the benefits of preserving her relationship with Jim over severing the child's relationship with his paternal grandparents, thereby impacting the court's analysis of all four prongs. In essence, defendant contends the court erred by failing to consider that KLG is preferred over termination of parental rights under the amendments to the KLG statute.<sup>9</sup> We are unpersuaded.

KLG allows a relative to become the child's legal guardian and commit to care for the child until adulthood, without stripping 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

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<sup>9</sup> On July 7, 2022, Joy filed a motion for summary disposition pursuant to Rule 2:8-3 alleging that the court erred in applying the law. She raises many of the same arguments on appeal, specifically that the court failed to comply with the July 2, 2021 statutory amendments to the KLG Act and N.J.S.A. 30:40C-15.1(a)(2). On August 4, 2022, we denied Joy's motion for summary disposition.

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 enacted L. 2021, c. 154, which, in part, removed the KLG requirement that adoption be "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)). Thus, KLG may now remain a valid defense to the termination of parental rights. But, regardless of whether the amendment applies retroactively, a KLG defense requires a valid KLG alternative.

Here, Joy does correctly note that the court mistakenly referred to the old statutory standard—KLG could be considered only where adoption is "neither feasible nor likely"—under N.J.S.A. 3B:12A-6(d)(3) because that provision of the statute was repealed in 2021. However, she misstates the meaning of the amendments. 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. The KLG amendments do not prohibit a court from terminating parental rights when it is in the child's best interests under the statutory standard and there are no willing and available KLG individuals. See N.J.S.A. 3B:12A-6(d)(4).

Here, based upon our careful review of the record, the court's reference to the old statutory standard is harmless because the court specifically found KLG was not viable and, during the proceedings prior to the trial, Joy opposed KLG. Moreover, the Division produced clear and convincing evidence it pursued and considered KLG and the paternal grandparents demonstrated a clear preference for adoption. See R.G., 217 N.J. at 552 ("[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference").

Furthermore, the court did not otherwise make any findings inconsistent with the 2021 amendment to N.J.S.A. 30:4C-15.1(a)(2), which eliminated from the analysis under the second prong of the best interests standard consideration of "evidence that separating the child from [their] resource family parents would cause serious and enduring emotional or psychological harm to the child."

In New Jersey Division of Child Protection and Permanency v. 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. 11, 25-26 (App. Div. 2022). We explained, "[t]he 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.

We further determined "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 also 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).

In addition, 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 guardianship judgment is not founded in whole or in part of any consideration of the factor that is no longer pertinent under N.J.S.A. 30:4C-15.1(a)(2). The court relied on the expert testimony of Doctors Brodie, Wells and Smith regarding Joy's unaddressed substance abuse, which rendered her unfit to parent in the foreseeable future. And, any delay in permanency would add further harm to Jim. The court correctly considered the amended version of the statute. Therefore, we reject Joy's argument.

#### V.

Next, Joy argues the court improperly considered inadmissible imbedded hearsay evidence, including historical records detailing that Jim was "exposed to [Joy's] drug use" during her pregnancy. Relying upon N.J. Division of Child Protection and Permanency v. Y.N., 220 N.J. 162, 168-69 (2014), Joy avers the court improperly concluded she harmed Jim before he was born due to her positive test results for buprenorphine and norbuprenorphine. Joy also argues

the court erred in its determination the record contained a finding of abuse or neglect—specifically that in December 2018, she "knowingly and willingly" admitted she left Jim "unattended." In addition, Joy asserts the court improvidently found she suffers from unabated substance abuse absent any testimony as to the content of her laboratory test results or their "correlation to Jim's life" or her "parenting ability," in light of the fact she was on medication assisted treatment. Joy contends her test results constitute hearsay and should have been disregarded by the court. We disagree.

"Hearsay is not admissible except as provided by the [New Jersey Rules of Evidence] or by other law." N.J.R.E. 802; see also N.J.R.E. 801(c) (defining "hearsay" as a statement that "the declarant does not make while testifying at the current trial or hearing . . . [and is] offer[ed] in evidence to prove the truth of the matter asserted in the statement"). Division records may be admitted as evidence "'of any condition, act, transaction, occurrence or event relating to a child in an abuse or neglect proceeding . . . [as] proof of that condition, act, transaction, occurrence or event' if it meets the prerequisites for admission of a business record." N.J. Div. of Child Prot. & Permanency v. J.D., 447 N.J. Super. 337, 347 (App. Div. 2016) (alteration in original) (quoting N.J.S.A. 9:6-8.46(a)(3)).

The New Jersey Rules of Evidence provide, in relevant part, that a business record may be admitted if it "was made in the regular course of business and it was the regular practice of that business to make such writing or other record." N.J.R.E. 803(c)(6); see also R. 5:12-4(d) (stating the Division "shall be permitted to submit into evidence . . . reports by staff personnel or professional consultants. . . . [and the c]onclusions drawn from the facts stated therein shall be treated as prima facie evidence, subject to rebuttal"). Hearsay embedded in such records, however, "must satisfy a separate hearsay exception." J.D., 447 N.J. Super. at 347-48 (citations omitted).

Here, we conclude the court's characterization of admitted Division records as business records complied with Rule 5:12-4(d), N.J.R.E. 801(d), and N.J.R.E. 803(c)(6). The court highlighted Megnin testified she was familiar with the documents; they were made in the ordinary course of the Division's business; and they were made at or about the time that the events were depicted. At trial, the court stated that any hearsay contained in the documents "will be disregarded." Joy fails to articulate how any embedded hearsay was improperly relied upon by the court.

Joy's drug screen results were properly admitted under Rule 5:12-4(d). Moreover, Joy admitted to using opiates while pregnant with Jim and that she

was later noncompliant with her narcolepsy treatment and medication. Therefore, we conclude the court did not base its first prong analysis on inadmissible hearsay. See J.D., 447 N.J. Super. at 348 (citing N.J.R.E. 803(b)(1)) (A "defendant's own statements are admissible as statements of a party-opponent.").

We also reject Joy's argument that the court's failure to conduct a hearing to adjudicate the neglect finding and dismissal of the Title 9 litigation nullifies her December 2018 admission against interest. A finding under prong one does not require a determination of abuse or neglect. See N.J. Div. of Youth & Fam. Servs. v. A.P., 408 N.J. Super. 252, 259-60 (App. Div. 2009). Given the overwhelming testimonial evidence regarding Joy's parenting deficits, her long-term inability to address her deficits and provide permanency for Jim, and the experts' uniform conclusion she has been, and will continue to be, unable to safely parent Jim, reversal is unwarranted.

## VI.

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 Division has proven 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