

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0047-22  
A-0048-22  
A-2073-22

NEW JERSEY DIVISION  
OF CHILD PROTECTION  
AND PERMANENCY,

Plaintiff-Respondent,

v.

J.B. and C.R.,

Defendants-Appellants.

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IN THE MATTER OF  
C.D.R., a minor.

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NEW JERSEY DIVISION  
OF CHILD PROTECTION  
AND PERMANENCY,

Plaintiff-Respondent,

v.

J.N.B.,

Defendant-Appellant,

and

C.D.R.,

Defendant.

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IN THE MATTER OF THE  
GUARDIANSHIP OF  
C.D.R., a minor.

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Argued May 28, 2024 – Decided June 28, 2024

Before Judges Mawla, Marczyk, and Chase.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Monmouth County,  
Docket Nos. FN-13-0105-21 and FG-13-0044-22.

David Anthony Gies, Designated Counsel, argued the  
cause for appellant J.N.B. in A-0047-22 and A-0048-22  
(Jennifer Nicole Sellitti, Public Defender, attorney;  
David Anthony Gies, on the briefs).

Amy M. Williams, Designated Counsel, argued the  
cause for appellant C.R. in A-0047-22 and A-0048-22  
(Jennifer Nicole Sellitti, Public Defender, attorney;  
Amy M. Williams, on the briefs).

Deric D. Wu, Designated Counsel, argued the cause for  
appellant J.N.B. in A-2073-22 (Jennifer Nicole Sellitti,  
Public Defender, attorney; Deric D. Wu, on the brief).

Jessica Anne Prentice, Deputy Attorney General,  
argued the cause for respondent (Matthew J. Platkin,

Attorney General, attorney; Sara M. Gregory, Assistant Attorney General, and Janet Greenberg Cohen, Assistant Attorney General, of counsel; Jessica Anne Prentice, on the briefs).

Noel Christian Devlin, Assistant Deputy Public Defender, argued the cause for minor in A-0047-22, A-0048-22, and A-2073-22 (Jennifer Nicole Sellitti, Public Defender, Law Guardian, attorney; Meredith Alexis Pollock, Deputy Public Defender, of counsel; Noel Christian Devlin, of counsel and on the briefs).

#### PER CURIAM

These back-to-back appeals, which we consolidate for purposes of this opinion, involve C.D.R. ("Callie"),<sup>1</sup> born in April 2021 to appellants J.B. ("Juliet") and C.R./C.D.R. ("Carter"). In A-0047-22 and A-0048-22, Juliet and Carter each appeal from the Family Part's September 14, 2021 determination they abused or neglected Callie in violation of N.J.S.A. 9:6-8.21(c). The matters were perfected for appeal by an order entered on July 25, 2022, terminating the litigation. In A-2073-22, Juliet appeals from the termination of her parental rights. Carter voluntarily surrendered his parental rights to Callie and therefore does not participate in A-2073-22. Both the Division of Child Protection and

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<sup>1</sup> Pseudonyms and initials are used to reference the child and other individuals to protect their privacy and preserve the confidentiality of these proceedings. R. 1:38-3(d)(12).

Permanency ("Division") and the Law Guardian urge us to reject defendants' arguments and affirm the judge's decisions. We affirm in all three matters.

I.

The underlying facts concerning the history of Juliet and Carter and the termination of their parental rights to C.D.R. ("Calvin") and C.N.-V.R. ("Clara"), are set forth in A-2849-2,1 also decided today. Therefore, those facts will not be repeated here. In that matter, we affirmed the termination of their parental rights.<sup>2</sup>

Juliet has four older children not fathered by Carter. In 2014, the court granted the Division care and supervision of the four older children after Juliet left them unsupervised with Carter despite knowing he is a registered sex offender and barred from unsupervised contact or residing with any minor. Notwithstanding having lost custody of both Clara and Calvin, Juliet continued to reside with Carter at the motel and became pregnant with Callie in late 2020.

On February 8, 2021, after learning Juliet was pregnant with Callie, the Division held a family team meeting with Juliet and Carter to discuss reunification with Clara and Calvin and to plan for Callie's birth. The

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<sup>2</sup> The trial court's opinion in that matter was entered into evidence for purposes of this guardianship proceeding.

caseworker emphasized that housing remained the biggest barrier to Juliet's reunification with the children, since she and Carter continued to share the same motel room, and Carter lacked "permission from parole to live with his children." The Division offered to assist Juliet in finding housing, but Juliet continually resisted discussing the plan for Callie's birth. After the caseworker informed defendants the Division might seek to remove Callie depending on the family's housing circumstances at the time of her birth, Juliet suggested her aunt as a placement option. The Division investigated the aunt, who declined. Juliet said if she was unable to secure separate housing by her April 27 due date, she planned to rent her own motel room apart from Carter. Despite this representation, Juliet was still sharing the single room with Carter at the time of Callie's birth.

#### Callie's Birth

On the morning of April 26, Carter canceled the couple's scheduled visitation with Clara and Calvin, citing "car trouble." The case worker called Juliet's phone, and Carter answered. Carter declined the Division's transportation offer, claiming he had to work on Juliet's car and Juliet did not want to attend the visit without him. Later that afternoon, two caseworkers made an unannounced visit to the motel. They observed Juliet's car parked in front of

the couple's motel room; neither Carter nor Juliet was outside, and the drapes to their room were drawn. When the workers knocked on the door, Carter answered but opened the door only a crack. The workers explained they came to check on the family because it was unusual for them to cancel visits. Carter agreed and explained Juliet's car needed new brakes. Carter denied Juliet was home, reporting a friend had picked her up. He also misrepresented that Juliet had given birth or gone into labor yet, remarking Juliet had delivered their older children late.

Hours later, CentraState Medical Center in Freehold informed the Division Juliet had given birth to Callie earlier that day and had refused routine medical testing for the newborn. The caseworker was told Juliet had received inconsistent prenatal care. The caseworker responded to the hospital, where she learned Juliet refused to have the hospital complete routine screenings on Callie, claiming they were "invasive." Because of this refusal, Callie was kept under observation and remained in the hospital longer than otherwise necessary.

At the hospital, Juliet stated she did not have an alternate plan for housing independent of Carter. Juliet suggested staying at her aunt's home in Bradley Beach, but that was not acceptable since Juliet's cousin, who had sexually assaulted her years prior, was living there. Additionally, Juliet was unsuccessful

in obtaining housing through any of the resources to which the Division referred her. She informed the Division she had not yet obtained her own motel room but would do so when she left the hospital.

The caseworker was unable to speak to Carter at the hospital as Carter had been barred from the property for disruptive behavior. The caseworker met with him at the motel. When Carter was informed Callie would be removed from their care, he said he would obtain a separate room at the motel, but he failed to do so.

The Division determined it would be impossible for Juliet to bring Callie home because she still lived with Carter. The Division alleged abuse or neglect because Callie was at risk of harm from Juliet's failure to establish independent living and Carter's inability to reside with children. The day after Callie's birth, the Division conducted an emergency Dodd<sup>3</sup> removal of Callie, placed her in a resource home, and provided for supervised visitation with her parents and older siblings. The Division then filed a verified complaint against Juliet and Carter under Title 9 and Title 30 and an order to show cause seeking supervision, care, and custody of Callie. The court held a hearing on April 29, 2021, where it

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<sup>3</sup> A "Dodd" removal refers to the emergency removal of a child from a home without a court order, pursuant to the Dodd Act, N.J.S.A. 9:6-8.21 to -8.82.

heard testimony as to the Division's concerns about Juliet's failure to find housing apart from Carter and granted the Division's application.

### Post-Dodd Actions

In May 2021, although the Division had ruled out living in Bradley Beach with her former abuser, Juliet claimed she was living there. However, the Division observed Juliet's car frequently parked at Carter's motel. Juliet even appeared at a virtual court session from the shared motel room. Nonetheless, the Division referred Juliet to the COVID-19 Rapid Re-Housing Program, but her application was denied after she failed to provide photo identification and bank statements.

The court held a return on the order to show cause on May 19, 2021, and continued Callie's placement in resource care, finding Juliet still lacked appropriate housing. The court also held hearings in June 2021 and August 2021, and preserved the placement.

In July 2021, Juliet admitted she was still paying for Carter's motel room. She also confirmed they were still in a relationship. Juliet stated she looked into other housing but did not have any "proof of income." In August 2021, Juliet was ordered to continue participation in individual therapy and the Nurturing Parent program, which she attended on twelve occasions. However, in August,



Juliet's mother contacted the Division to report Juliet, in violation of court orders and Carter's parole, allowed Carter to have contact with the older children.

Throughout the fall of 2021 and winter of 2022, the Division provided Juliet with family team meetings to work towards reunification, supervised visitation through the YMCA, and housing assistance through Keeping Families Together, Rapid Re-housing, Family Promise, Good Counsel, and 180 Turning Lives Around. The Division also referred Juliet and Carter for couples counseling and Juliet for reunification therapy, individual therapy, and parenting education through IEP Youth Services, Inc.

Though defendants attended visitation consistently, Carter became increasingly aggressive with YMCA staff and was eventually suspended from visits after hitting Calvin. Carter continued to violate his community supervision for life ("CSL") conditions, was terminated from sex-offender therapy, and remained prohibited from living with children, including his own. Juliet continued to engage in services but still refused to separate from Carter, confirming she was still living with him in December 2021.

#### Juliet's Relocation to North Carolina

In April 2022, Juliet began trips to visit friends in North Carolina and then reported she planned to move into a trailer on her friend's property. The Division

noted Juliet "had finally reached a consensus that she needed to separate from Carter." Juliet then informed the Division she relocated to North Carolina but refused to provide her address.

In June and July 2022, Juliet returned to New Jersey for visitation with her children. During each of these visits, the Division repeatedly observed Juliet's vehicle parked at the motel where Carter still resided. When Juliet complained of the costs of driving back and forth, the Division offered to pay for airfare, bus, or train tickets. In August, Juliet started both virtual and in-person visitation. She acknowledged to the Division she was still spending time with Carter when in New Jersey.

Finally, in August 2022, Juliet provided her North Carolina address to the Division. In September 2022, the Division traveled to North Carolina to assess Juliet's home. The Division observed Juliet had her own bedroom and was free to stay in the house as long as she wanted. However, the home was infested with bugs and lacked hot water, and there were loose electrical wires and dog feces inside the home.

In October 2022, Juliet's therapist reported Juliet was still staying with Carter during her visits to New Jersey. The Division arranged for pretrial evaluations, including a psychological and bonding evaluation with Dr. Alan J.

Lee. Juliet traveled to New Jersey for visitation throughout the rest of 2022. In January 2023, Juliet's car broke down and she borrowed her mother's car. Juliet informed the Division she could not go back to North Carolina until she could get a new car. Juliet's mother's car was then repeatedly seen parked outside Carter's motel room. Juliet then reported she lost her job in North Carolina.

## II.

### A.

A fact-finding hearing occurred on September 14, 2021. The sole witness was the caseworker, who testified for the Division and recited her history with this family, including her efforts to assist Juliet in finding housing beginning in early 2021. She recounted the facts of the February 8 meeting after learning of Juliet's pregnancy. She also testified that, at the time of Calvin's birth in 2017, Juliet had assured the Division she would obtain a motel room separate from Carter's, but she failed to do so, leading to the removal of Clara and Calvin. The caseworker also testified Juliet received inconsistent prenatal care during her pregnancy. She also described Juliet's refusal to allow certain routine medical care for newborn Callie. She testified Juliet acknowledged she was not living separately from Carter at the time of Callie's birth. The caseworker testified Carter had offered to move out of the motel room but then failed to do so. She

also highlighted that just a few days before Callie's birth, Carter pleaded guilty to violating his CSL by failing to register and was pending sentencing for that conviction. The caseworker confirmed the Division had further concerns about Juliet's ability to parent safely.

The court issued an oral opinion finding abuse and neglect by both parents. It recited the history of this matter, including the Division's efforts to assist Juliet in obtaining housing in advance of Callie's birth. The court found the caseworker credible.

The court cited N.J.S.A. 9:6-8.46(a)(1), which provides "proof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of, or the responsibility of, the parent or guardian." The court pointed to the parents' 2018 stipulation regarding Clara and Calvin, in which they stipulated to abuse and neglect in a similar fact pattern when through Juliet left then-newborn Calvin alone, Carter's failure to inform his parole officer of Calvin's birth, and his spending time with Calvin alone in violation of his parole.

The court reasoned defendants' failure to secure separate living arrangements put Callie at risk of harm. It entered an order on September 14, 2021, finding abuse and neglect of Callie because, "[l]eading up to and through

the birth of [Callie], the parents remained living together in a motel and neither parent took any action to arrange separate living arrangements so that [Callie] would not be living with the father."

The court denied Juliet's motion for reconsideration in December 2021 and continued Callie's placement in resource care. In April 2022, the court conducted a hearing after the Division filed for guardianship of Callie and concluded it was "not safe to return [Callie] home in the foreseeable future." The court held a final hearing on July 25, 2022, and entered an order terminating the abuse and neglect litigation because a guardianship complaint had been filed.

#### B.

"Title 9 governs acts of abuse and neglect against a child" by providing "interim relief for children at risk and outlin[ing] the standards for abuse and neglect proceedings against parents and guardians." N.J. Div. of Youth & Fam. Servs. v. A.L., 213 N.J. 1, 18 (2013). "In Title [9] proceedings, the Division has the burden of proving by a preponderance of competent, material, and relevant evidence that a parent abused or neglected a child." N.J. Div. of Child Prot. & Permanency v. B.P., \_\_\_ N.J. \_\_\_, \_\_\_ (2024). The Division "need only show that it was more likely than not that the defendant abused or neglected the child." N.J. Div. of Child Prot. & Permanency v. B.O., 438 N.J. Super. 373, 380 (App.

Div. 2014). "Abuse and neglect cases 'are fact-sensitive.'" N.J. Div. of Youth & Fam. Servs. v. E.D.-O., 223 N.J. 166, 180 (2013) (quoting N.J. Div. of Youth & Fam. Servs. v. T.B., 207 N.J. 294, 309 (2011)).

N.J.S.A. 9:6-8.21(c)(4) defines an "abused or neglected child," in relevant part, as:

a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian . . . to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof . . . .

The Supreme Court has interpreted conduct satisfying N.J.S.A. 9:6-21(c)(4)(b) as "conduct that is grossly or wantonly negligent, but not necessarily intentional." E.D.-O., 223 N.J. at 179 (quoting G.S. v Dep't of Human Servs., 157 N.J. 161, 178 (1999)). "Conduct is considered willful or wanton if done with the knowledge that injury is likely to, or probably will, result." G.S., 157 N.J. at 178 (internal citation omitted). "[T]he concept of willful and wanton misconduct implies that a person has acted with reckless disregard for the safety of others." Id. at 179.

A parent "fails to exercise a minimum degree of care when he or she is aware of the dangers inherent in a situation and fails adequately to supervise the child or recklessly creates a risk of serious injury to that child." Id. at 181. "Where an ordinary reasonable person would understand that a situation poses dangerous risks and acts without regard for the potentially serious consequences, the law holds [them] responsible for the injuries [they] cause[]." Id. at 179. Further,

where a parent or guardian acts in a grossly negligent or reckless manner, that deviation from the standard of care may support an inference that the child is subject to future danger. To the contrary, where a parent is merely negligent, there is no warrant to infer that the child will be at future risk.

[T.B., 207 N.J. at 307.]

Once, as here, abuse or neglect has been found, the offender's conduct must be logged in the child abuse registry as "the repository of all information regarding child abuse or neglect that is accessible to the public pursuant to State and federal law." N.J.S.A. 9:6-8.11. The agency has no discretion under the statute to withhold or remove an offender's name from the registry once the

Division has substantiated the allegations of abuse. See, e.g., N.J. Div. of Child Prot. & Permanency v. L.O., 460 N.J. Super. 1, 12 (App. Div. 2019).<sup>4</sup>

Appellate review of a trial court's finding of abuse or neglect is "limited" and "should be upheld when supported by adequate, substantial, and credible evidence." N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 552 (2014). Such deference is owed because the trial court "has the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand; it has a 'feel of the case' that can never be realized by a review of the cold record." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 293 (2007)).

"Moreover, by virtue of its specific jurisdiction, the Family Part 'possess[es] special expertise in the field of domestic relations' and thus 'appellate courts should accord deference to [F]amily [Part] fact[-]finding.'" R.G., 217 N.J. at 553 (first and second alterations in original) (quoting Cesare v. Cesare, 154 N.J. 394, 412-13 (1998)). "Therefore, '[w]e will not overturn a family court's fact-finding's unless they are so "wide of the mark" that our

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<sup>4</sup> The registry serves an important function in assuring that employers, day care centers, adoption agencies, and other organizations that deal with children are apprised of the harmful conduct that led a particular individual to be listed on the registry. N.J. Div. of Youth & Fam. Servs. v. M.R., 314 N.J. Super. 390, 399-402 (App. Div. 1998).



intervention is necessary to correct an injustice.'" B.P., \_\_ N.J. at \_\_ (quoting N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448 (2012)).

We also recognize, however, "where the focus of the [appeal] is . . . alleged error in the trial judge's evaluation of the underlying facts and the implications to be drawn therefrom, the traditional scope of review is expanded." R.G., 217 N.J. at 552 (quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188-89 (App. Div. 1993)). No deference is owed to a "trial court's interpretation of the law and the legal consequences that flow from established facts." Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995).

### C.

Juliet argues the court erred in finding abuse or neglect because it improperly considered evidence of a past risk of harm which did not materialize. Specifically, she alleges there was no risk of harm to Callie through the parents' cohabitation before her birth, and contrary to the court's findings, she and Carter did not refuse to live apart after Callie's birth.

Here, the court reasonably concluded Juliet's failure to formulate an appropriate plan for Callie's housing placed her at a substantial risk of harm. Despite having months to plan for the birth and being confronted by the caseworker with the possibility of Callie's removal, Juliet did not secure a safe

living arrangement in time for the child's homecoming. The record established that, even at the time of Callie's birth, Juliet had made no arrangements for suitable housing. Despite her assurances the parents would seek separate motel rooms, it was not established such rooms were necessarily available, affordable, or could safely house a newborn. Juliet's ongoing assurances that they would eventually obtain separate housing never came to fruition during the guardianship litigation for Clara and Calvin despite nearly identical assertions from Juliet. The trial court did not abuse its discretion when it concluded Juliet's failure to obtain such housing before Callie's birth, which remained an extant concern immediately after her birth, placed Callie at a risk of harm. As the court succinctly summed up, "[a]ctions speak louder than words."

Juliet also cites A.L. to argue the Division did not demonstrate an imminent, substantial risk of harm to Callie after the birth. In A.L., the Court reversed a finding of abuse and neglect based on a mother's drug use during pregnancy, where that record did not establish danger or a risk of harm to the child after birth. 213 N.J. at 22. However, the A.L. Court made clear the behavior of an expectant mother "can still be relevant if it relates to a child's suffering or the risk of harm to a child after birth." Ibid. Juliet asserts her failure to obtain alternate housing during pregnancy was comparable to A.L. because

no harm materialized. However, as discussed above, Callie was placed at risk of harm in that Juliet failed to arrange suitable housing for her, and that harm was manifest when she did not have anywhere to live safely at the time of her birth. The only reason the ultimate lack of suitable housing did not materialize harm to Callie over the longer term is the Division's swift emergency removal. Indeed, the record suggests if the hospital had not informed the Division of the birth and had it not removed Callie, Juliet and Carter would have returned to their shared motel room with Callie.

Juliet also argues the court erred in considering her 2018 stipulation in the prior abuse and neglect proceeding. The Division previously found a substantiated case for risk of sexual abuse against both parents, and they both stipulated to a judicial finding of abuse and neglect on June 25, 2018. N.J.R.E. 201(b)(4) provides a court may take judicial notice of "records of the court in which the action is pending and of any other court of this state . . . ." Further, N.J.S.A. 9:6-8.46(a)(1) plainly provides "proof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of, or the responsibility of, the parent or guardian." The court was permitted to take judicial notice of the order.

Juliet argues the court disregarded her need to save money by cohabitating with Carter during the pregnancy. She cites New Jersey Division of Child Protection & Permanency v. L.W., 435 N.J. Super. 189, 195 (App. Div. 2014), to argue "poverty alone is not a basis for a finding of abuse or neglect." However, the court here did not base its finding on poverty, but rather on the failure to obtain alternate housing despite Juliet's own assertions she would be able to do so. Moreover, Juliet was the one paying for the shared room with Carter but declined to have him removed.

Juliet further contends the court erred in its April 18, 2022, order approving the Division's permanency plan for termination followed by adoption. She posits the court failed to determine whether Callie could have been safely returned to her, and the court improperly relied on evidence from Clara and Calvin's guardianship litigation in approving the permanency plan.

The court entered an order following a hearing on April 18, 2022, approving the Division's plan of termination of parental rights as to Callie and ordering the filing of a guardianship complaint. At that hearing, the court heard arguments from counsel and explicitly concluded it was "not safe to return [Callie] home in the foreseeable future." The subsequent guardianship action proceeded to a trial at which Juliet's rights were terminated.

Here, as a threshold matter, the April 18, 2022, order was not listed in Juliet's notice of appeal, nor in her case information statement.<sup>5</sup> Pursuant to Rule 2:5-1(f)(ii), Juliet's challenge to that order has been waived. See Pressler & Verniero, Current N.J. Court Rules, cmt. 5.1 on R. 2:5-1(f) (2023) ("Courts have concluded that only the judgments, orders or parts thereof designated in the notice of appeal are subject to the appellate process and review.").

Even if we were to consider this issue despite its omission from Juliet's notice of appeal, it is moot. We have held an order terminating an abuse or neglect action is moot when "the decision sought in a matter, when rendered, can have no practical effect on the existing controversy." N.J. Div. of Youth & Fam. Servs. v. A.P., 408 N.J. Super. 252, 263 (App. Div. 2009) (quoting Greenfield v. N.J. Dep't of Corrs., 382 N.J. Super 254, 257-58 (App. Div. 2006)). Since a judgment of guardianship in A-2073-22 has already been entered and appealed, a reversal of the court's decision here approving the permanency plan of termination would have no practical effect.

Carter's argument is that his status alone, as a person previously convicted of a crime and subject to CSL, does not automatically create imminent danger

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<sup>5</sup> Juliet's notice of appeal and case information statement lists only the September 14, 2021 fact-finding order and the July 25, 2022 order terminating litigation.

and a substantial risk of harm to his child, as required to support the finding of abuse or neglect. He also adds he was willing to vacate the couple's shared motel room after Callie's birth.

The extent of the harm, if any, from Carter's presence is not truly at issue. The court did not find harm based only on Carter's status as a sex offender who was barred from living with children. Rather, it was his and Juliet's failure to plan for Callie's birth, considering that status, which served as the basis for the court's finding. This failure created the substantial risk that, upon discharge from the hospital, Callie would be harmed because she did not have a suitable place to live. The court exercised its significant discretion to reasonably conclude that, because Carter was not permitted to live with Callie, the failure to make alternate living arrangements by the time of her birth exposed her to a substantial risk of harm. Carter's alleged willingness to move out of the motel room after Callie's birth is of limited relevance here, as he failed to do so in time for her birth or immediately thereafter, thus exposing her to a risk of harm.

Our Supreme Court's recent decision in B.P. is inapposite. There, the Court reversed a finding of abuse or neglect against a mother who left her newborn baby at the hospital and did not return. \_\_\_ N.J. at \_\_\_ (slip op. at 21). Consistent with longstanding principles of child welfare jurisprudence in this

State, the Court held, in the absence of actual harm, a finding of abuse or neglect under Title 9 subsection (c)(4) must be based on specific findings of fact establishing a parent's failure to exercise a minimum degree of care and placing the child in imminent danger of becoming impaired. Id. at \_\_\_ (slip op. at 24). A mere possibility of a child's impairment is not sufficient. Id. at \_\_\_ (slip op. at 23-24).

As the trial court expressly acknowledged, Carter is a convicted Megan's Law offender who admitted to sexually abusing his own seven-year-old daughter. Given the risk he poses, specifically to children, including his own, he is strictly prohibited from living with children. Yet by the time of Callie's birth, Carter and Juliet had failed to secure separate housing despite having months to plan. The risk Callie faced by living with Carter or being left unsupervised with him was real and not the speculative "maybe" described by the B.P. Court's discussion of risks to a newborn left in the safety of a hospital.

### III.

#### A.

The subsequent guardianship trial took place over five days in January and February 2023. At the time of the trial, Juliet remained in New Jersey while allegedly seeking a new car. On the first day of trial, Carter completed an

identified surrender of his parental rights to Callie's resource parents. Thereafter, the Division presented documentary evidence and testimony from seven witnesses, including: caseworkers Alexandra Ucal, Kyle Higgins, Jillian Lepore, and Angela Vaccaro; Aklima Baksh, LPC, ACS; a resource parent; and Dr. Lee. The Law Guardian called no witnesses but supported the Division's plan of termination of parental rights. Juliet called no witnesses.

The caseworkers testified consistently to the documentation in the record including the Division's involvement with Juliet before Callie's birth, as well as matters involving Clara and Calvin. They also testified to: the feasibility of placement with other relatives; referrals made to Juliet for housing, domestic violence services, and psychology services and the results of those referrals; Juliet's vehicle being at Carter's motel room up to and including the day of trial; her moves to North Carolina and Bradley Beach; and the Division's inspection of those residences.

The resource mother testified she had been caring for Callie since she was three days old. After being fully educated about the differences between kinship legal guardianship ("KLG") and adoption, she and her family were committed to adopting Callie. She said she planned to continue sibling visits for Callie post-adoption and was "open" to discussing continued contact with Juliet.



Baksh testified that since 2020, she had been working in therapy with Juliet to regain custody of her children, address trauma, and learn to be "more assertive, stand up for herself, and communicate." She confirmed Juliet knew Callie could not be returned to her custody while she was living with Carter, but still stayed with him and paid for the couple's hotel room for years. Moreover, by trial, Juliet was again living with Carter.

Dr. Lee testified as an expert in clinical and forensic psychology. He testified about his September 2022 psychological evaluation of Juliet and comparative bonding evaluations of Callie with her resource parents and of Callie with Juliet. At the time of her psychological evaluation, Juliet had been living for three months in North Carolina in a rental with friends. Before that, she lived with Carter for years at the motel and, intermittently, with her grandmother in Bradley Beach.

According to Dr. Lee, Juliet unequivocally refused to answer certain questions, struggled to maintain attention, and focused her efforts on defending Carter. While she refused to discuss her relationship with Carter, Juliet made "active efforts . . . to weave in information in her defense of [Carter]." Moreover, Dr. Lee found Juliet's "entrenched and maladaptive personality and character traits" adversely impacted her ability to function. Reflective of this,

he cited her "problems in judgment and decision-making," difficulty coping with life demands, and struggle "to establish stability in different areas of her life."

Dr. Lee found Juliet "would not be able to be a minimally adequate parent to [Callie] at the time and within the foreseeable future." Juliet's "inability to provide consistency, stability, protection, and support," would "likely jeopardize [Callie's] health, safety[,], and welfare." Even if Juliet had stable housing or employment, or completely severed her relationship with Carter, Dr. Lee's opinion would be unchanged. He stressed Juliet's issues persisted for years, despite intervention, and eliminating any one of those perceived obstacles "does not . . . fix everything." As such, Dr. Lee "did not support [Juliet] being an independent caretaker of [Callie]," and ultimately recommended "other forms of permanency . . . planning besides placement or reunification" with Juliet.

Turning to bonding, Dr. Lee testified Callie, then just one and one-half years old, exhibited an "ambivalent and insecure attachment" to Juliet. He found a "low risk of [Callie] suffering severe and enduring harm if [her] relationship with [Juliet] is permanently ended" and severing the parent-child relationship would be "not likely to result in more harm than good." Conversely, Dr. Lee found Callie shared a "significant and positive bond" with her resource parents, with whom she had lived her entire life. Given their bond, he found "there is a

significant risk of [Callie] suffering severe and enduring harm" if the relationship were severed. Thus, Dr. Lee concluded termination of parental rights was unlikely to result in more harm than good.

Following the trial, the court issued a thorough written decision, finding the Division had proven by clear and convincing evidence all four prongs of the statutory test in N.J.S.A. 30:4C-15.1(a). The court then ordered the termination of Juliet's parental rights to Callie.

## B.

As with appeals from Title 9 abuse or neglect cases, our scope of appellate review in Title 30 cases is limited. We will not second-guess or substitute our judgment for that of the family court, provided that its factual findings are "grounded in substantial and credible evidence in the record." N.J. Div. of Child Prot. & Permanency v. D.C.A., 256 N.J. 4, 19 (2023). "Deference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" Cesare, 154 N.J. at 412 (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). However, we owe no deference to a judge's legal conclusions which are reviewed de novo. N.J. Div. of Child Prot. & Permanency v. A.B., 231 N.J. 354, 369 (2017).

The applicable law is clear. When terminating parental rights, the trial court applies the statutory best interests test, which requires consideration of four prongs:

(1) The child's safety, health, or development has been or will continue to be endangered by the parental relationship;

(2) The parent is unwilling or unable to eliminate the harm facing the child or is unable or unwilling to provide a safe and stable home for the child and the delay of permanent placement will add to the harm;

(3) The [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.

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

The Division must prove each prong by "clear and convincing evidence." N.J. Div. of Child Prot. & Permanency v. D.H., 469 N.J. Super. 107, 115 (App. Div. 2021). These prongs are not discrete and separate; they overlap to inform a more general inquiry that the termination of parental rights is in a child's best interests. N.J. Div. of Child Prot. & Permanency v. R.L.M., 236 N.J. 123, 145 (2018). "The question ultimately is not whether a biological mother or father is

a worthy parent, but whether a child's interest will best be served by completely terminating the child's relationship with that parent." N.J. Div. of Youth & Fam. Servs. v. T.S., 417 N.J. Super. 228, 249 (App. Div. 2010) (quoting E.P., 196 N.J. at 108).

"Parents have a constitutionally protected right to maintain a relationship with their children." M.M., 189 N.J. at 279. That right, however, "is not absolute" and is limited "by the State's parens patriae responsibility to protect children whose vulnerable lives or psychological well-being may have been harmed or may be seriously endangered by a neglectful or abusive parent." F.M., 211 N.J. at 447. In guardianship and adoption cases, such as here, it is well-established "[c]hildren have their own rights, including the right to a permanent, safe[,] and stable placement." N.J. Div. of Youth & Fam. Servs. v. C.S., 367 N.J. Super. 76, 111 (App. Div. 2004). We acknowledge "the need for permanency of placements by placing limits on the time for a birth parent to correct conditions in anticipation of reuniting with the child." Ibid. Thus, a parent's interest must, at times, yield to the State's obligation to protect children from harm. See N.J. Div. of Youth & Fam. Servs. v. G.M., 198 N.J. 382, 397 (2009).

C.

Juliet challenges the court's findings on each of the four prongs of the statutory test in N.J.S.A. 30:4C-15.1(a). We address them in turn.

Under prong one, the Division "must show that the alleged harm 'threatens the child's health and will likely have continuing deleterious effects on the child.'" F.M., 211 N.J. at 449 (quoting In re Guardianship of K.H.O., 161 N.J. 337, 352 (1999)). The Division must "demonstrate harm to the child by the parent," which "involves the endangerment of the child's health and development resulting from the parental relationship." N.J. Div. of Youth & Fam. Servs. v. I.S., 202 N.J. 145, 170 (2010) (quoting K.H.O., 161 N.J. at 348) (emphasis omitted). "To satisfy this prong, [the Division] does not have to wait 'until a child is actually irreparably impaired by parental inattention or neglect.'" F.M., 211 N.J. at 449 (quoting In re Guardianship of DMH, 161 N.J. 365, 383 (1999)).

Juliet argues the court erred in its finding under the first prong because the concern that she remained in a relationship with Carter was remedied by her move to North Carolina. As to the first prong of the statutory test, the court found Callie's safety, health, or development had been and would continue to be harmed by the parental relationship. Contrary to her representations, Juliet was

still in a relationship with Carter at the time of trial, which posed a substantial risk of harm to Callie.

In support of its finding of harm, the court pointed to Dr. Lee's testimony that he did not support reunification, particularly in light of Juliet's ongoing relationship with Carter. The court further credited Dr. Lee's opinion that Juliet was unable to cope with life's demands, exhibited a pattern of poor judgment, and was unable to establish stability. Here, abundant evidence supported the court's finding Callie had been, and would continue to be, harmed by the relationship with Juliet.

Juliet's argument that any concern that she remained in a relationship with Carter was remedied by her temporary move to North Carolina is unpersuasive and we will discuss further below under the second prong. The court reasonably concluded this move did not ameliorate the concerns, because of the evidence and testimony from the caseworkers that Juliet's car returned to Carter's motel room, and apparently stayed overnight, on each of her visits to New Jersey. There was additional evidence she spent time with him on her visits to New Jersey, including her admission that she drove him around and took him shopping. He also accompanied her on some visits with Callie. By the time of

trial, she had returned to New Jersey for an unspecified long-term period after losing her job and car.

Juliet next argues the court erred in finding the Division demonstrated she was unable or unwilling to eliminate the alleged harm facing Callie or was unable or unwilling to provide a safe and stable home for her, and the delay in permanent placement would add to the harm. She further argues the recent elimination from the second prong consideration of any evidence of serious and enduring harm caused by separation from resource parents meant the court was not permitted to consider such evidence under the fourth prong either.

In support of this finding, the court pointed to the testimony of Higgins, Lepore, and Ucal, as well as Baksh, all of whom it found credible, about the history of Juliet and her children. It credited their testimony about Juliet's longstanding cohabitation with Carter at the motel and his status as a sex offender, as well as Juliet's apparent relocation to North Carolina.

Based on this testimony, the court concluded Juliet continued to be in a relationship with Carter at the time of trial, despite knowing he could not live with the children, such that "[n]othing has changed since the last guardianship trial." The court explicitly rejected the notion that the move to North Carolina severed Juliet's ties with Carter, finding that she stayed with him "often" on her



returns to New Jersey, and she "could have truly removed herself from the father but has decided against doing so." Ample evidence demonstrated Juliet's inability or unwillingness to eliminate the harm facing Callie. Further, her continued relationship with Carter prevented her from establishing a safe and stable home for Callie because he was not permitted to live with children. The court's findings were thus supported by the evidence in record and we decline to disturb them.

Juliet's contention that the revisions to the second prong restricted consideration of such evidence under the fourth prong was explicitly rejected in D.C.A., which held the amendment does not bar evidence of a child's bond to a current placement under the fourth prong. 256 N.J. at 28 (2023).

Juliet argues the court erred in its finding under the third prong that the Division demonstrated its reasonable efforts to provide services. Specifically, she argues the court's obligation to consider alternatives to termination does not end when the resource parents express a preference for adoption.

The court found the Division made reasonable efforts to provide Juliet with services to help correct the circumstances that led to Callie being placed outside the home. The court cited the caseworker's testimony about services provided, including ongoing therapy with Baksh and supervised visitation. It

also found the Division referred Juliet to domestic violence services with 180 Turning Lives Around, but she declined such services after reconciling with Carter. In addition, the court found the Division made efforts to assist Juliet to obtain housing. The Division reasonably evaluated Juliet's residence in North Carolina, even after Juliet delayed in providing the address, and found it was not appropriate for Callie. The court also addressed alternatives to termination of parental rights, crediting the resource parent's testimony that she wished to adopt Callie and did not want to pursue KLG.

The substantial credible evidence in the record supports the court's finding that the third prong was satisfied. Throughout this matter, the Division worked to reunify Juliet with Callie by providing numerous housing resources, visitation, therapy, professional evaluations, and other services. Juliet participated in these services without success, as she failed to obtain appropriate housing apart from Carter. Her temporary relocation to North Carolina did not yield a home suitable for Callie, and there was evidence to suggest she had returned to living with Carter at the motel even at the time of trial. Despite years of these services, Juliet was still unable to provide a safe and stable home for Callie, and the court's finding as to the third prong was amply supported by the evidence in the record.

Juliet argues the Division and the court should have considered alternative placements or a KLG arrangement. The Division evaluated Juliet's proffered relative, an aunt, as an alternate placement but she was unable to care for Callie. As to KLG, Juliet cites N.J.S.A. 3B:12A-6(d)(3) and argues the resource parents' preference for adoption over KLG is not dispositive. However, the court did not consider the stated preference here to be dispositive, and instead considered it as part of the best interests analysis, as expressly permitted by N.J.S.A. 3B:12A-6(d)(4) (authorizing court to award KLG only when it "is in the child's best interests"). Further, evidence of a resource parents' preference for adoption is relevant to, but not dispositive of, a trial court's finding no alternative to termination of parental rights. N.J. Div. of Child Prot. & Permanency v. M.M., 459 N.J. Super. 246, 263 (App. Div. 2019).

Juliet next argues the court erred in its finding under the fourth prong that the termination of her parental rights will not do more harm than good. The court credited Dr. Lee's testimony about his bonding evaluations, in which he found Callie had an ambivalent and insecure bond with Juliet, which was neither significant nor positive, and there was a low risk that Callie would suffer severe or enduring harm if this bond were severed. It also credited Dr. Lee's testimony that Callie shared a significant and positive bond with the resource parents and

would suffer severe and enduring harm if these bonds were severed. The court also relied on Dr. Lee's testimony about the need for permanency, and the resource parent's testimony about her desire to adopt Callie.

Under the fourth best interests prong, the Division should adduce testimony from a "well qualified expert who has had full opportunity to make a comprehensive, objective, and informed evaluation" of the child's relationship with the biological and foster parents. In re Guardianship of J.C., 129 N.J. 1, 19 (1992). "[A] child's need for permanency is an extremely important consideration pursuant to this prong." R.G., 217 N.J. at 559. "[A] child has a right to live in a stable, nurturing environment and to have the psychological security that [their] most deeply formed attachments will not be shattered." F.M., 211 N.J. at 453. But "[k]eeping the child in limbo, hoping for some long term unification plan, would be a misapplication of the law." N.J. Div. of Youth & Fam. Servs. v. A.G., 344 N.J. Super. 418, 438 (App. Div. 2001). The question "is whether, after considering and balancing the two relationships, the child will suffer a greater harm from the termination of ties with her natural parents than from the permanent disruption of her relationship with her foster parents." K.H.O., 161 N.J. at 355. See also N.J. Div. of Youth & Fam. Servs. v. H.R.,

431 N.J. Super. 212, 226 (App. Div. 2013) (if separation of the child from the caretaking parents will cause serious harm, then the fourth subpart is fulfilled).

The substantial credible evidence in the record supports the court's finding under prong four. Indeed, Dr. Lee explained that termination would not do more harm than good, and he made clear Callie would not suffer severe or enduring harm if her bond with Juliet were severed. There was further evidence that Juliet could not keep Callie safe and could not fully separate from Carter, which prevented her from establishing a stable home for Callie. Further, the record established Callie was securely bonded to the resource parents, and needed permanency.

To the extent we have not otherwise addressed any of either defendant's remaining arguments, we determine they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in A-0047-22, A-0048-22, and A-2073-22.

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

  
CLERK OF THE APPELLATE DIVISION