

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3263-21

NEW JERSEY DIVISION  
OF CHILD PROTECTION  
AND PERMANENCY,

Plaintiff-Respondent,

v.

T.A.R.,

Defendant-Appellant,

and

Y.R. and J.J.E.,

Defendants.

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IN THE MATTER OF THE  
GUARDIANSHIP OF M.M.R.,  
N.A.R., J.I.R., J.N.R., and  
Y.J.R., minors.

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Argued May 10, 2023 – Decided May 26, 2023

Before Judges Currier, Mayer and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FG-07-0039-22.

Adrienne Kalosieh, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Adrienne Kalosieh, of counsel and on the briefs).

Meaghan Goulding, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Meaghan Goulding, on the brief).

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

Todd Wilson, Designated Counsel, argued the cause for minors N.A.R., J.I.R., J.N.R., and Y.J.R. (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Meredith Alexis Pollock, Deputy Public Defender, of counsel; Todd Wilson, on the brief).

## PER CURIAM

Defendant T.A.R. (Tia)<sup>1</sup> appeals from a June 7, 2022 Family Part guardianship judgment terminating her parental rights to her five minor children.

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<sup>1</sup> We use initials and pseudonyms to protect the identity of defendants, their children, and the children's resource parents. R. 1:38-3(d)(12).

We affirm, substantially for the reasons expressed by Judge Garry J. Furnari in his comprehensive oral opinion.

I.

Tia is the biological mother of M.M.R. (Meg), born in October 2014; N.A.R. (Noelle), born in February 2016; J.I.R. (Joe), born in July 2017; J.N.R. (Jack), born in August 2018; and Y.J.R. (Yuri), born in January 2020. Meg's putative father, defendant J.J.E., was never located nor was his paternity confirmed, and Joe's father was never identified. In January 2022, defendant Y.R. (Yogi) executed an identified surrender for his three children, Noelle, Jack and Yuri.

Tia has a lengthy history with the Division of Child Protection and Permanency (Division), dating back to when she was a teenager and needed placement in a resource home. The Division became involved with Tia again in 2014, when Meg was just two months old, after it received a referral from a service provider that Tia had no stable housing. Once Tia secured transitional housing for herself and her infant, the Division closed its case.

In October 2015, the Division received another referral, this time concerning Tia's mental health and ability to parent. By then, Tia was pregnant

with Yogi's child, Noelle. Tia engaged in therapy and the Division closed its case two months after commencing its investigation.

In February 2016, Tia contacted the Division herself to report Yogi threw a knife at her, bruised her arm, and threatened to kill Meg. Although Tia obtained a final restraining order against Yogi and agreed to meet with a domestic violence liaison, she refused to go to a domestic violence shelter and declined services. Several months later, Tia moved in with Yogi while her restraining order against him was still in effect. She admitted she renewed her relationship with him after he was released from jail in October 2016.

The Division received another report of domestic violence between Yogi and Tia in December 2016. Tia stated Yogi choked and kicked her in the presence of Meg and Noelle. The Division learned Tia had no housing for the girls and that she was still in contact with Yogi after the attack. Due to the Division's ongoing concerns about the risk of harm to the girls, it removed them and referred Tia for various services, including domestic violence counseling, therapy, and housing assistance.

Shortly after the girls were removed, Tia dismissed her existing restraining order against Yogi and insisted he should be able to visit with the

girls at the Division's offices. Also, during a January 2017 psychological evaluation, Tia stated she and Yogi would be attending couples counseling.

By April 2017, Tia reported she and Yogi were no longer a couple. That same month, following a fact-finding hearing, the trial court entered an order under N.J.S.A. 9:6-8.21(c), finding Yogi abused or neglected Meg and Noelle.

In July 2017, three days after Joe's birth, the Division was granted custody of the infant and he was added to the existing Title Nine litigation. Because Tia successfully completed domestic violence counseling and secured housing at a shelter, she was reunified with Meg, Noelle, and Joe in February 2018. Contemporaneously, the trial court ordered that Yogi's contact with the children would remain supervised.

Less than a month later, Meg was hospitalized with breathing problems. She had extensive bruising on her face and chin. Tia admitted she left Meg and Joe in Yogi's care, in violation of the court's order. Accordingly, the Division removed the children again and placed them in their prior resource homes.

In June 2018, after Tia complied with additional services, the trial court returned custody of the children to her. The Division continued to monitor the family and provide services, including an in-home parenting aide and therapy for the children. Several months later, it received a referral from Meg's school

that the child had lice. Meg's hair was found to be matted with large knots; Noelle also had lice and matted hair. Tia claimed she used a treatment shampoo once but "the treatment[] did not work," so she did not apply it again as required. Instead, she used vinegar to treat the lice, based on her friends' suggestions. An investigator observed the prescription boxes for the treatments were unopened.

In November 2018, the Division received a referral from Joe's pediatrician that the child had bruises and scratches on his face. Tia could not explain the injuries. Following an investigation, the Division determined Meg also had visible injuries to her face. Meg disclosed Yogi put his foot on her face after she wet the bed. The Division again removed Meg, Noelle, and Joe, and also removed four-month-old Jack.

In December 2018, the trial court awarded the Division custody of the children. The following month, Meg's resource parents reported Meg had pulled down another child's pants and placed her finger in the child's vagina. Meg stated she learned this behavior from Yogi. Meg was removed from her placement and eventually placed at a residential facility.

On April 4, 2019, following a fact-finding hearing regarding incidents from November and December 2018, Judge James Paganelli entered an order finding Tia and Yogi abused or neglected the children. The order stated Tia

"was not to be in a supervisory position between [Yogi] and the children[,] and [Yogi] placed his foot on [Meg's] face . . . causing bruising on both sides of her face."

After the Division filed a guardianship complaint in November 2019, the trial court dismissed the Title Nine case. That month, Meg was discharged from her residential program and placed with a resource parent who requested Meg's removal the following month. When Meg was placed again, she disclosed to a new resource parent that Yogi sexually abused her and put his private part in her mouth and "peed." She also reported Yogi punched and kicked her. The matter was referred to the prosecutor's office and Meg underwent a diagnostic evaluation. She was recommended for trauma-focused therapy and to have no unsupervised contact with Yogi.

Shortly after Yuri's birth in January 2020, the Division was awarded custody of the infant and Yuri was added to the guardianship matter. During this time, Dr. Eric Kirschner conducted a psychological evaluation of Tia; he also performed comparative bonding evaluations and evaluated Yogi. Following his assessments, Dr. Kirschner agreed with the Division's plan to terminate Tia's parental rights as to Noelle, Joe, Jack and Yuri. But because Meg was still without an adoptive placement and had no caregiver to mitigate

the harm Meg would suffer if she was separated from her mother, Dr. Kirschner supported the Division's attempts to find an adoptive placement for Meg while also working towards reunification for the child. He also stated he had "serious concerns as to [Yogi's] fitness to parent" and opined Yogi's prognosis for being able to parent in the foreseeable future was "poor to guarded."

In October 2020, Dr. Kirschner performed additional psychological and comparative bonding evaluations. Around this time, Tia informed the Division that she and Yogi were no longer a couple, and she was in a new relationship. Because Tia was compliant with services and demonstrated some insight about her challenges, Dr. Kirschner recommended reunification between her and all five children. However, he recommended that reunification occur gradually.

Also in October 2020, Dr. Minerva Gabriel conducted a psychological evaluation of Tia and comparative bonding evaluations. Based on her assessments, Dr. Gabriel recommended that Tia be reunified with her children. The trial court subsequently dismissed the guardianship litigation and reopened the Title Nine case.

In December 2020, Meg started seeing her mother for unsupervised visits; she was reunified with Tia a week later. When the Division visited Tia the next month, she appeared to be overwhelmed. Therefore, the Division provided



additional services, including increased parent aide hours and daycare assistance. Later in January 2021, Joe and Yuri were reunified with Tia. Just three days after she was reunified with the two boys, Tia told the Division she planned to send Meg and Joe to stay with a friend in New York. She also refused to comply with family preservation services. Due to its ongoing concerns, just nine days after Joe and Yuri were reunified with their mother, the Division removed them. The boys were returned to their prior resource home and reunification plans for Noelle and Jack were placed on hold.

Once Joe was removed from Tia's custody, a caseworker observed he looked thinner, had scratches on his nose, lip, and neck, and one of his fingernails was missing. Joe was taken to the emergency room based on the severity of his injuries and a doctor concluded Joe's injuries were consistent with physical abuse. Additionally, the doctor determined Joe should have been treated for his injuries sooner. Tia claimed Joe bit his fingernail but admitted she did not seek medical attention for his condition. Further, she blamed his bruises on tight-fitting clothing.

In February 2021, Meg disclosed to a caseworker that Yogi came to the house often and she did not like it when he was in the house. Meg asked the worker to "call the cops" so Yogi could go to jail and stop hurting her mother.

She also implored the worker not to tell Tia or Yogi what she said because it was "a secret." Concerned that Yogi had access to Meg and was in violation of a court order prohibiting such contact, the Division removed Meg and placed her in her previous resource home. Meg's resource parent expressed a continuing commitment to help the child but confirmed she was not interested in adopting Meg or entering into a kinship legal guardianship (KLG) for the child. The resource parent stated that although Meg was "making progress," she was physically aggressive and acted in a "very sexual" way.

Dr. Kirschner re-evaluated Tia in March 2021. He issued a report two months later, concluding Tia "had made significant progress towards reunification with her children" by the time he evaluated her in October 2020, when "she had reportedly cut all ties with [Yogi] . . . for more than six months." But given her failed reunifications with Meg, Joe, and Yuri in February and March 2021, as well as Joe's recent medical evaluation for bruises and his unexplained fingernail injury, Dr. Kirschner no longer believed permanency could be achieved through reunification. He noted Tia was defensive and unwilling "to be forthcoming about recent events" negatively impacting the children, and that "[h]er explanation of events appeared to be inconsistent and contradictory with . . . the record." He also stated Tia "appeared to blame the

Division for her difficulties." Accordingly, he concluded that "[s]erious questions and concerns existed regarding [Tia's] ability to safely protect her children from physical and psychological harm while in her care." Dr. Kirschner highlighted results from Tia's prior testing which showed "areas of [her] ongoing parental deficit." He concluded "she lacked nurturing skills and struggled to handle parenting stresses." Thus, he now recommended "the Division pursue the children's permanency through alternative avenues, such as resource parent adoption."

In June 2021, the Division discussed the differences between adoption and KLG with Noelle and John's resource parents, as well as Joe and Yuri's resource mother. Each resource parent stated they preferred to adopt the children in their care.<sup>2</sup> That month, the court approved the Division's permanency plan to terminate Tia's parental rights, followed by adoption. Also in June 2021, the Division substantiated Tia for physical abuse of Joe and placing Meg at risk of harm in February and March 2021, respectively.

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<sup>2</sup> According to the record, by September 2021, Noelle and Joe's resource parents separated but agreed one of the resource parents would adopt the children and co-parent with the other.

In August 2021, Tia announced she was engaged to R.R. (Rick). The Division subsequently learned Rick had a criminal history and a history of domestic violence involving his sister and ex-wife.

When Dr. Kirschner evaluated the couple in December 2021, Rick and Tia downplayed Rick's criminal and domestic violence history. Additionally, Rick stated the couple had postponed their wedding "to wait for the right timing." Tia also admitted to Dr. Kirschner that "she had not been forthcoming . . . [during] her previous evaluation . . . in March 2021, in particular [with] regard to domestic violence between herself and [Yogi]," and she "had not been forthcoming [with] her [therapist] at the time."

Based on the December 2021 evaluation, Dr. Kirschner found Tia had "multiple unsuccessful reunifications . . . over the past few years with the most recent one in early 2021, which lasted less than a few months before removal due to substantiated allegations of neglect and abuse against [Tia]." Therefore, he concluded,

reunification is not recommended. . . . The clinical data continue[] to raise significant concern as to [Tia's] insight and judgment, in particular regard[ing] her ability to meet her children's needs for safety, stability, and ultimately the permanency that they deserve [, which] she has been unable to provide to them for most of their lives. At this point, it would be asking a lot from even the most resilient of children to endure

another unsuccessful reunification. [Tia's] children are desperately in need of permanency. The data suggest[] . . . she . . . contributed to delays in the children attaining permanency up to this point and to a certain extent, the delay in the children's permanency has likely contributed to some of their emotional and behavioral difficulties. Given the long-standing history of this case, an extension of time to attain permanency is not recommended at this time as it would only serve to further delay the children's permanency.

Dr. Kirschner also expressed concern that Rick "appeared to portray himself as the victim in all of [his domestic violence] incidents, . . . and . . . externalized blame onto multiple others." The doctor further determined "the clinical data raised concern as to the children's welfare and well-being if the [c]ourt was to . . . reunify [the children] with [Tia] and her fiancé."

Regarding his comparative bonding evaluations, Dr. Kirschner concluded as to the four youngest children,

their resource homes . . . provided them with consistency, stability and safety over the past few years, which . . . included multiple placements due to unsuccessful reunifications. . . . These children's respective resource parents will likely be able to mitigate the impact of harm to these children in the event of termination of parental rights so as to not be serious and enduring. . . .

[T]ermination of parental rights would not do them more harm than good as it would provide them with an opportunity to attain consistency, stability, safety and ultimately permanency, [which] neither of their parents

have been able to provide for them much of their lives, including most of the past three years. . . .

As for [Meg], . . . she is not in a resource home that is committed to her adoption at this time. She has been placed in her current resource home on multiple occasions following unsuccessful reunifications. As the oldest of the children, [Meg] has been removed from her mother's care on four occasions in the past five years, which includes three unsuccessful reunifications up to this point. While [Meg] would be vulnerable to experience serious and enduring harm in the event of termination of her mother's parental rights, there remains concern as to [Tia's] ability to provide her with adequate safety, stability and ultimately permanency, as well as the impact of another unsuccessful reunification on [Meg's] well-being. It is [my] opinion based on a reasonable degree of psychological certainty that termination of parental rights would not do [Meg] more harm than good as it would provide her with an opportunity to attain consistency, stability, safety and ultimately permanency, [which] her mother has been unable to provide for most of her life, with the past five years mostly in resource placement. [Meg] would benefit from placement in a therapeutic pre[-]adoptive resource home, whereby adoption could serve to mitigate the impact of harm so as to not be serious and enduring, as would her continued participation in outpatient mental health services to explore her . . . feelings regarding adoption in a therapeutic environment.

The guardianship trial commenced on June 1, 2022. The Division called four witnesses: a family caseworker, an adoption caseworker, a casework supervisor, and Dr. Kirschner. The Division workers testified about the various

removals endured by Tia's children, as well as its placement efforts, including its assessment of numerous relative resources who were ruled out. Additionally, the adoption caseworker testified she explored adoption and KLG with the four younger children's resource parents and they opposed KLG but wanted to adopt the children. Dr. Kirschner testified consistent with his evaluation reports.

The Law Guardian supported the Division's plan to terminate Tia's parental rights and called no witnesses. Tia testified and also called her therapist, Joyce Mierzejwski, and Dr. Gabriel, to testify on her behalf. Mierzejwski testified she had treated Tia since she was a teenager and Tia had turned her life around after the most recent removal. Mierzejwski also stated that Tia admitted she was not honest with Mierzejwski in the past, but Tia had become "a phenomenal parent" who now was "spot on with the kids." Therefore, Mierzejwski supported Tia's reunification with the children.

Dr. Gabriel also testified she was in favor of Tia's reunification with the children. She found all of the children were significantly attached to Tia and Tia could mitigate the harm the four younger children might suffer if removed from their resource parents. Notably, Dr. Gabriel admitted during cross-examination that she did not know about Meg, Joe and Yuri's most recent failed reunification. She also was unaware that after that failed reunification, the

Division substantiated Tia for creating a risk of harm and for having abused or neglected the children.

On June 7, 2022, following three days of trial, Judge Furnari terminated Tia's parental rights. He found the Division satisfied each prong of the best interests test, N.J.S.A. 30:4C-15.1, by clear and convincing evidence. The judge's oral opinion thoughtfully analyzed each prong and gave careful attention to the importance of permanency and stability for the children.

Initially, the judge found the children were removed from Tia's care on multiple occasions and the Division provided various services to Tia throughout the litigation. Judge Furnari also concluded that despite the Division's reasonable efforts, and Tia taking advantage of certain services the Division provided, she repeatedly placed the children at risk of harm or subjected them to harm by virtue of her relationship with Yogi and was unable to eliminate that harm.

Next, the judge concluded the Division "made more than reasonable efforts" to reunify Tia with her children, and in fact, "made extraordinary efforts." He stated that "[t]he Division . . . provided psychological, psychiatric evaluations, referral[s] to domestic violence counseling, parenting classes, Family Preservation Service, supervised visitation, paternity testing, relevant



assessments, transportation, assistance, referral to Early Intervention Services, [and] child care." Further, he found there were "really no alternatives to termination of . . . parental rights," although "the Division . . . explored every alternative." Judge Furnari concluded "the Division . . . continued to assess[] numerous relative resources for the children" and there also were "unsuccessful placements" but the Division "finally had these children . . . in . . . placement[s] that [were] consistent and . . . meeting their needs."

Additionally, the judge found Meg currently had no permanent placement, but the Division had coordinated multiple placements for her and "clearly explored every possible alternative." The judge also observed Meg was "in [ten] homes and . . . [fourteen] different placements . . . over a period of four and a half years."

Finally, having considered the results of Tia's psychological and comparative bonding evaluations, Judge Furnari found the Division satisfied its burden in demonstrating termination of Tia's parental rights would not do more harm than good. He stated, "it would be not in the child[ren's] best interest to prolong the resolution of the[ir] status by extending indefinitely current foster care placement," recognizing their "need for permanency and stability is the central fact[or] in guardianship cases." The judge also found the resource

parents for the four younger children "provided consistency, stability, and safety to [them] over the past . . . several years" and had "mitigate[ed] the harm caused by the failed reunifications that . . . already occurred with [Tia.]" And while Meg was "not currently in an adoptive home," she was "in a good resource home" and had "made significant progress with her behavior." Ultimately, the judge found that although Meg was "clearly bonded with" Tia, the child's "need for permanency" was paramount. He added, "It's hard to imagine what another failed . . . reunification might do to that child."

In reaching these conclusions, the judge credited Dr. Kirschner's testimony, which he characterized as "compelling," over that of Tia's witnesses. In fact, Judge Furnari determined Mierzejewski's statement that Tia "was spot on when it came to caring and advocating for her children" was not "supported by the factual record and it . . . appear[ed] that the therapist was almost unconditionally accepting of [Tia's] version of events" to the point Mierzejewski "appeared [to be] more [of] an advocate for [Tia] than an objective observer." Therefore, he "found it difficult to give . . . much weight to her conclusions."

Similarly, the judge found Dr. Gabriel's "opinion was worthy of little weight against the well-reasoned opinions of Dr. Kirschner," noting Dr. Gabriel relied on the conclusions of Tia's therapist to support reunification of Tia and

her children. He also found it "striking" that Dr. Gabriel was unaware of the children's most recent removal from Tia's care.

## II.

On appeal, Tia urges us to reverse the guardianship judgment, contending Judge Furnari erred in finding the Division met its burden under prongs two, three, and four of N.J.S.A. 30:4C-15.1(a). She argues the judge relied on unsupported allegations to conclude she was unwilling or unable to cease endangering the children, and he ignored the steps she took "to gain stability and end the cycle of domestic violence." She also contends Judge Furnari mistakenly concluded the Division made reasonable efforts toward reunification. Lastly, she argues the Division "failed to show termination would do no more harm than good because KLG was not explored, the children are bonded to [her] and Meg has no permanency plan." We are not convinced.

An appellate court's scope of review of an order terminating parental rights is limited. N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007) (citing In re Guardianship of J.N.H., 172 N.J. 440, 472 (2002)). A reviewing court will uphold a trial court's factual findings if they are "supported by adequate, substantial, and credible evidence." N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 552 (2014) (citing N.J. Div. of Youth & Fam.

Servs. v. E.P., 196 N.J. 88, 104 (2008)). We "accord deference to fact[-]findings of the family court because it has the superior ability to gauge the credibility of the witnesses who testify before it and because it possesses special expertise in matters related to the family." N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448 (2012) (citing Cesare v. Cesare, 154 N.J. 394, 413 (1998)). However, we review a trial court's legal conclusions de novo. N.J. Div. of Youth & Fam. Servs. v. I.S., 202 N.J. 145, 183 (2010).

Parents have a constitutionally protected right to raise their children. N.J. Div. of Youth & Fam. Servs. v. A.W., 103 N.J. 591, 599 (1986). But that right is not absolute. R.G., 217 N.J. at 553 (citing In re Guardianship of K.H.O., 161 N.J. 337, 347 (1999)). Parental rights are "tempered by the State's *parens patriae* responsibility to protect the welfare of children," K.H.O., 161 N.J. at 347 (citation omitted), when the child's "physical or mental health is jeopardized," A.W., 103 N.J. at 599 (quoting Parham v. J.R., 442 U.S. 584, 603 (1979)).

Under N.J.S.A. 30:4C-15.1(a), the Division must satisfy the following prongs before a parent's rights can be terminated:

- (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;<sup>3</sup>

(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.

The Division must prove each of the four prongs by clear and convincing evidence. R.G., 217 N.J. at 554. 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.

Here, Tia does not challenge the judge's findings on prong one, so we need not address it. However, we are mindful prongs one and two of the best interests test "are related to one another, and evidence that supports one informs and may support the other as part of the comprehensive basis for determining the best interests of the child." In re Guardianship of D.M.H., 161 N.J. 365, 379 (1999) (citation omitted). We also recognize the first prong of the best interests test

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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 [the child's] resource family parents would cause serious and enduring emotional or psychological harm to the child."

requires the Division to demonstrate a "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. A trial court must be concerned not only about actual harm to the child but also the risk of harm. D.M.H., 161 N.J. at 383. And 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. Thus, our Supreme Court has held "[a] parent's withdrawal of . . . nurture[] and care for an extended period of time is in itself a harm that endangers the health and development of the child." D.M.H., 161 N.J. at 379 (citation omitted). And when children "languish in foster care," their parents' "delay in establishing a stable and permanent home . . . engender[s] significant harm." Id. at 383.

The second prong of the best interests determination "in many ways, addresses considerations touched on in prong one." F.M., 211 N.J. at 451. This prong "relates to parental unfitness," K.H.O., 161 N.J. at 352, and "the inquiry centers on whether the parent is able to remove the danger facing the child," F.M., 211 N.J. at 451 (citation omitted). The Division can satisfy this inquiry by showing a parent 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."

N.J.S.A. 30:4C-15.1(a)(2). See also N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 281 (2007).

Here, Judge Furnari accepted the testimony of the Division's witnesses, and particularly, that of Dr. Kirschner, in finding prongs one and two were satisfied. He concluded Tia's persistent parental deficits negatively impacted her ability to meet the children's basic needs and led to repeated removals and reunifications, to the children's detriment. He also agreed with Dr. Kirschner that it was unlikely Tia would become a viable parenting option for the children in the foreseeable future. Further, the judge found any further delay of permanent placement would add to the harm the children had already endured. These findings are well supported by the record and entitled to our deference.

Turning to prong three, Tia contends the Division did not make reasonable efforts to provide services to her and did not explore KLG as an alternative to termination. This argument is unavailing.

Under the third prong, the Division must show by clear and convincing evidence that it "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." N.J.S.A. 30:4C-15.1(a)(3). "Reasonable efforts may include consultation with

the parent, developing a plan for reunification, providing services essential to the realization of the reunification plan, informing the family of the child's progress, and facilitating visitation." M.M., 189 N.J. at 281 (internal quotation marks and citations omitted). The reasonableness of the Division's efforts in providing services to a parent is not measured by the success of the services. D.M.H., 161 N.J. at 393. Indeed, the Division's "best efforts may not be sufficient to salvage a parental relationship." F.M., 211 N.J. at 452. Moreover, "if the Division ha[s] been deficient in the services offered to" a parent, reversal is not necessarily "warranted, because the best interests of the child controls[]" the ultimate determination. N.J. Div. of Youth & Fam. Servs. v. F.H., 389 N.J. Super. 576, 621 (App. Div. 2007) (citation omitted).

Additionally, under prong three, a court must consider alternatives to termination. N.J.S.A. 30:4C-15.1(a)(3). Alternatives may include placement with a kinship caregiver leading to KLG. N.J.S.A. 30:4C-15.3, 3B:12A-6(d)(3); R.G., 217 N.J. at 561-63; N.J. Div. of Youth & Fam. Servs. v. K.L.W., 419 N.J. Super. 568, 579 (App. Div. 2011).

Here, the record supports Judge Furnari's conclusion the Division made reasonable efforts to reunify Tia with her children. In fact, the record demonstrates the Division provided Tia with numerous services over a period of



several years. Despite these services, Tia remained unable to safeguard her children and was substantiated for abuse or neglect. Moreover, as the children suffered through multiple removals and failed reunifications, the Division continued to offer Tia and her children various services, some of which she rejected. Under these circumstances, we decline to disturb Judge Furnari's determination regarding the Division's reasonable efforts.

Regarding Tia's contention the Division failed to explore alternatives to termination, we note that until recently, KLG was considered "a more permanent option than foster care when adoption '[was] neither feasible nor likely.'" N.J. Div. of Youth & Fam. Servs. v. P.P., 180 N.J. 494, 512-13 (2004) (quoting N.J.S.A. 3B:12A-6(d)(3) to (4)). We also recognize that in July 2021, the Legislature amended N.J.S.A. 3B:12A-6(d)(3) and removed the statutory requirement that adoption be "neither feasible nor likely," making KLG an equally available permanency plan for children in the Division's custody. However, the Legislature did not delete paragraph (d)(4) of the KLG statute, which requires a court to find "awarding [KLG] is in the child's best interest," N.J.S.A. 3B:12A-6(d)(4), before it can order KLG. Thus, the amended KLG statute simply ensures a resource parent's willingness to adopt no longer forecloses KLG. But the amendment to N.J.S.A. 3B:12A-6(d)(3) does not affect

the trial court's application of the best interests test for parental termination cases as codified under N.J.S.A. 30:4C-15.1(a)(1) to (4).

Accordingly, a trial court is not required to impose KLG where the caregiver has decided against it in favor of adoption, and the judge finds adoption is in the child's best interests. See N.J. Div. of Child Prot. & Permanency v. D.C.A., 474 N.J. Super. 11, 28 (App. Div. 2022), wherein we confirmed the recent statutory amendment to the second prong of N.J.S.A. 30:4C-15.1 was 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 the child." Ibid. (citation omitted). We also stated, "we do not understand the [recent] amendment to prong two [of N.J.S.A. 30:4C-15.1] to mean that . . . a bond [forged between a child and resource caregivers] may never be considered within any part of the best interests analysis." Id. at 26.

Next, it is well established that "[t]he decision of a resource parent to choose adoption over KLG must be an informed one." N.J. Div. of Child Prot. & Permanency v. M.M., 459 N.J. Super. 246, 260-61 (App. Div. 2019). Not only should the caregiver's consent be informed, "but also unconditional, unambiguous, and unqualified." Id. at 264. The statute requires the Division to

fully inform caregivers "of the potential benefits and burdens of KLG before deciding whether . . . to adopt." Id. at 263. Once informed, "the caregiver's preference between the two alternatives should matter." Ibid.

We are satisfied Judge Furnari understood these principles when considering whether there were viable alternatives to termination of Tia's parental rights. Indeed, he credited the testimony of the Division's witnesses and found numerous placements were explored and relative placements were ruled out. He also accepted the Division's proofs that the resource parents for the four younger children: were meeting the children's needs; understood the differences between KLG and adoption; opposed KLG; and wanted to adopt the children. The judge further found the Division was properly pursuing a select home placement for Meg, who suffered through more failed reunifications and resource placements than her siblings and needed permanency. These findings are amply supported by competent evidence in the record.

Finally, we turn to the fourth prong of N.J.S.A. 30:4C-15.1(a)(4), which serves as "a 'fail-safe' inquiry guarding against an inappropriate or premature termination of parental rights." F.M., 211 N.J. at 453 (citations omitted).

[T]he fourth prong of the best interests standard cannot require a showing that no harm will befall the child as a result of the severing of biological ties. The question to be addressed under that prong is whether, after

considering and balancing the two relationships, the child will suffer a greater harm from the termination of ties with [the child's] natural parents than from the permanent disruption of [the] relationship with [the child's] foster parents.

[K.H.O., 161 N.J. at 355.]

"The crux of the fourth [prong] is the child's need for a permanent and stable home, along with a defined parent-child relationship." N.J. Div. of Youth & Fam. Servs. v. H.R., 431 N.J. Super. 212, 226 (App. Div. 2013) (citation omitted). Therefore, "to satisfy the fourth prong, the State should offer testimony of a 'well[-]qualified expert who has had full opportunity to make a comprehensive, objective, and informed evaluation' of the child's relationship with both the natural parents and the foster parents." M.M., 189 N.J. at 281 (quoting In re Guardianship of J.C., 129 N.J. 1, 19 (1992)).

A determination on the fourth prong cannot be made simply by showing "the child has bonded with foster parents who have provided a nurturing and safe home," or that terminating parental rights "likely will not do more harm than good" because it would provide the child with the benefit of a "permanent placement with a loving family." E.P., 196 N.J. at 108 (citations omitted). Nor can it be made simply upon finding the bond with a resource parent is stronger than the bond with the biological parent, because that is an expected result of an

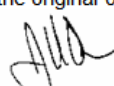
early or lengthy removal. G.L., 191 N.J. at 608-09. Termination is only appropriate when the absence of permanency will cause harm to the child, and the biological parent is unlikely in the reasonably foreseeable future to become capable of primary caregiving for the child. N.J. Div. of Youth & Fam. Servs. v. L.J.D., 428 N.J. Super. 451, 483-87 (App. Div. 2012).

Here, Judge Furnari agreed with Dr. Kirschner the children needed permanency and stability, neither of which Tia could provide now or in the future. The judge also concurred with Dr. Kirschner's conclusion that severing the children's relationship with Tia would cause harm, but in the case of Noelle, Joe, Jack, and Yuri, their resource parents would be able to mitigate that harm. Further, the judge agreed with Dr. Kirschner that even though Meg had no permanent placement, the risk of another failed reunification between Meg and her mother posed greater harm to Meg than termination of Tia's parental rights. We discern no basis to second-guess these findings.

In sum, we conclude the judge's factual findings under N.J.S.A. 30:4C-15.1 are entirely supported by the record and thus, his legal conclusions are unassailable.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION