

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2072-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

T.M.,

Defendant-Appellant,

and

J.V., deceased,

Defendant.

IN THE MATTER OF THE
GUARDIANSHIP OF M.V.,
a minor.

Submitted February 7, 2023 – Decided April 11, 2023

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Hudson County,
Docket No. FG-09-0133-21.

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

Matthew J. Platkin, Attorney General, attorney for
respondent (Donna Arons, Assistant Attorney General,
of counsel; Wesley Hanna, Deputy Attorney General,
on the brief).

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

PER CURIAM

Defendant T.M. (Tia) appeals from a judgment terminating her parental rights to her biological son M.V. (Max) and granting the Division of Child Protection and Permanency (Division) guardianship of Max with the plan that he be adopted by his paternal aunt M.V. (Mary).¹ Tia argues the trial court erred in finding the Division had proven by clear and convincing evidence the four prongs of the best-interests test necessary for the termination of parental rights. See N.J.S.A. 30:4C-15.1(a). The Division and Max's law guardian contend the

¹ We use initials and fictitious names to protect privacy interests and to maintain the confidentiality of the record. See R. 1:38-3(d)(12).

judgment is supported by substantial credible evidence in the record. Having reviewed the record in light of the parties' contentions and the applicable law, we affirm substantially for the reasons explained by the Family Part judge in her comprehensive written opinion.

The facts and evidence are detailed in judge's opinion, which she rendered after a three-day trial. Accordingly, we summarize only certain facts and procedural events. Max was born in August 2018. His father, J.V., died before Max's birth.

The Division first became involved with Tia and Max in October 2018, when Tia brought Max to a hospital, where he was diagnosed with a skull fracture. According to Tia, Max had fallen out of her bed. The Division investigated and found abuse or neglect had not been established.

On February 19, 2020, Mary reported to the Division Tia had been leaving Max with random people and had been driving under the influence with Max in the car. After the Division received that report, Division caseworkers went to Tia's residence. No one responded when they knocked on the door. Ten minutes later, they saw Tia exit a car. When the caseworkers asked to see Max, Tia initially advised them Max was not home. Tia was acting "bizarre," staring into space and forgetting what she was discussing with the caseworkers. She denied

being under the influence of any substance. She admitted to smoking marijuana weekly, but asserted she smoked outside and not while caring for Max. The caseworkers offered to wait until Max returned home. After about twenty minutes, Tia told the caseworkers Max had been home with her downstairs neighbor. The caseworkers found Max in the upstairs apartment, alone, crying, and in a soiled diaper.

The Division implemented a safety protection plan, requiring Tia to be supervised while caring for Max, to provide a urine screen, and to complete a substance-abuse assessment. Tia identified her brother's ex-girlfriend as someone who could supervise her with Max, but the ex-girlfriend was available for only a limited time. Tia did not identify anyone else who was willing to supervise her with Max, and she declined the Division's offer to have "homemakers" in that role. On February 21, 2020, Max was removed from Tia's care and placed in a non-family resource home. On February 25, 2020, Tia provided a urine screen, which was positive for PCP. The court granted the Division custody of Max and directed that Tia be accorded weekly supervised visits with Max. The court also ordered Tia to submit to a psychological evaluation, substance-abuse evaluation and treatment, and random drug

screening. Max remained in the resource home for three months until he was placed with Mary, where he has remained.

The Division provided Tia with numerous services, including referrals to substance-abuse treatment programs, referrals to psychological evaluations, furniture assistance, and transportation. Tia failed to complete successfully any of the substance-abuse treatment programs to which the Division had referred her, repeatedly tested positive for PCP, and missed scheduled psychological evaluations. Tia failed to attend a scheduled updated evaluation for the guardianship proceeding, preventing the completion of a bonding evaluation. Following the evaluations she had completed, she did not attend the recommended individual counseling. Her last documented urine screen was taken on May 24, 2021, and was positive for PCP and marijuana. Tia concedes in her brief "she continued to test positive and struggled with completing drug treatment programs successfully through 2020 and into the first half of 2021." In October 2021, Tia told a Division caseworker she was still using "a lot of marijuana" and declined to take a urine test because "she needed time to get her urine clean."

Tia advised the Division she had admitted herself into an Integrity House twenty-eight-day in-patient program in June of 2021. She provided the Division

with a certificate of completion from Integrity House. The certificate did not provide any information regarding whether Integrity House had recommended Tia engage in other treatment or services after her release. Tia refused to sign an authorization form releasing records from Integrity House to the Division despite being court ordered to do so. Tia advised a Division caseworker she had a sponsor but did not provide the caseworker with any contact information regarding the sponsor or proof of any attendance in any type of aftercare treatment program.

During a February 18, 2021 permanency hearing, the Division presented a permanency plan consisting of the termination of Tia's parental rights followed by Mary's adoption of Max. The court declined to consider the plan until "mediation could be held to determine if [Kinship Legal Guardianship (KLG)] would be deemed appropriate." After the mediation was held, the court approved the Division's permanency plan in March 2021.

The guardianship trial took place in November 2021 and February 2022. In addition to submitting numerous documents into evidence, the Division presented testimony from a Division adoption caseworker, Mary, and psychologist Dr. Ada Liberant, who had evaluated Tia in August and September 2020. Dr. Liberant testified Tia initially had reported "she had gotten a bad

patch of marijuana that must have been laced with PCP" but then "reluctantly acknowledge[d] that she had a problem with angel dust, which is another name for PCP." According to Dr. Liberant, "active PCP use . . . is a significant risk factor for safe parenting because it could lead to dissociated states, . . . altered mental states, delusions, hallucination, just kind of a break from reality which would be a significant risk factor for being a parent." Dr. Liberant testified about Tia's risk of relapsing given that "she had no insight into her substance abuse issues and triggers for use." Dr. Liberant also opined that "while actively using, [Tia] was not safe enough to be around [Max] unsupervised and needed supervision in place until such time that she demonstrated abstinence" for "four to six months." Dr. Liberant recommended Tia undergo a full psychiatric evaluation and a neurological workup to assess for long-term effects of PCP use, engage in individual psychotherapy so "she could learn coping skills . . . so that she wouldn't have[] to rely on substance abuse to deal with negative effects," and be reevaluated in terms of her ability to safely parent after a four to six month "demonstrated abstinence from substances." Tia's counsel conceded Tia was "not able . . . to contradict [Dr. Liberant's] testimony with testimony and/or proof."

In addition to detailing the Division's contact with Tia, the services the Division had offered to Tia, and Tia's history of noncompliance and positive PCP tests, the Division caseworker testified Tia had missed about half of her scheduled visits with Max. She also testified the Division had assessed other relatives as possible placements for Max, had had more than one discussion with Mary about KLG and adoption, and had provided Mary with written materials about the differences between KLG and adoption. The other relatives were unwilling to care for Max.

Mary confirmed the Division had discussed KLG with her "[s]everal times" and had explained the differences between KLG and adoption, including as recently as a few weeks before her testimony. Mary testified she had participated in two court-ordered mediations, had had several months to consider the issue, and had "put a lot of thought into it." She was "firm on adoption" and unwilling to serve in a KLG role because she "would like to protect [Max] and [didn't] want to be dragged in a couple of years back to court." She explained her reasons for wanting to adopt Max:

He's been here for a while and we love him and this is what I think is best for him just because of the things that have happened in the time that he's been here. I strongly believe that it's to his best benefit for him to remain where he is, with his family. He's being taken

care of. He's thriving and I want to . . . make sure that he is taken care of properly.

Tia did not to testify or call any witnesses.

Based on that evidence, the judge made extensive findings of fact and conclusions of law. She found Dr. Liberant's testimony to be credible and uncontroverted and that Tia had not "demonstrated sustained abstinence as recommended by the expert before she could safely parent her son." The judge addressed the four prongs of the best interests of the child test. See N.J.S.A. 30:4C-15.1(a). Applying her factual findings to the law, the judge found the Division had proven each of the four prongs by clear and convincing evidence.

Addressing prong one, the judge found the Division had proven Max had been harmed "because of [Tia's] addiction and inability to remediate her drug addiction and provide a safe and stable home for her son." Referencing Dr. Liberant's findings and recommendations, the judge recognized Tia had attended a neuropsychological evaluation but had admitted to continued marijuana use after completing a twenty-eight-day in-patient treatment program, had not engaged in psychotherapy, had failed to attend an updated psychological evaluation, and had refused to participate in a random drug screen. From that evidence, the judge concluded Tia had "failed to demonstrate that she has remained substance free." Citing New Jersey Division of Youth and Family

Services v. B.G.S., 291 N.J. Super. 582, 592 (App. Div. 1996), and New Jersey Division of Youth and Family Services v. A.W., 103 N.J. 591, 612 (1986), the judge held it was "against the child's best interest to prolong resolution of his status by indefinitely extending foster care placement."

Concerning prong two, the judge found "no evidence that [Tia] has been able to abstain from abusing PCP despite completing a [twenty-eight]-day drug program" and concluded Tia had "not corrected the circumstances that led to the removal of her child" and had "refused to cooperate with the Division," despite the clear findings and recommendations of Dr. Liberant. The judge held that Tia's refusal to cooperate with the Division, maintain sobriety for four to six months, or "correct[] the circumstances that led to the removal of [Max]" proved Tia was unwilling or unable to eliminate the harm facing Max and was not likely to be able to provide a safe and stable home for him in the near future.

Turning to prong three, the judge found the Division had provided "a comprehensive number of reasonable efforts" since becoming involved with the family in 2020. The judge identified the numerous evaluations, treatment programs, and other assistance the Division had offered Tia. The judge found that despite the efforts the Division had made to enable Tia to visit Max, Tia had attended only fifty percent of the visitations scheduled between July 2020 and

April 2021. The judge found the Division had adequately explored alternatives to termination, but none of those alternatives had been viable.

With regard to prong four, the judge found there was "no viable parent that [could] now or in the foreseeable future safely parent [Max]" and that terminating Tia's parental rights would not do more harm than good. In making that finding, the judge acknowledged a bonding evaluation had not been completed and considered that Tia could have had significantly more visitations with Max than she opted to have. The judge found Max now has a large extended family for support and that "no evidence . . . show[ed] that terminating defendant's rights will cause more harm than good."

In this appeal, Tia argues the judge erred in finding each of the four prongs under the best-interests standard. Challenging the judge's factual findings, Tia asserts Max never suffered in her care, her completion of the Integrity House twenty-eight-day program was sufficient to demonstrate sustained sobriety, the Division provided only "cookie-cutter type services" and had not made reasonable efforts regarding Tia, and that KLG was an available option. She argues the judge impermissibly placed the burden on her to disprove she was using drugs, made a reversible error when she misattributed a quote to Dr.

Liberant, and failed to consider fully recent statutory amendments. We disagree and affirm.

A review of the record establishes that each of the judge's findings concerning the four prongs under the best-interests standard is supported by substantial credible evidence. N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 447-48 (2012). Moreover, the judge correctly summarized the law and correctly applied her factual findings to the law. N.J. Div. of Child Prot. & Permanency v. P.O., 456 N.J. Super. 399, 407 (App. Div. 2018). The judge properly relied, in part, on the unrebutted testimony of Dr. Liberant, who had evaluated Tia and had factual bases for her opinions. See N.J. Div. of Child Prot. & Permanency v. R.L.M., 236 N.J. 123, 146 (2018) (finding "[i]n a termination of parental rights trial, the evidence often takes the form of expert opinion testimony by psychiatrists, psychologists, and other mental health professionals").

Defendant criticizes Dr. Liberant's evaluation for being "dated" in that it was performed before Tia completed the Integrity House program. In weighing the evidence and assessing the credibility of witnesses, the judge was free to consider the timing of the report along with Tia's failure to attend a scheduled updated evaluation for the guardianship proceeding and refusal to sign an

authorization releasing records from Integrity House. "[W]e apply a deferential standard in reviewing the family court's findings of fact because of its superior position to judge the credibility of witnesses and weigh the evidence," N.J. Div. of Child Prot. & Permanency v. J.R.-R., 248 N.J. 353, 368 (2021), and "because it possesses special expertise in matters related to the family," F.M., 211 N.J. at 448. "Particular deference is afforded to decisions on issues of credibility." N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007). Dr. Liberant's testimony was uncontroverted, and we defer to the judge's finding that it was credible.

Defendant's primary argument is that the judge improperly shifted the burden of proof to Tia and focused on a lack of evidence. However, the judge's opinion is not based on "an insidious shift in the burden of proof" but a correct analysis of the evidence before the court. Dr. Liberant testified Tia had acknowledged she had a problem with PCP; active PCP use is a "significant risk factor for safe parenting"; Tia's lack of insight into her substance-abuse issues and triggers meant she had a risk of relapse; Tia needed a neurological workup to assess for long-term effects of PCP use and individual psychotherapy to learn coping skills to avoid relying on substance abuse; and Tia could not safely parent Max until she had had four to six months of sobriety.

The evidence presented at trial showed Tia's last documented drug screen was positive for PCP and marijuana, Tia had failed to complete any of the substance-abuse programs to which the Division had referred her, and that, although Tia had a certificate of completion from the Integrity House program, she also had admitted to a Division caseworker that after that program she was still using "a lot of marijuana" and declined to take a urine test because "she needed time to get her urine clean." That evidence supports the judge's finding that Tia did not have the four to six months of sobriety necessary for her to be able to safely parent Max and that it was unlikely she would be able to provide a safe and stable home for Max now or in the foreseeable future.

Defendant's argument that the 2021 statutory amendments to the KLG Act, N.J.S.A. 3B:12A-1 to -7, and to N.J.S.A. 30:4C-15.1(a)(2) require reversal rests on an inaccurate interpretation of the law and is not supported by the credible evidence in the record. Under the 2021 amendments to the KLG Act, courts are no longer required to find, before granting KLG, that adoption was "neither feasible nor likely," which had been a factor in the determination as to whether KLG was the appropriate permanency plan. Compare L. 2021, c. 154, § 4 with N.J.S.A. 3B:12A-6(d)(3) (2006). As amended, the KLG Act ensures that a resource parent's willingness to adopt no longer forecloses KLG. The

amendments to the KLG Act do not impact a court's application of the best-interests test, as codified in N.J.S.A. 30:4C-15.1(a)(1) to (4), in a parental-termination case.

The only amendment to N.J.S.A. 30:4C-15.1(a) occurred in prong two, which no longer requires a court to weigh the potential harm caused by severing the bond between a child and a resource parent in its determination of whether a delay of permanent placement will add to the harm facing the child. See N.J. Div. of Child Prot. & Permanency v. D.C.A., 474 N.J. Super. 11, 25 (App. Div. 2022) (finding that in the recent amendment to prong two, "[t]he Legislature did not alter the other components" of the best-interests test). Under the amended statute, the best-interests test "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.

The Division assessed other relatives as possible placements for Max; none of them were willing to care for him. The Division had multiple discussions with Mary about KLG and adoption, including one discussion that took place just a few weeks before Mary testified at trial, and provided her with

written materials regarding the differences between them. Before approving a permanency plan that involved termination of Tia's parental rights, the judge ordered another mediation to take place to determine if KLG was appropriate, and Mary participated in that mediation. Mary explained on the record under oath why she had rejected serving in a KLG role and why she wanted to adopt Max. In her analysis of prong two of the best-interests test, the judge did not consider caregiver bonding. On that record, we perceive no error in the judge's finding of no viable KLG alternative and that it was in Max's best interest to terminate Tia's parental rights.

We recognize the judge misattributed to Dr. Liberant a quote about a child's need for permanency. That error, however, was harmless given the totality of the evidence in the record and statutory and case law acknowledging the "potential future harm caused by a 'delay of permanent placement.'" N.J. Div. of Youth & Fam. Servs. v. T.S., 417 N.J. Super. 228, 244 (App. Div. 2010) (quoting N.J.S.A. 30:4C-15.1(a)(2)). In the 2021 statutory amendments, the Legislature left in place in prong two of the best-interests test "the delay of permanent placement" language. N.J.S.A. 30:4C-15.1(a)(2). Thus, a child's "need for permanency" remains a consideration in parental-termination cases. As we held in T.S., "parents dabbling with addictive substances must accept the

mandate to eliminate all substance abuse. Such unabated behavior initiates the foster care placement of their children and causes continuing harm by depriving their children of necessary stability and permanency." 417 N.J. Super. at 245.

To the extent we have not otherwise commented on them, we have duly considered defendant's other arguments and conclude 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