New Jersey Division of Youth and Family Services v. S.L.

2009 | Cited 0 times | New Jersey Superior Court | October 13, 2009

RECORD IMPOUNDED

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

Submitted September 15, 2009

Before Judges Fuentes, Gilroy and Simonelli.

Defendant S.L. is the biological mother of seven children identified here as T.L. (Tina), born in June 1997, S.L. (Steve), born in July 1998, M.L. (Matt), C.L. (Craig), twins boys born in August 1999, F.L. (Fran), born in October 2003, J.L. (Joyce), born in November 2004, and K.L. (Kevin), born in October 2006.[1]

M.L. is the children's biological father.[2]

Defendant appeals from the final judgment of the Family Part terminating her parental rights to these children. She argues that the Division of Youth and Family Services (Division or DYFS) failed to prove by clear and convincing evidence the four statutory prongs contained in N.J.S.A. 30:4C-15.1a. After reviewing the evidence presented to the trial court, and in light of prevailing legal standards, we reject defendant's argument and affirm.

We will not recite in detail the extensive history of contact defendant, S.L., and the children have had with the Division. Instead, we incorporate by reference the factual findings and conclusions of law made by Judge Critchley in his comprehensive oral opinion delivered from the bench on July 8, 2008. We add only the following brief comments.

We are satisfied that commencing in February 2005, the first contact DYFS had with defendant, and up to and including the date of the trial court's final ruling, DYFS provided defendant with multiple opportunities to reform her wayward behavior; address a variety of documented mental health problems; and, perhaps most importantly, overcome and manage her serious substance abuse problem. None of these interventions proved successful. Even in the face of the mountain of evidence documenting her addiction, defendant continues to steadfastly minimize the negative effect her dysfunctional lifestyle has had on her children.

It is noteworthy that scarcely two months after the trial court approved the Division's permanency

plan recommending termination of parental rights, defendant was arrested for failure to pay outstanding fines and again tested positive for cocaine and morphine. Indeed, defendant admits that she was neither physically nor mentally capable of caring for the children at the time the court entered the judgment of guardianship terminating her parental rights. There are no legal or factual justifications for any further delays in securing a permanent, safe, and secure home for these children.

Judge Critchley's oral opinion carefully reviewed the evidence presented by DYFS, and thereafter concluded that it had met all of the legal requirements for an order of guardianship. His opinion tracks the statutory requirements of N.J.S.A. 30:4C-15.1, accords with In re Guardianship of K.H.O., 161 N.J. 337 (1999), In re Guardianship of D.M.H., 161 N.J. 365 (1999), and New Jersey Div. of Youth and Family Servs. v. A.W., 103 N.J. 591 (1986), and is supported by the record. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974). The "court's factual findings '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)).

Although we are satisfied that Judge Critchley correctly addressed each of the four statutory prongs in N.J.S.A. 30:4C-15.1a, we will nonetheless briefly address defendant's arguments concerning the availability of a Kinship Legal Guardianship (KLG), under N.J.S.A. 3B:12A-1 to -7, as a defense to this guardianship action.

Defendant argues that the trial court erred when it failed to properly consider the advanced age of the custodial grandparents, sixty-eight and seventy-two years old, as a factor militating against permanency. We disagree. As correctly noted by Judge Critchley, KLG is not available as an alternative to termination here because both grandparents are willing and able to adopt the children. New Jersey Div. of Youth & Family Servs. v. P.P., 180 N.J. 494, 510 (2004). Affirmed.

1. The children's names are fictitious.

2. Although represented by counsel, M.L. did not appear before the Family Part at the time of trial. The court entered default against him prior to the commencement of trial. Even in his absence, however, M.L.'s counsel continued to represent his interest throughout the trial. Based on the evidence presented, the trial court found sufficient grounds to terminate M.L.'s parental rights. On September 9, 2009, after S.L.'s appeal had been fully briefed, and one week before the case was scheduled for disposition before this court, M.L. filed a motion seeking leave to file an appeal and supporting brief nunc pro tunc. Mindful of the considerations involved, New Jersey Div. of Youth and Family Servs. v. R.G., 354 N.J. Super. 202 (App. Div. 2002), certif. denied, 177 N.J. 491 (2003), we denied the motion by order dated September 21, 2009.