

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3886-21

NEW JERSEY DIVISION OF  
CHILD PROTECTION AND  
PERMANENCY,

Plaintiff-Respondent,

v.

C.I.,

Defendant-Appellant,

and

N.R.,

Defendant.

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IN THE MATTER OF THE  
GUARDIANSHIP OF M.N.I.,  
a minor.

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Submitted May 2, 2023 – Decided May 19, 2023

Before Judges Geiger, Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Ocean County, Docket  
No. FG-15-0005-21.

Joseph E. Krakora, Public Defender, attorney for  
appellant (Christine Olexa Saginor, Designated  
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attorney for minor (Meredith A. Pollock, Deputy Public  
Defender, of counsel; Melissa R. Vance, Assistant  
Deputy Public Defender, of counsel and on the brief).

#### PER CURIAM

Defendant C.I. (Cheryl) appeals from a judgment terminating her parental rights to her biological son, M.N.I. (Mason) and granting the Division of Child Protection and Permanency (Division) guardianship of Mason, with the plan that he be adopted by his paternal grandmother C.R. (Celia).<sup>1</sup> Cheryl 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). Cheryl also argues the Division failed to

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<sup>1</sup> We use initials and pseudonyms to protect privacy interests and to maintain the confidentiality of the record. See R. 1:38-3(d)(12).

adequately explore possible Kinship Legal Guardianship (KLG). The Division and Mason's Law Guardian contend the judgment is supported by clear and convincing evidence in the record. Having carefully 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 oral decision.

The Division first became involved with Cheryl on May 3, 2018, when it received a referral that Cheryl was using heroin and consuming alcohol while pregnant with Mason. After Mason was born on June 9, 2018, Cheryl and Mason went to live with Cheryl's mother in Pennsylvania. The Division referred Cheryl for a substance abuse evaluation, which she did not attend.

On July 17, 2018, the Toms River Police Department (TRPD) notified the Division regarding its concerns for Mason after receiving a report that Cheryl was "stumbling around" and "had urinated in the middle of a busy parking lot." When police arrived on scene, Cheryl was standing outside of her running car and was "barely able to stand or talk." Mason was in the back seat of her car while this occurred.

Later that day, Division caseworkers found Cheryl in and out of consciousness and slurring her words while attempting to feed Mason his bottle.

Based on her conduct and condition, and concerns for Mason's safety, the Division executed a Dodd removal<sup>2</sup> and placed Mason with Celia.

The Division referred Cheryl for inpatient substance abuse treatment, which she completed in February 2019. Upon her discharge, Cheryl was referred to an intensive outpatient program (IOP). She then moved into Celia's home and was reunified with Mason.

On March 14, 2019, the Division received a referral that Cheryl had relapsed. The Division then implemented a safety protection plan requiring that Celia supervise Cheryl's contact with Mason. Cheryl complied with the safety protection plan and the plan was lifted on June 6, 2019.

Less than two weeks later, the Little Egg Harbor Police Department reported a domestic dispute at Celia's home, where Cheryl was intoxicated, began assaulting another individual, and was found "flailing around wildly." Cheryl was arrested and later admitted drinking about a pint of vodka before the incident. The Division removed Mason, ruled out all other presented relatives, and placed him in Celia's care, where he remains.

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<sup>2</sup> "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." N.J. Div. of Child Prot. & Permanency v. T.D., 454 N.J. Super. 353, 363 n.8 (App. Div. 2018) (quoting N.J. Div. of Youth & Fam. Servs. v. P.W.R., 205 N.J. 17, 26 n.11 (2011)).

In 2019, the Division worker discussed the differences between adoption and KLG with Celia. Celia wished to adopt Mason. The Division also explored possible relative placement with the maternal grandfather, a maternal uncle, and a paternal grandfather, but none were interested or able to act as placement and were ruled out.

The Division referred Cheryl for substance abuse and psychological evaluations and provided bus passes so that she could attend the services. The evaluating psychologist referred Cheryl for IOP, individual psychotherapy, psychiatric medication monitoring, and family support services. The Division provided Cheryl weekly supervised parenting time with Mason.

Cheryl attended IOP at Daytop Village of New Jersey. She relapsed with alcohol in August 2019. Cheryl's attendance at treatment was inconsistent and she tested positive for fentanyl on October 15, 2019. One week later, she tested positive for amphetamines and methamphetamines.

Cheryl completed IOP treatment by early February 2020 and was referred for individual therapy. After completing outpatient treatment, she at times refused to undergo urine screens requested by the Division. In April 2020, Cheryl relapsed with alcohol. In June 2020, she appeared to overdose on heroin and was revived by Narcan.

On August 5, 2020, the Division filed a verified complaint for guardianship against Cheryl and N.R., Mason's biological father, seeking to terminate their parental rights to Mason. N.R., provided an identified surrender of his parental rights prior to trial, indicating he desired his mother, Celia, to adopt Mason.

On October 26, 2020, Dr. Alan J. Lee performed a psychological evaluation of Cheryl and a bonding evaluation of Cheryl and Mason. In January 2021, Cheryl's substance abuse program advised the Division that she once again, was avoiding drug screenings.

On January 28, 2021, Dr. Gerard A. Figurelli performed a psychological evaluation of Cheryl. He found that "personality test results reveal no clinically significant evidence of antisocial traits, psychopathy, or sociopathy in the overall organization and functioning of [her] personality." Dr. Figurelli noted Cheryl "has a history of 'self-medicating' [with] alcohol and other substance abuse," however, "her substance use disorder is in early remission, approaching sustained remission" based on self-reporting. He found Cheryl "is not, at present, at risk for engaging in child maltreatment." Dr. Figurelli diagnosed Cheryl with generalized anxiety disorder, unspecified bipolar disorder, alcohol

use disorder in early remission approaching sustained remission, and history of other specified substance use disorder.

Dr. Figurelli performed a bonding assessment of Cheryl and Mason, who was then thirty-one months old. He concluded that if Cheryl remains compliant with any mental health treatment she requires, substance abuse abstinent, establishes an adequate and stable living arrangement, has an adequate and consistent financial support, and appropriate child caretaking arrangements, she "is able to act adequately and safely in a parenting role to [Mason]." He opined that if Cheryl can continue to provide "an appropriate and stable permanent placement" for Mason, it does Mason "more harm than good to have that relationship severed."

On April 29, 2021, a hair follicle test was positive for amphetamines and methamphetamines. Cheryl claimed she took unprescribed Adderall, which accounted for the amphetamine result, but did not account for the positive methamphetamine result.

In May 2021, Cheryl was discharged from a mental illness and chemical abuse (MICA) program "due to inconsistent attendance" and inability to test abstinence because she provided "inconsistent drug screening samples." Dr. Lee performed a second psychological evaluation of Cheryl on May 24, 2021.

In September 2021, Cheryl began attending a program known as Journeys. Although admitted to the program, she only attended two sessions and was discharged.

The judge conducted a permanency hearing on August 12, 2021, and entered an order accepting the Division's permanency plan for Mason of "termination of parental rights followed by adoption by the current caregiver."

As to risk and safety, the order contained the following findings:

It is not and will not be safe to return the child home in the foreseeable future because [Cheryl] still only has supervised visitation with [Mason], has only recently begun attending Level 2.1 treatment at Preferred Behavioral Health after testing positive for non-prescribed methamphetamine in a hair follicle test conducted on April 29, 2021[,] and is not currently recommended by any expert to be an independent caregiver. [N.R.] is currently incarcerated and unable to care for his child.

The order stated the Division has "provided reasonable efforts to finalize the permanency plan, including . . . substance abuse evaluations, random urine screens, psychological evaluations, bonding evaluation, supervised visitation, therapeutic visitation and transportation assistance." The order further stated that termination of parental rights followed by adoption was an appropriate plan.

A subsequent substance abuse evaluation in December 2021, recommended Level I outpatient treatment. Cheryl was discharged from the



program due to non-attendance. She was reevaluated in April 2022, and recommended for Level 2.1 IOP, but did not engage. In May and June 2022, Cheryl refused to provide oral swab samples.

In January 2022, Dr. Lee performed a third psychological evaluation. Dr. Lee's findings were consistent with his other two evaluations, and he continued to recommend other permanency options other than reunification. Dr. Lee also performed a second bonding evaluation of Cheryl and Mason and a bonding evaluation between Mason and Celia.

The Division scheduled another substance abuse evaluation in February 2022, but Cheryl failed to appear. She underwent a substance abuse evaluation on April 6, 2022, and was recommended for outpatient treatment, but she did not attend the program.

On April 22, 2022, Dr. Figurelli performed a second psychological evaluation of Cheryl and found:

[A]s long as [Cheryl] remains compliant with any mental health treatment she requires; . . . substance abuse abstinent; . . . establishes an adequate and stable living arrangement, adequate and consistent source(s) of financial support, and appropriate alternate child caretaking arrangements, [Cheryl] is able to act adequately and safely in a parenting role to [Mason]. The totality of the data available at the time of this evaluation supports a plan of reunification of [Cheryl] and [Mason]. If deemed necessary, a gradual and

graduated transfer of [Mason] to [Cheryl's] care can be implemented – that is, increasing periods, over time, of unsupervised contact of [Mason] in [Cheryl's] care – in order to ensure the adequacy of both parent and child's adjustment to the transition.

Only ten days later, on May 2, 2022, the Division directed Cheryl to submit to an oral drug screen swab. She refused. On June 8, 2022, Cheryl again refused to provide an oral swab, claiming it would make her late for work.

The guardianship trial took place in late June 2022. The Division presented testimony from Celia, Dr. Lee, the Division caseworker, and the Division adoption caseworker. Cheryl testified on her own behalf and presented testimony from Dr. Figurelli. The Law Guardian did not present witnesses. Numerous documents were admitted into evidence. Written summations were submitted by counsel.

On July 28, 2022, the judge issued a detailed oral decision, in which she recounted the evidence, making extensive findings of fact and legal conclusions.

The judge found Celia to be credible and noted:

She clearly and articulately explained her reasoning for wishing to adopt [Mason] rather than becoming a kinship legal guardian. She has already developed a backup plan if she is able to adopt [Mason] if and when he becomes legally free.

She is committed to [Mason]. She is concerned with providing him with a stable home and a stable parental figure.

The judge found Celia "had fully accepted the responsibility to provide [Mason] with a nurturing and safe environment and to secure all services necessary for his development and growth."

The judge noted Celia was very clear in her preference for adoption. She confirmed she was advised by the Division of the different permanency options and had discussed it with Division workers. Celia believes adoption is better emotionally for the child. Celia noted the child has developmental delays and is receiving services. The judge "accept[ed] the entirety of her testimony and adopt[ed] it as part of [her] findings of fact."

The judge also noted that Cheryl's parenting time has always been supervised. Her attendance was inconsistent. She had not participated in recommended mental health treatment.

The judge found Mason had resided with Celia for a total of four years. Mason was solely in Celia's care from July 17, 2018 to February 1, 2019. Mason remained in Celia's home thereafter until June 19, 2019, with Cheryl having custody during that period. Mason has lived with Celia continuously since June 20, 2019, with Celia being solely responsible for his care.

The judge found the caseworker "to be quite forthright in her testimony" and able to testify about "incidents that occurred some time ago with ease and had no pauses in memory." The judge found her "fully entrenched in the issues in this case and was invested in ensuring both the safety and well being of the child while simultaneously trying to provide services to [Cheryl] to assist her" in complying with Division requests and court orders. The caseworker testified she observed a loving and nurturing relationship between Mason and Celia. The court found the caseworker credible and accepted her testimony in its entirety.

The judge noted the adoption caseworker testified that Cheryl was not currently receiving recommended mental health treatment but had medication monitoring. Nor was she participating in recommended substance abuse treatment despite promising to do so. The adoption caseworker testified that Celia meets all of Mason's needs and ensures that he receives all recommended services.

The adoption caseworker further testified that he discussed permanency options with Celia, specifically KLG and adoption. He stated Celia was very clear in her preference to adopt Mason but would continue to allow visitation as she works well with the maternal grandfather regarding visitation. When he asked if she preferred adoption, Celia advised him she was concerned Cheryl

would continually file applications to change the guardianship whether they were valid or not. The adoption caseworker related that Celia felt this would be emotionally disruptive for Mason.

The judge found the adoption caseworker to be "candid and forthright in his testimony; his attention to details in this matter over the course of his two-year involvement illustrated his dedication to the needs of both" Mason and Cheryl. The judge "accept[ed] his testimony in its entirety and adopts it as part of its finding of facts."

The judge recounted the testimony of the expert witnesses. Dr. Lee reported Cheryl had "a history of polysubstance abuse to include marijuana, cocaine, and methamphetamine, [LSD], heroin, as well as a history of using alcohol problematically." Dr. Lee diagnosed Cheryl with bipolar II disorder (provisionally because not every symptom was present); unspecified anxiety disorder; unspecified depressive disorder; history of substance abuse disorder; and unspecified personality disorder with borderline and narcissistic traits.

Dr. Lee did not recommend Cheryl as an independent caretaker for Mason currently or in the foreseeable future and recommended that permanency planning for Mason other than reunification with Cheryl should be considered.

Dr. Lee's bonding evaluation of the nature and quality of the emotional relationship between Mason and Cheryl revealed an ambivalent and insecure attachment, not a significant and positive psychological attachment.

Dr. Lee performed a second psychological evaluation and found a personality disorder with borderline dependent and narcissistic traits, which are indicative of functional instability, as well as being self-absorbed, self-centered, focused on satisfying her own needs, lacking empathy, and incapable of formulating a consistent plan or problem-solving. Dr. Lee did not recommend Cheryl as an independent caretaker. He opined that her prognosis was poor for significant and lasting changes. A third psychological evaluation did not change the findings.

A second bonding evaluation revealed the bond between Mason and Cheryl remained ambivalent, irrespective of the fact that she was then having significant supervised visitation with Mason. In contrast, Dr. Lee found there was a significant and positive bond with secure attachment between Mason and Celia. Dr. Lee opined that KLG might work in situations where the child is securely bonded with the mother but that was not the case here. He further opined that termination of parental rights would not cause more harm than good.

The judge found the examinations conducted by Dr. Lee "were organized and thorough. He did not waiver in his opinions." She found Dr. Lee to be very persuasive and credible "and that [h]is observations, findings, and recommendations were grounded in specific facts and explained in detail." The judge accepted Dr. Lee's findings and opinions.

The judge noted the defense's expert, Dr. Figurelli, found Cheryl had a history of depression, anxiety, instability of mood, and mixed-substance abuse. He diagnosed her with generalized anxiety disorder, unspecified bipolar disorder, and alcohol use disorder in early remission approaching sustained remission. He conducted a bonding evaluation and found there was a positive and reciprocal interaction and a secure attachment.

The judge found Dr. Figurelli's reports and analysis "were superficial and did not address the totality of the circumstances being considered by the [c]ourt." The judge noted that Cheryl's refusal to provide oral swabs "did not seem to phase the doctor and did not appear to sway him at all in his opinion." The judge recounted that Dr. Figurelli did not perform a bonding evaluation with Celia. The judge concluded: "Dr. Figurelli was completely focused on what was in the best interest of the biological mother[,] rather than the child." Moreover, "Dr. Figurelli did not address permanency in his report to the extent

that he offers no opinion at all as to at what point the minor child, [Mason], is entitled to permanency." Accordingly, the judge gave "little weight to his conclusions and testimony."

Cheryl testified as the final witness. The judge noted she admitted several of the incidents and her relapses. She maintains she has remained sober since April 2020 despite contrary tests results. Cheryl admitted she twice refused to submit oral swabs. She acknowledged that Celia took good care of Mason.

The judge found Cheryl appeared incapable of implementing a plan to ready herself for the possibility of a reunification. The judge noted that Cheryl had no plan in place, had not looked for a different job, and had not signed a lease for stable housing. The judge further noted Cheryl spoke "in general terms, nothing was said with certainty or with conviction." The judge found her somewhat defensive and noted she "doesn't appear to appreciate or have insight into the fact that [Mason] has been in placement for almost the entirety of his life." The judge found Cheryl "has no empathy for [Mason]."

The Judge applied the four-prong best interests test codified in N.J.S.A. 30:4C-15.1(a), and found the Division established each prong by clear and convincing evidence. The judge recognized "the emphasis [has] shifted from prolonged efforts at reunification to expeditious planning for the children."



As to the first prong, which requires proof by clear and convincing evidence that "the child's health, safety, or development has been or will continue to be endangered by the parental relationship," the judge explained the Division "does not have to wait until the child is actually irreparably harmed or impaired by parental inattention or neglect." The judge reasoned that "unabated substance abuse by parents . . . causes continuing harm by depriving children of the necessary stability and permanency." "Continued drug use by parents after placement where the parent is unwilling or incapable of obtaining appropriate treatment can be determinative in proving prong one." Based on Cheryl's repeated substance abuse relapses despite treatment and mental health issues, and failure to complete recommended treatment, the judge found the Division satisfied prong one by clear and convincing evidence.

As to the second prong, which requires proof by clear and convincing evidence that "the parents are unwilling or unable to eliminate the harm facing the child or unwilling and unable to provide a stable home and the delay of permanent placement will add to the harm," the judge noted this "prong addresses whether it is reasonably foreseeable that the parent can overcome the harm that brought the child" to the Division's attention "and there is no risk of future harm." The judge found that "[t]o date, four years later, [Cheryl] has not

overcome the initial harm which was substance abuse, lack of stable housing, and mental health issues." "She has not been receiving treatment for two" of those years "and her housing is in its initial stages." The judge found Cheryl "has not been able to overcome the initial harm." The judge credited Dr. Lee's testimony that her prognosis is poor, and she will not be able to do so for the foreseeable future. The judge found that delaying permanency at this point could be harmful in and of itself. The judge concluded the second prong was satisfied by clear and convincing evidence.

As to the third prong, which requires proof by clear and convincing evidence that 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 court has considered alternatives to termination of parental rights," the judge found "the Division has provided significant reasonable efforts" during the period Mason was in placement that included "multiple substance abuse evaluation referrals." "[T]here were multiple relapses and in addition, there were a number of referrals where [Cheryl] refused to engage and the Division was required to continually re-refer." The judge listed the services provided by the Division, which included substance abuse and mental health evaluations and referrals, supervised visitation, reunification

programs, therapeutic modalities, family team meetings, and bus passes. The judge concluded that Cheryl's "failure to comply can only be attributed to herself."

As to alternatives to termination of parental rights, the judge found:

[KLG] is not an appropriate plan in this matter. The only approved potential relative resource parent was [Celia]. A last[-]minute offer of a potential placement was [Cheryl's] brother, [M.I.], who resides in the state of South Carolina.

However, at the time of trial, [M.I.] had yet to present himself or confirm his interest in being considered. At least two Division workers discussed [KLG] with [Celia]. She was opposed to this.

She testified in court with regard to why she was opposed to it. She believes that [Mason] needs a stable person overseeing him and making decisions for him and maintaining a stable home for him.

She was quite concerned that if there was KLG [Cheryl] would make repeated applications for his return which would have a negative impact on [the child's] sense of permanency.

These beliefs were confirmed by Dr. Lee who had some discussions with [Celia] as well. Dr. Lee also confirmed that repeated application such as that could have a detrimental effect on the child.

In addition, he had testified that KLG was difficult in a situation such as this with a very young child such as [Mason] and a scenario where the child does not have a positive and secure attachment to both

adults: . . . the kinship legal guardian[] and the biological parent.

Considering the record, the judge found the Division satisfied the third prong by clear and convincing evidence.

As to the fourth prong, that termination of parental rights will not do more harm than good, the judge noted the testimony showed Mason "is doing very well" in his placement with Celia. The bonding evaluations performed by Dr. Lee reflected the difference in attachment between Mason and Cheryl compared to Mason and Celia. The judge noted the testimony, which she found credible, that Mason was "safe, happy, and engaged in his current placement." Moreover, "[t]he relative resource parent is committed to meeting all of [Mason's] needs; conversely, [Cheryl] has failed to make any consistent effort to re-establish parental relationship with the child despite having ample opportunity over the past three years to do so." Noting that N.R. had surrendered his parental rights so that Mason could be adopted by Celia, and considering the record, the judge found the Division satisfied the fourth prong by clear and convincing evidence.

A judgment of guardianship terminating Cheryl's parental rights and accepting surrender of N.R.'s parental rights was entered on July 28, 2022. This appeal followed.

Defendant raises the following points for our consideration:

POINT I

THE TRIAL COURT ERRED IN CONCLUDING THAT MASON'S SAFETY, HEALTH, OR DEVELOPMENT HAS BEEN OR WILL CONTINUE TO BE ENDANGERED BY [CHERYL].

POINT II

THE TRIAL COURT ERRED IN CONCLUDING THAT [CHERYL] WAS NOT ABLE OR WILLING TO REMEDIATE HER PERCEIVED PARENTING ISSUES.

POINT III

ALTERNATIVES TO TERMINATION OF PARENTAL RIGHTS WERE NOT PROPERLY CONSIDERED BECAUSE THE TRIAL COURT FAILED TO TREAT KLG AS THE PREFERRED RESOURCE.

POINT IV

THE TRIAL COURT ERRED IN CONCLUDING THAT TERMINATION OF [CHERYL'S] PARENTAL RIGHTS IS IN MASON'S BEST INTERESTS BECAUSE THE TRIAL COURT GAVE UNDUE WEIGHT TO THE NON-CREDIBLE OPINION OF [THE DIVISION'S] EXPERT.

Cheryl argues the judge erred in finding each of the four prongs under the best-interests standard were proven by clear and convincing evidence. We disagree and affirm the termination of Cheryl's parental rights substantially for

the reason expressed by the judge in her thorough and well-reasoned oral decision. We add the following comments.

Appellate courts defer to the fact finding of a family court because of the special jurisdiction and expertise that those courts possess, as well as the ability of the trial court to get a "better perspective than a reviewing court." Cesare v. Cesare, 154 N.J. 394, 411-413 (1998); accord N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448 (2012); N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 343 (2010). "[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); see also N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007) (stating that "[p]articular deference is afforded to decisions on issues of credibility.").

A trial court's findings of fact should not be disturbed "unless they are so wholly unsupportable as to result in a denial of justice." In re Guardianship of J.N.H., 172 N.J. 440, 472 (2002) (quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)). In turn, the trial court's decision to terminate parental rights should not be disturbed if "there is substantial credible evidence

in the record to support the trial court's findings." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008).

As amended in July 2021, parental rights may be terminated when:

- (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 court has considered alternatives to termination of parental rights; and
- (4) Termination of parental rights will not do more harm than good.

[N.J.S.A. 30:4C-15.1(a).]

Our careful review of the record convinces us that the Division presented clear and convincing evidence satisfying each prong. The judge's findings as to each prong is amply supported by substantial credible evidence. See F.M., 211 N.J. at 447-48. The judge correctly applied her factual findings to the applicable legal principles. See 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

testimony of Dr. Lee, who evaluated Cheryl three times and had factual bases for his opinions. See N.J. Div. of Child Prot. & Permanency v. R.L.M., 236 N.J. 123, 146 (2018) (holding that "[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").

Cheryl'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) was to 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 its 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.

To the extent we have not otherwise commented on them, we have duly considered Cheryl'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