RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3513-21

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

A.S.,

Defendant-Appellant,

and

J.B.,

Defendant.

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

Submitted September 11, 2023 – Decided September 27, 2023

Before Judges Gilson, Berdote Byrne and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Chancery Division, Mercer County, Docket No. FG-11-0037-20.

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

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

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

PER CURIAM

Defendant A.S.,[1] the biological mother of J.B. (Joe), who was born in August 2016, appeals from the June 27, 2022, judgment of guardianship terminating her parental rights to the child.[2] Defendant contends the Division of Child Protection and Permanency (Division) failed to prove prong three of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence because it failed to

[1] We refer to the adult parties by initials and to the child by a fictitious name to protect their privacy. See R. 1:38-3(d)(12).

[2] J.B., Joe's biological father, did not participate in the guardianship litigation and has not participated in the appeal.

provide reasonable services to A.S. and failed to consider reasonable alternatives to termination. The Law Guardian supports the termination on appeal as it did before the trial court.

Based on our review of the record and applicable law, we are satisfied the record evidence supports the decision to terminate defendant's parental rights. Accordingly, we affirm substantially for the reasons set forth by Judge Thomas J. Walls, Jr. in his thorough and well-reasoned, 115-page opinion rendered on June 27, 2022.

We will not recite in detail the history of the Division's interactions with A.S. and Joe. Instead, we incorporate by reference the factual findings and legal conclusions contained in Judge Walls, Jr.'s decision. We add the following comments.

The Division removed Joe from defendant's custody when he was two years old and placed him with his current resource parents. With respect to prong three, the Division was required to make "reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home . . . ." N.J.S.A. 30:4C-15.1(a)(3). This prong "contemplates efforts that focus on reunification of the parent with the child and assistance to the parent to correct and overcome those circumstances that

necessitated the placement of the child into [resource] care." In re Guardianship of K.H.O., 161 N.J. 337, 354 (1999). The Division's efforts are "not measured by their success." In re Guardianship of D.M.H., 161 N.J. 365, 393 (1999).

After removing Joe, the Division offered defendant numerous services to help her reunite with her child, but defendant failed to engage in or take any meaningful steps to address the long-standing issues. The record is replete with instances where A.S. was offered substance abuse services, mental health services, housing assistance, and visitation with Joe. A.S. refused to avail herself of most of these services. The uncontroverted expert evidence of Dr. Brandwein diagnosed A.S. as suffering from "a personality disorder with narcissistic and paranoid features that has a rather profound impact on her day-to-day functioning and ability to parent her child." The doctor noted A.S. has "little to no insight into why [Joe] was removed from her care, blames others for her misfortunes, and has no evidence of sobriety . . . ."

A.S. also argues the Division failed to adequately explore alternatives to termination and the termination contravenes recent amendments to the KLG statute elevating KLG as preferable to adoption in termination cases. A.S.'s first argument is belied by the record, which supports the trial court's finding that the Division explored reasonable alternatives to termination, such as contacting her

various siblings for possible placement, ruling out Joe's maternal grandmother, and exploring placement options with Joe's paternal relatives.

A.S.'s second argument is based on the Legislature eliminating language in N.J.S.A. 30:4C-15.1(a)(2) on July 2, 2021.[3] The Legislature removed from the court's consideration "evidence that separating the child from his resource family parents would cause serious and enduring emotional or psychological harm to the child . . . ." Compare L. 2015, c. 82, § 3, with L. 2021, c. 154, § 9. The Legislature simultaneously removed language from the KLG statute at N.J.S.A. 3B:12A-6(d)(3) requiring the court consider KLG as an option only when "adoption of the child is neither feasible nor likely." Compare L. 2006, c. 47, § 32, with L. 2021, c. 154, § 4. The KLG statute has no application to a termination-of parental rights trial. The amendments to KLG now ensure a resource parent's willingness to adopt no longer forecloses the possibility of KLG at the time the permanency plan is selected by the court. Evidence establishing a resource parent's clear and informed preference for adoption remains relevant to a trial court's finding that there are no reasonable alternatives to termination of parental rights and termination will not do more harm than good in a termination of parental rights proceeding. The considerations of delay

[3] The amendments to the KLG statute explicitly became effective the same day.

in achieving permanency, alternatives to termination, and balancing more harm than good must still be considered pursuant to the unchanged plain text of N.J.S.A. 30:4C-15.1(a)(2)-(4).

We find A.S.'s interpretation of the amendments unavailing in light of the holding in New Jersey Division of Child Protection & Permanency v. D.C.A., 474 N.J. Super. 11, 27-29 (App. Div. 2022), certif. granted, 253 N.J. 599 (2023), which narrowly construed the KLG amendments in conjunction with the best interests test amendment. As the court in D.C.A. noted, interpretations of the amendments dispensing of the best interests test in favor of KLG contravene the plain language of both amendments and are without merit. Id. at 27-29.

In his thoughtful opinion, Judge Walls, Jr. reviewed the evidence presented at trial and concluded: (1) the Division had proven all four prongs of the best interests test pursuant to N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence; and (2) termination of defendant's parental rights was in Joe's best interest.

In this appeal, our review of the trial judge's decision is limited. We defer to his expertise as a Family Part judge, Cesare v. Cesare, 154 N.J. 394, 413 (1998), and we are bound by his factual findings so long as they are supported by sufficient credible evidence, N.J. Div. of Youth & Fam. Servs. v. M.M., 189

N.J. 261, 278-79 (2007) (quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)).

Applying these principles, we conclude Judge Walls, Jr.'s factual findings are fully supported by the record, and in light of those facts, his legal conclusions are unassailable.

Affirmed.