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NEW JERSEY DIVISION OF YOUTH
AND FAMILY SERVICES,

Plaintiff-Respondent,

v.

V.M. and B.G.,

Defendants-Appellants.

IN THE MATTER OF THE GUARDIANSHIP
OF J.M.G., a minor.

Submitted May 4, 2010 - Decided August 6, 2010

Before Judges Carchman, Lihotz and
Ashrafi.

On appeal from the Superior Court of New
Jersey, Chancery Division, Family Part,
Essex County, Docket Nos. FG-07-190-07 and
FN-07-572-06.

Yvonne Smith Segars, Public Defender,
attorney for appellant V.M. (Ruth Harrigan,
Designated Counsel, on the brief).

Yvonne Smith Segars, Public Defender,
attorney for appellant B.G. (Miles Lessem,
Designated Counsel, on the brief).

Paula T. Dow, Attorney General, attorney for respondent New Jersey Division of Youth and Family Services (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Lisa J. Rusciano, Deputy Attorney General, on the brief).

Yvonne Smith Segars, Public Defender, attorney for respondent minor (Christopher A. Huling, Assistant Deputy Public Defender, on the brief).

Gibbons P.C., and Lynn M. Paltrow (National Advocates for Pregnant Women) of the New York bar, admitted pro hac vice, and Katherine Jack (NAPW), and Susan Jenkins (NAPW) of the D.C. bar, admitted pro hac vice, attorneys for amicus curiae Experts in Maternal and Neonatal Health, Birth, and Child Welfare (Lawrence S. Lustberg, Jennifer B. Condon, Ms. Paltrow, Ms. Jack, and Ms. Jenkins, on the brief).

PER CURIAM

On this appeal from a judgment terminating the parental rights of defendants V.M. and B.G. and granting guardianship of their infant child J.M.G. to plaintiff Division of Youth and Family Services (DYFS), we conclude that DYFS did not establish the statutory criteria, N.J.S.A. 30:4C-15.1a, by clear and convincing evidence. Accordingly, we reverse and remand for further proceedings.

Much of the background of this matter can be found in our majority and concurring opinions in N.J. Div. of Youth & Family Servs. v. V.M., 408 N.J. Super. 222 (App. Div.), certif. denied, 200 N.J. 505 (2009), cert. denied, ___ U.S. ___, ___ S. Ct. ___,

___ L. Ed. 2d ___ (2010) (V.M.). On that appeal, we concluded that "the independent evidence presented, irrespective of the evidence concerning the mother, V.M.'s, resistance to the c-section, amply supported the judge's ultimate finding as to V.M." Id. at 224. However, we reversed the judgment as to B.G., the father, determining that there was no factual support for a finding of abuse and neglect on his part. Id. at 225.

At the conclusion of the ensuing guardianship proceeding, the Family Part judge found that DYFS had met its burden of proof as to the first and third prongs of the best interests of the child test set forth at N.J.S.A. 30:4C-15.1a, but that prongs two and four remained "open." He then ordered the guardianship case temporarily returned to protective services status, and appointed an independent psychiatrist to evaluate defendants. Upon receipt of the expert's report, the judge reinstated the guardianship proceeding. At the conclusion of the guardianship hearing, he found that DYFS had established all four prongs of the best interests of the child test and terminated defendants' parental rights.

I.

Needless to say, as the trial judge concluded, a "profound disagreement" existed among the experts regarding defendants' ability to parent J.M.G. Our analysis requires an expansive

discussion of the relevant facts.[1] In assessing the facts, we observe that generally, DYFS presented substantive and relevant factual information interspersed with seemingly trivial issues that has little impact on the dominant issue of the best interests of the child. We present both to provide a comprehensive overview of what was before the trial judge in assessing the best interests of the child.

V.M. and B.G. have been married since 1995. B.G. was self-employed as a limousine driver.[2] V.M. has a bachelor's degree in communications and a paralegal certificate but has been unemployed since 1997, in large part due to a workplace injury, which resulted in a workers compensation action.

V.M. was treated by Ronni Lee Seltzer, M.D., a psychiatrist, from 1993 to 2005 for "psychiatric symptoms secondary to [the] work related injury." Seltzer initially diagnosed V.M. as suffering from post-traumatic stress disorder ("PTSD"), major depression and panic disorder, and treated her with a combination of pharmacotherapy and psychotherapy. Over

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[1] We incorporate the factual statement in the majority and concurring opinion in V.M.

[2] During the pendency of this appeal, defendants moved to supplement the record and for other related relief. Since we now reverse and remand, we deny the motions without prejudice to defendants submitting such additional proofs to the trial judge as they deem relevant to the issues.

the course of V.M.'s treatment, Seltzer prescribed antidepressant (Zoloft), antipsychotic (Abilify and Seroquel), antianxiety (Klonopin), and sleep medications (Ambien). Toward the later part of her treatment, Seltzer's notes increasingly reported V.M.'s paranoia.

V.M. stopped seeing Seltzer in January 2006. Seltzer's notes concluded that the doctor was

> [s]urprised by [V.M.'s] cancelling all future [appointments]. Learned that [V.M.'s workers' compensation] litigation settled, which may have precipitated this decision. Attempted to contact [V.M.] to discuss the benefit of ongoing [treatment], but [she] did not return any calls. Since [V.M.] demonstrates neither suicidal nor homicidal ideation, she is within her right to terminate [treatment], though clearly not recommended by this MD.

Meanwhile, V.M. became pregnant with the couple's first child in July or August 2005. She sought treatment from Ted Cohen, M.D., an obstetrician, for prenatal care, and read books on pregnancy and parenting. V.M. also stopped taking the psychotropic medication prescribed by Seltzer for fear of adverse effects on her unborn child.

On April 16, 2006, V.M., who was then forty-two years old, and B.G., then forty-one years old, went to St. Barnabas Hospital after V.M. experienced contractions. We described the

relevant facts adduced at the abuse and neglect trial regarding V.M.'s labor and delivery:

> [V.M.] consented to the administration of intravenous fluids, antibiotics, oxygen, fetal heart rate monitoring, an episiotomy[] and an epidural anesthetic. She refused to consent to any other invasive treatment, however, including a c-section or fetal scalp stimulation. Hospital personnel explained the potentially dire consequences of not allowing a c-section in the event of fetal distress, but V.M. remained adamant in her refusal.
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> In the hospital records, V.M. is described as "combative," "uncooperative," "erratic," "noncompliant," "irrational" and "inappropriate." She ordered the attending obstetrician, Dr. Shetal Mansuria, to leave the room and told her if she did not do what V.M. said, she would be off the case. V.M. then threatened to report the doctor to the police. In fact, at one point V.M. did call the Livingston Police to report that she was being abused and denied treatment. She told a nurse that "no one is going to touch my baby." She continuously refused to wear the face mask that provided her with oxygen and also refused to remain still in order to allow for fetal heart monitoring. She thrashed about to the extent that it was unsafe for the anesthesiologist to administer an epidural. She would not allow Dr. Mansuria to touch the baby or perform an ultrasound examination. . . . V.M. "was very boisterous and yelling and screaming at the top of her lungs."
>
> B.G. was present while all of these events occurred. Dr. Mansuria explained the complications, such as brain damage, mental retardation and fetal death, that could occur if the fetus went into distress and a c-section was not performed. She also

explained that an examination revealed a "nonreassuring fetal status." B.G. said that he understood the risks, but V.M. would not consent to the procedure.

The hospital responded appropriately to confront V.M.'s mental state and her refusal to consent to the c-section. After considering V.M.'s "extreme behavior" and signs of developing fetal distress, the hospital staff requested an emergency psychiatric evaluation to determine V.M.'s competency. Dr. Devendra Kurani responded to the delivery room and spoke to V.M. for approximately one hour. While Dr. Kurani was there, the anesthesiologist was able to administer an epidural. V.M. informed Dr. Kurani that she had a psychiatric history and had been on medication prior to getting pregnant. B.G. confirmed that V.M. had been treated by a psychiatrist for post-traumatic stress disorder and had been prescribed Zoloft, Prozac and Seroquel. When Dr. Mansuria stressed the need for V.M. to consent to a c-section, V.M. stated that she understood the risks, but she did not want the procedure. Dr. Kurani then made a critical finding. Although he acknowledged that V.M. was very anxious, Dr. Kurani concluded that V.M. was not psychotic and had the capacity for informed consent with regard to the c-section. At no time did anyone seek judicial intervention or the appointment of a special medical guardian.

After Dr. Kurani left, the staff requested a second psychiatric opinion from Dr. Jacob Jacoby. Before Dr. Jacoby's evaluation was completed, V.M. gave birth vaginally to J.M.G. without incident. In his report, Dr. Jacoby recounted V.M.'s professed history of childhood abuse, workplace violence and societal discrimination. He noted that V.M. was treated by a psychiatrist, Dr. Ronnie Lee Seltzer, for many years until V.M. stopped

seeing her allegedly at the behest of her lawyers. Although he concluded that V.M. appeared to be cognitively intact, he admitted that "there is a gnawing concern overall that the patient may not be as intact as I may have described."

Later that day, Dr. Jacoby dictated an addendum report recounting a conversation with Dr. Seltzer. Dr. Seltzer related that she initially treated V.M. for post-traumatic stress disorder but later began to appreciate that V.M. suffered from either a schizoaffective disorder or a bipolar disorder. Dr. Seltzer questioned the reliability of B.G. and was concerned about V.M.'s "ability to care for her child in a responsible manner." Dr. Jacoby also related a conversation with B.G. in which B.G.

> indicated that he feels the way the patient [V.M.] is acting now is not her normal manner and that she is not as "tranquil." She seems to be more rambunctious and over expansive (i.e., in a possible hypomanic state)[.] He also was hesitant but seemed to intimate that the patient has in fact had episodes of psychotic ideation, which he did not want to elaborate upon, prior to this present birth.

Dr. Jacoby concluded that V.M.'s and B.G.'s ability to parent the child "needs to be more fully evaluated by state social services."

Despite being slightly premature, J.M.G. was in good medical condition upon her vaginal delivery. She was taken to the neonatal intensive care unit, placed on antibiotics and observed for signs of jaundice. No drugs or alcohol were detected in her blood or urine.

> [V.M., supra, 408 N.J. Super. at 227-29 (footnote omitted).]

However, V.M. testified at the guardianship trial that she fully cooperated with the health care professionals, including signing the form giving the doctors permission to perform a c-section and disclosing her prior psychiatric treatment. V.M. said that when the nurses failed to place a timely request for an anesthesiologist to perform an epidural, she asked them to call another doctor and "somehow a psychiatrist was called[.]"

On April 18, 2006, a social worker at St. Barnabas contacted DYFS reporting concerns about releasing J.M.G. to defendants' care. DYFS caseworker Heather Frommer spoke to defendants later that day. As she indicated at the guardianship trial, V.M. and B.G. denied that V.M. had ever received psychiatric treatment, denied knowing Seltzer, and claimed that V.M. had requested a psychiatric consultation at the hospital because she was being mistreated by the staff who refused to place her request for an epidural. However, V.M. countered by noting that she gave Frommer, who was "very combative" and was "yelling" questions at her, Seltzer's phone number, and said that she had taken the medication prescribed by Kurani.

Frommer also spoke to Kurani, who told her that he had prescribed Zyprexa, a mood stabilizing medication, for V.M. on April 17 and 18, 2006, but she had refused to take it, and said

that V.M. "distorts everything that is told to her." V.M. refused to participate in an outpatient psychiatric care program following her discharge. Frommer also spoke to the social worker, who confirmed that V.M. had been "noncompliant with recommendations from a psychiatrist for medication before her pregnancy," and had been "uncooperative" with the hospital psychiatrists.

After consulting with her superiors, Frommer informed defendants that J.M.G. would not be discharged to their care and that DYFS would file a motion for custody. She told defendants that there would be a court hearing on April 20, 2006, and wrote down the relevant information. V.M. became upset, started yelling, and called the police. Frommer asked defendants if they had available relatives for placement, but they did not provide any relative placement resources.

V.M., but not J.M.G., was discharged from the hospital later that day. That evening, Frommer and Ketleen Israel, another DYFS worker, went to defendants' apartment in Short Hills to complete a home assessment. Frommer observed that defendants had not purchased a crib for the infant, who was born several weeks premature, but had purchased other baby items and found no safety concerns.

During the assessment, V.M. was speaking to an individual on the telephone who she said was her attorney. V.M. asked Frommer to speak to the attorney, but Frommer said she was not permitted to do so. Frommer reminded defendants about the court hearing on April 20, 2006, and told them that if they did not provide relative resources J.M.G. would be placed in a foster home. In her referral response report, Frommer wrote:

> [t]he allegation of neglect of [J.M.G.] by her mother cannot be substantiated; however, there are serious child welfare concerns surrounding [V.M.'s] past and current mental health. It was documented by the hospital that she was uncooperative with hospital psychiatric staff. Furthermore, it was learned that she discontinued psychiatric treatment with . . . Seltzer in December of 2005. [V.M.] has refused to sign a release for the Division to obtain relevant information regarding her mental health functioning and compliance with treatment.

Defendants did not appear at the hearing on April 20, 2006, although they were present at all other hearings, and denied having any knowledge of the date. Frommer claimed that she telephoned their house that morning, but no one answered the phone. The judge found that removal of J.M.G. was required based on V.M.'s psychiatric condition, her refusal to cooperate with DYFS in disclosing medical information, her refusal to take the medication prescribed by the hospital, and her failure to be forthcoming with information.

On April 21, 2006, DYFS received a call from a social worker at St. Barnabas reporting that defendants "were creating a scene" while visiting J.M.G. in the hospital. The social worker stated that V.M. was "threatening the hospital and stating that she knows Donald Trump[.]" V.M. claimed at the guardianship trial that she knew nothing about the court proceedings. She said she believed J.M.G. had not been discharged because the infant was jaundiced and because V.M. had had a fever during the delivery. Defendants visited J.M.G. every day in the hospital until she was released. J.M.G. was discharged on April 24, 2006, and placed in a foster home.

On April 25, 2006, Frommer, accompanied by members of the Milburn police, served defendants with a copy of the order awarding DYFS temporary legal custody of J.M.G. V.M. refused to sign the document authorizing release of her medical information to DYFS and accused DYFS of kidnapping J.M.G.

On April 28, 2006, defendants had their first visit with J.M.G. since her release from the hospital. Defendants were "very quiet and calm" throughout the visit and left "without incident." A visitation program ensued at the Children's Aid and Family Service's office. A report regarding their progress during that first month of visits indicates that defendants were always early for the visits, brought appropriate gifts for the

infant, including formula, diapers, clothing and diaper bags, and had developed a cordial relationship with the foster mother, expressing their appreciation for the quality of J.M.G.'s care.

Meanwhile, on May 10, 2006, V.M. contacted DYFS reporting that DYFS had "kidnapped her baby" and that no one from DYFS had informed her about visitation or what would happen next regarding their case. V.M. wanted J.M.G. to be placed with a family member not in a foster home.

At the fact-finding hearing of the abuse and neglect issues, the judge entered an order reflecting his findings that both parents had abused or neglected J.M.G. in that they "refused to cooperate with the medical professionals of Saint Barnabas Hospital during child birth," although the judge made no findings in his oral decision that B.G. had abused or neglected the child. V.M., supra, 408 N.J. Super. at 251.

> [T]he judge also rejected B.G. as a custodial parent (assuming V.M. left the marital premises), focusing on B.G.'s lack of cooperation with DYFS. The judge stated that J.M.G. would be returned to B.G. if certain conditions were met: B.G. receives a psychological evaluation within the next week; the evaluator concludes that the child would be in no danger with B.G.; V.M. is not in the home; and a mechanism is in place for monitoring V.M.'s visits.
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> [Id. at 232.]

On June 1, 2006, Gregory Defilippo, a DYFS caseworker, contacted M.G.M., V.M.'s mother, who said that V.M. had had problems "dealing with other people, her whole life." M.G.M. believed that V.M.'s problems had been exacerbated by her treatment with Seltzer, and by her marriage to B.G. M.G.M. said that her daughter could not reside with her, and she hoped that J.M.G. would "be adopted by a loving family."

On June 12, 2006, DYFS referred defendants to Mark Singer, a psychologist, who did not testify at trial, for evaluation.[3] During his evaluation, B.G. denied that V.M. had refused "medication or medical treatment, including denying refusing consent for a C-section, while in the hospital." B.G. also denied that V.M. had "been diagnosed with psychosis." B.G. claimed that V.M. never took the medications prescribed by Seltzer, and that she had sought treatment with her as a part of a court case. B.G. alleged that Seltzer "got a lot under the table for prescribing medication that she has no diagnosis for." B.G. reported that they were suing Seltzer and St. Barnabas, and

[3] Defendants had been referred to another psychologist who later withdrew because she could not "be neutral." This result arose as a result of defendants exercising self-help to locate the psychologist after being given a wrong address and then contacting the psychologist at her home.

alleged that Cohen, V.M.'s treating physician, had "touched [V.M.] inappropriately during a OB-GYN examination."

During her evaluation with Singer, V.M. said she had taken some, but not all, of the medication prescribed by Seltzer, and claimed Seltzer's notes had been altered "because they were used for litigation purposes." She also reported that Seltzer had "issues," "never had children," and "had countless problems with patients." V.M. explained that the current controversy started when "there was harassment perpetrated on [her] by the medical staff," and further alleged that Cohen "has a little bit of bias [against] anyone over 35 becoming pregnant."

Singer administered a series of personality tests on V.M., the results of which he found indicated that she was secretive, defensive, felt victimized by others, excessively displayed emotions, had a dramatic need for attention, and "may manipulate others and events to satisfy [her] need for attention and approval."

Singer found that "many of the elements presented in the case record are in direct contrast with the perceptions reported by [B.G.] and [V.M.]." He concluded that:

> If the Court should determine that the record is credible, it would not be recommended to place a child with any individual who has not been compliant with medication, has significant mental health issues that are not being treated, and has

> significantly distorted reality. Placing a child with any such individual is likely to expose that child to a risk of harm.

Nonetheless, Singer found that reunification with J.M.G. was the ultimate goal, and toward that end he recommended that defendants be evaluated by a qualified psychiatrist, participate in individual and joint psychotherapy, maintain appropriate housing, and continue supervised visitation. Compliance with the recommendations was anticipated to lead to reunification. However, the length of time required to achieve reunification was "dependent upon the abilities of both adults to reduce their level of defensiveness and to benefit from the above recommendations."

On August 19, 2006, defendants began attending parenting classes with Final Stop Family Services. Within a few days, Marninne Rejouis, the parenting skills facilitator, advised DYFS that they would not be able to provide services to the family until V.M. "receives treatment." Rejouis reported that although initially "the class was going well," when Rejouis began going over the rules of the class, V.M. became "extremely upset," and threatened to add Final Stop to the list of defendants she was suing, including the state, doctors, and the hospital. B.G. was unable to calm V.M. and apologized for her behavior, explaining that they were "under a lot of stress." By letter dated August

25, 2006, addressed to Kimberly Lewis, a DYFS caseworker, defendants responded that

> Rejouis told us that our clothing is too expensive and that if we continue to attend classes she will have to actually work and she doesn't want to do that. Ms. Rejouis said that her other clients just sign in and leave so she doesn't have to work, Ms. Rejouis also stated that we are not on public assistance and she doesn't understand the case. Please inform us of the new location and schedule for another parenting skills class.

One month later, the judge conducted a compliance hearing, during which, as we noted in our prior concurring opinion,

> it became clear that the plan suggested at the fact-finding hearing had gone awry. Attempts to obtain psychological/psychiatric evaluations of V.M. and B.G. proved unsuccessful,[] as had efforts to provide V.M. with parenting classes.[]
>
> The judge expressed his frustration, observing that he "wanted desperately to reunify this family," but the parents were "snatching defeat from the jaws of victory." He also expressed concern that no psychiatrists would undertake the evaluation if they thought they would be sued, to which V.M. responded, "[t]hat's your problem." When V.M. was asked if she would waive her right to sue psychiatrists, she replied, "[n]o way." As a result, the judge ordered that a psychiatrist be appointed who would have the same immunity as the court.
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> [V.M., supra, 408 N.J. Super. at 232-33 (footnotes omitted).]

Defendants were referred to St. Barnabas's Family Life Education Center for parenting classes. Dr. Christine Baker reported that V.M., who appeared delusional and paranoid, would not be appropriate for their program until she received psychiatric treatment.

By letter dated October 20, 2006, defendants informed caseworker Lewis that they wanted to attend parenting classes at Overlook Hospital. With reference to the scheduled psychological evaluations, defendants wrote that "[t]o insure our safety it is necessary to have officers from the Bloomfield Police Dep[artment] accompany us to these appointments."

In October 2006, defendants were referred to Vivian Chern Shnaidman, M.D., a psychiatrist, for evaluations. Shnaidman found that V.M. suffered from chronic paranoid schizophrenia and that B.G. suffered from "folie a deux," a rare condition in which one person subscribes to the psychoses and paranoid delusions of another.

In a letter sent to a DYFS caseworker on November 17, 2006, V.M.'s brother, R.M., who did not testify at trial, wrote that defendants were "currently incapable of making the proper decisions necessary to provide a healthy environment for themselves or their new baby." He said that defendants believed that V.M.'s father's girlfriend's daughters were involved in a

"conspiracy to call DYFS," and believed that Frommer was the daughter of one of V.M.'s father's girlfriends. V.M. threatened to burn her father's store down and threatened "to take revenge" against her father and his girlfriend. V.M. also claimed that an eighty-five year old man had raped her in his friend's restaurant and that "some stranger forced himself on her and all sorts of other ridiculous fabrications that are obviously brought on by Zoloft." R.M. believed that V.M.'s "psychiatric related issues" were caused by "a lack of sleep."

On December 7, 2006, Lori Schreuders, director of Clinical Services at Family Connections, reported that it would not be in defendants' best interest for them to continue to participate in their parenting group. She said defendants "would be better served by a program that would offer them a more individualized approach to address their parenting skills needs." Defendants ultimately attended parenting and nutrition classes at Overlook Hospital.

Defendants were referred by DYFS to Northwest Essex Community Healthcare Network for individual psychotherapy treatment with Yanada Essex, a licensed social worker. Defendants attended all of the weekly sessions with Essex, were cooperative, and completed the year-long treatment program. Essex recommended that V.M. pursue individual therapy.

Instead, defendants began treatment on a monthly basis with Marc Cantillon, M.D., a psychiatrist, and continued to see him through the time of the guardianship trial.

Shnaidman and Cantillon testified at the abuse and neglect hearing, providing diametrically opposite observations and recommendations. The judge found: "'I don't think I've ever seen a case of mental disorder where the diagnoses . . . [were] so diametrically opposed. We're in different worlds.'" V.M., supra, 408 N.J. Super. at 234. J.M.G.'s foster mother also testified, stating that defendants visited the child once every two weeks, always brought shopping bags full of supplies, and listened to and followed her suggestions. Id. at 233. The foster mother opined that they "would be wonderful parents." Ibid. Nonetheless, the judge approved DYFS's plan of terminating defendants' parental rights based on V.M.'s psychiatric history and on B.G.'s unwillingness to accept her condition.

J.M.G. was placed in her current pre-adoption home on April 2, 2007, and on April 25, 2007, DYFS filed an order to show cause and verified complaint for guardianship seeking termination of defendants' parental rights to J.M.G.

Patrice Amatrudi, a DYFS caseworker assigned to this case, began supervising the weekly visits. Amatrudi observed some

areas of concern during the visits, which appear rather trivial in context, including that B.G. placed the infant's diaper on backwards. She admitted that although B.G. was initially "hesitant" to change J.M.G.'s diaper, he ultimately did it correctly. B.G. explained he was "nervous" because that was the first time he had changed a diaper.

Amatrudi also observed that on one occasion when J.M.G. was sitting on V.M.'s lap drinking a bottle, they heard a "suction" sound, and J.M.G. threw the bottle onto the floor. Amatrudi saw that the nipple had inverted into the bottle, but V.M., who apparently thought J.M.G. had swallowed the nipple, "shrieked and jumped up and came running towards [Amatrudi] with the child." Although Amatrudi was pleased that V.M. had noticed that the nipple was "not evident," she was concerned that V.M. had come to her for help, instead of trying to extract the nipple on her own, or seek help from B.G. Amatrudi admitted that V.M. "was calm when she saw that the baby was okay and then . . . commented she had once saved [B.G.] from choking by using the Heimlich maneuver . . . ."

Further, Amatrudi observed that during the visits V.M. would often play music at a very loud volume. Although J.M.G. liked music, the loud volume seemed to agitate her, and V.M. did not realize that the volume should be turned down. On one

occasion V.M. tried to zip J.M.G.'s jacket, but the zipper was broken, so V.M. said that J.M.G. did not like to have her coat zipped, even though the child had never expressed that preference. Amatrudi admitted, however, that defendants interacted with J.M.G. and always brought appropriate gifts. She also admitted that B.G. was a good support for V.M., and that the couple appeared close. However, she testified that J.M.G., who had no special needs, had interacted with and had bonded to her foster parents, who wanted to adopt her.

V.M. was hospitalized at Overlook Hospital for depression and anxiety from May 25 to June 7, 2007. A hospital form, under the caption "History of Present Illness," indicated that the patient had complained of worsening depression and

> had actually stopped taking her outpatient psychiatric medication for 7 weeks and had returned to her outpatient psychiatrist, Dr. Miller, about 1 month ago. . . . The patient states that she has been under an enormous amount of stress within the last few months, ending a relationship with her boyfriend, moving in with her parents 2 months ago who are not supportive, and also needing to end a relationship with her husband whom she has been estranged for the last several years.

This history was obviously inaccurate in that V.M. was not estranged from B.G., nor did she live with her parents, who were divorced. The judge in the guardianship action relied on this report and found that the history "evidences" the "serious

nature" of V.M.'s "mental health stability." However, although the form contains V.M.'s correct name, patient number and birth date, it may have been erroneously assigned to her, because it lists different treating physicians (Monahan and Miller, not Cantillon), different psychiatric medications (prescribed by Miller), and indicates that the patient admitted to gambling, an admission not contained in any other reports.

Following her discharge, Overlook referred V.M. to its outpatient program. According to hospital records, V.M. attended the program for twelve days, but was then terminated "[b]ecause of her continued disruptive behavior [] in groups; [and] despite medical team's efforts to redirect and set limits; and alienation from other group members due to her inappropriate behavior [and] insensitivity to others[.]" However, V.M. maintained that she had attended sixteen sessions, and had then been discharged because her insurance would not pay for further treatment.

Meanwhile, DYFS learned about V.M.'s admission to Overlook during a scheduled visitation on May 31, 2007. Amatrudi reported that B.G. telephoned V.M. in the hospital at least five times during the visit, thereby confirming her "suspicion that [B.G.] could never live apart from his wife and maintain [J.M.G.] for [J.M.G.'s] sake alone." At the time of her

discharge V.M. was taking antidepressant (Wellbutrin and Paxil) and anti-psychotic (Seroquel) medication.

In July 2007, DYFS referred defendants to Alice Nadelman, a psychologist, for evaluation. Nadelman, who prepared four separate reports and testified at the guardianship trial, opined that V.M. and B.G. were "unable to provide safe and appropriate care" for J.M.G., and placement with them would place the child at a "high risk" for psychological harm as well as "possible inadvertent physical harm." Nadelman based her findings on her psychological evaluations of V.M. and B.G., and her observations of their interactions with J.M.G.

Nadelman concluded that "the primary psychological concern" with B.G. "is his lack of recognition of any concerns or any problems in his wife's functioning or her ability . . . to parent[.]" She found that V.M. was "preoccupied with her own needs" and "showed the capacity to attribute feelings" to J.M.G. that did not correlate with the reality of the child's behavior. Moreover, removal from her foster parents would cause J.M.G., who she described as a happy, easygoing, well-adjusted, and well-functioning child, to suffer serious and enduring harm. Defendants did not have the capacity to help J.M.G. with the grieving process she would experience if removed from her foster parents.

In her preliminary report dated August 13, 2007, Nadelman further set forth that V.M. "presented as an intelligent and highly verbal . . . woman, who was able to present facts and data in an organized manner, to support a position, yet had difficulty answering questions about her daughter without going off on tangents[.]" V.M.'s cognitive processes appeared intact, especially in the realm of written information, but her conversations were often disorganized and illogical. V.M. was unwilling to acknowledge that she has had any emotional problems which might interfere with her care of a baby or that her behavior at the time of J.M.G.'s birth created cause for concern. Instead, V.M. insisted that doctors, mental health professionals and DYFS workers have lied about her.

Nadelman opined that in addition "to her delusional thinking that everyone is against her," V.M. "has psychological problems in the affective realm." V.M.'s

> intense emotional responses, particularly her anxieties, which can be triggered by multiple precipitants, cause her to lose control and become irrational. At these times, her coping skills deteriorate and she becomes virtually unable to function. The combination of her delusions and flooding of anxiety present significant risks in the care of a baby or any young child who cannot communicate and take care of herself in an emergency. [V.M.] could easily become overwhelmed by [J.M.G.'s] normal toddler demands, distress or crying and be unable to cope with it. Of even greater concern, if

> [J.M.G.] did not respond to her as she wanted, [V.M.] could begin to view her child as being against her and could lash out against the child. In her present condition, despite regular therapy and medication, (which she may or may not be taking) [V.M.] is not capable of taking care of a child without full supervision by a competent caregiver who could interfere when necessary.

Another significant risk factor regarding V.M.'s ability to care for J.M.G. was her interpersonal isolation. Nadelman found that

> [a]lthough [V.M.] did not provide a reasonable explanation for her lack of connection with her family, the DYFS worker, who has spoken with . . . [her] parents, indicated that they did not want to be involved with her because she was very difficult to deal with. This would be the expected consequence of her position that anyone who does not agree with her is lying, malevolent and against her. [V.M.'s] inability to function in a work situation is likely related to her difficulties in getting along with people. Whether this is actually the result of the physical and emotional trauma she experienced from the work-required boxing injury or whether it predated that incident . . . cannot be determined in this evaluation. What is known is that [V.M.] has not functioned within normal parameters in 14 years, that her interpersonal relationships are impaired, resulting in her isolation from friends and family, (except for her husband) and that she continues to experience significant depression and anxiety which resulted in her psychiatric hospitalization in May 2007.

With regard to B.G., Nadelman found that he presented as "devoted to his wife and daughter"; however, he refused to acknowledge that V.M. had any emotional problems which might interfere with the care of a baby or that V.M.'s actions at the time of their daughter's birth created valid concerns by the hospital staff. B.G. showed no awareness that any aspect of V.M.'s functioning was not normal, and "claimed not to know why his wife could not work and, at times, seemed out of touch with reality." "He viewed his family as innocent victims of a corrupt system which had 'kidnapped' his daughter and denied him his legal rights."

Further, B.G. appeared to share his wife's interpersonal isolation. He had not told anyone, including his siblings who resided in Bangladesh, or his friends, that J.M.G. was removed from his care. Nadelman found that B.G.

> cannot be considered an appropriate caregiver for his baby daughter or even able to monitor and assist his wife. His denial that she has any problems would make him unable to recognize if she were behaving inappropriately with the baby. His deferring to his wife would make him unable to intervene to protect his child. [B.G.] has joined his wife in the delusion that everyone is against them and has engaged in lies and illegal behavior to keep their daughter away from them. He showed no understanding of their role in the removal of the child or what would be required to provide safe and appropriate parenting. The combination of their delusions present

> significant risks in the care of a baby or any young child who cannot communicate and take care of herself in an emergency.

Additionally, Nadelman found that although the data from the first assessment of the parent-child interaction conducted on July 12, 2007, "demonstrated the delight and caring that both parents feel for their daughter," it also demonstrated "their very limited ability to respond to her cues or to comfort her." Defendants were so preoccupied with their own agendas that they did not notice when J.M.G. took steps on her own. Defendants attributed motivations to J.M.G.'s actions which were clearly their projections, not grounded in the child's actual desires. Of particular concern, on one occasion V.M. kept putting J.M.G. in the seat of an activity table, which defendants had brought to the visitation session, despite the child's visible distress. B.G. was more responsive to J.M.G.'s distress, but did not ask V.M. to stop seating the child in the chair. And, although B.G. was generally somewhat more responsive to J.M.G.'s cues and better able to comfort her, his aversion to changing her diaper presented a cause for concern.

Nadelman concluded, in her preliminary report, that it would be "unsafe for either or both parents to be given custody of [J.M.G.]." Although neither parent would "intentionally harm" the child, she "would be at-risk of physical and/or

emotional mistreatment if she were with them without supervision." V.M. "would be likely to become agitated and panicked if she could not satisfy [J.M.G.], and could become overwhelmed to the point that she would behave irrationally." V.M. could "inadvertently hurt" J.M.G. "if she became overwhelmed by her own irrational ideas and emotions" and B.G. was unable to stop her. Moreover,

> [d]espite receiving numerous services during the past 15 months, neither parent has gotten beyond the point of fighting against the "kidnapping" of their daughter. They have not focused on what they have to learn to do to provide safe and appropriate care for her. They have not acknowledged or resolved their own psychological problems which directly impact how they deal with a child. They desperately want [J.M.G.] returned to them because she is theirs and their rights have been violated. They do want to be a happy and functional family but do not seem to have any idea how to achieve that.

In her updated report, dated September 23, 2007, she found that the data from additional sessions with defendants and her second observation of their interaction with J.M.G. continued

> to support the position that [V.M.] and [B.G.], individually or together, cannot provide safe or appropriate parental care for [J.M.G.]. She would be at-risk of physical and/or emotional harm if she were with them without supervision. Both parents demonstrated that they can become angry, loud and irrational with virtually no provocation other than their distortion of what is being said or done. This

> unpredictability and volatility presents a serious risk to [J.M.G.], since something could come up at any moment during a visit that might send one or both parents into a raging tirade.

Similarly, in her report dated September 30, 2007, Nadelman found that:

> The data from this second observation again demonstrated the delight and caring that both parents feel for their daughter as well as indications of a beginning attachment. Both parents were more responsive to [J.M.G.'s] cue's [sic], especially [B.G.], who made repeated efforts to follow [J.M.G.'s] lead and encourage her curiosity, while keeping her safe. [V.M.] tried to do the same, but had difficulty sustaining her focus on [J.M.G.'s] actions since she was preoccupied with her own concerns, such as playing continuous music or getting her to eat . . . . [J.M.G.] did respond to her parents' attention and affection and clearly responded more positively to them than to strangers . . . . [J.M.G.] also accepted care and comfort from both parents, allowed them to pick her up and to change her diaper. These are indications of beginning attachment. Of note, [B.G.] was willing and able to change [J.M.G.'s] wet diaper, with instructions from his wife.
>
> The major concerns from this observation were the two instances when [V.M.] was alone with [J.M.G.] and did not maintain proper safety - when she was going to leave her unattended in the changing crib, and when she lost sight of her while changing the CD player and [J.M.G.] walked out of the room. To her credit, [V.M.] accepted my instructions and immediately remedied the situation. However, after 17 months of supervised visits as well as

> infant-care classes, it is of concern that she was unaware of basic safety procedures.

Nadelman concluded that:

> Family reunification cannot be supported as a goal because both parents remain unable to recognize or remedy the high risk of harm to their child, even after months of treatment and medication. It would be in the best interest of [J.M.G.] to remain with and be adopted by her foster parents, in whose care she is thriving.

On February 13, 2008, Nadelman conducted an updated evaluation. In her report dated March 30, 2008, she wrote that during the session V.M. appeared disheveled and drowsy, her hair was uncombed, and she was alternatively alert, but then "stare[d] silently." V.M. told Nadelman that Cantillon had recently changed her medication, and Nadelman admitted that V.M.'s appearance could have been a result of the medication. She found that:

> [V.M.] did not demonstrate the capacity to provide even minimally safe and appropriate parental care for [J.M.G.], nor has she ever done so during the course of all these evaluation[s]. [B.G.] showed the potential to become an adequate caregiver for his daughter, only if he[] recognized and acknowledged the risks presented by his wife. His continued insistence that his wife was fine and needed no help other than from himself, indicated his continued denial/distortion of reality and inability to perceive potential danger or to protect [J.M.G.] Even when he tried to influence his wife's interaction with [J.M.G.], [he] had limited success. It was clear that he

> was unable to improve his wife's appearance or alertness and he did not identify any of this as a problem.

At the guardianship trial, Nadelman further testified that:

> I agree that there is no history of . . . violence, but there's always the first time. That's my concern. It's my concern given the extent of the reactions that I've observed, with what I consider very minor precipitants, . . . that's the risk; . . . that irrational desperate response [by V.M.] where there's nobody to call, there's nobody can [sic] come right over if [B.G.] is not available.
>
> It would not be a risk in his presence, but he can't be there all the time . . . .

Nadelman said the risk of inadvertent neglect was significant for a two-year-old, and would obviously be much less if the child was older. Based on her observations, she found the risk of harm to the child was real, not speculative. Moreover, due to their psychopathology, defendants had been unable to address the issues that could have resulted in reunification. Defendants' inability to ameliorate the harm was indicative of a broader psychopathology. Nadelman concluded that family reunification would not be in J.M.G.'s best interest because both parents remained unable to recognize or remedy the high risk of harm to their child, even after almost two years of treatment and medication. It would be in J.M.G.'s best interest

to "be adopted by her foster parents, in whose care she is thriving."

Nadelman conducted bonding evaluations of J.M.G. and her foster parents in their home finding that there were many indications of developing attachment between J.M.G. and her foster parents. For example, J.M.G. was far more vocal in the presence of her foster parents than she had been without them. J.M.G. looked to her foster parents for care, comfort and affection, and accepted their affection "with visible pleasure."

In an updated evaluation, Nadelman found that there were many indications of increased attachment between J.M.G. and her foster parents, with whom she had lived for almost one year. She called her foster parents "Da-da and Mama and related to them as her parents." J.M.G.'s foster parents had become her psychological parents, she had a growing attachment to them, and she would have "a grief reaction" if she were removed.

In assessing defendants' attachment to J.M.G. and in contrast to the home bonding evaluations of the foster parents, Nadelman conducted the sessions in her office. During the session on February 3, 2007, Nadelman found that the

> data from this observation, done 5 months after the previous parent-child assessment, was markedly different from prior observations. [B.G.] was more responsive and in-tune with [J.M.G.'s] desires and actions while [V.M.] [who was on new

> medication] was more withdrawn and disconnected, often sitting silently and not responding to [J.M.G.]. [B.G.] repeatedly tried to draw his wife into increased interaction with their daughter, but it was difficult for [V.M.] to respond. However, she did make the effort . . . to run with her. [J.M.G.] was more responsive to [B.G.] and occasionally ignored or walked away from her mother. [V.M.] expressed some concern about this but generally did not seem to have the energy to be more responsive. Neither parent thought to check [J.M.G.'s] diaper during the 2 hour visit and [B.G.] continued to have difficulty actually changing the diaper. Neither parent knew how to dispose of a wet diaper.
>
> Both parents were affectionate with [J.M.G.] and she was responsive to both, although more to [B.G.]. [J.M.G.] did not use language with her parents, except to say "uh oh." She did make a range of sounds which [B.G.] tried to understand. The parents reported that [J.M.G.] has spoken more at past visits. [J.M.G.] seemed comfortable with her parents during the visits and they seemed to have developed a routine together. However, there were few indications of increased attachment and she was ready and willing to leave when the transportation aide arrived.

In direct contrast to Nadelman, Cantillon had testified at the Title 9 trial that:

> B.G. was anxious and distraught over DYFS's removal of his daughter, but he had no mental disorder of any kind. [Cantillon] concluded that B.G. would be a fit parent for J.M.G. He also believed that V.M. was a suitable and fit parent. He observed that her bizarre behavior at the hospital could have been caused by oxygen deprivation and that she expressed a willingness to obtain

> ongoing psychiatric care. He concluded that it would be safe to return J.M.G. to her parents' care immediately.
>
> [V.M., supra, 408 N.J. Super. at 234.]

During the guardianship trial, Cantillon, who had been treating V.M. for a year and a half, testified as a fact witness that V.M. suffered from PTSD and was hospitalized once in Fall 2007 for "excess stress." He prescribed anti-depressant (Zoloft and Zyprexa) and antipsychotic (Seroquel and Haldol) medication for V.M.'s depression and anxiety, not psychotic symptoms, and described her condition at the time of trial as "[s]table."

Cantillon found that B.G. suffered from anxiety and depression as a result of the removal of his daughter, but had no mental disorders. He prescribed antipsychotic (Seroquel) and antidepressant (Mirtazapine) medication for B.G.'s anxiety and insomnia. Cantillon said that "function is what determines if someone is truly balanced," and he found that B.G., who successfully operated a business and was very supportive of his wife, was balanced.

Maureen Santina, a psychologist, who evaluated defendants in February 2008, was proffered as an expert witness on behalf of B.G. She opined that B.G. was "unqualifiedly capable of parenting" J.M.G., and that V.M. was, in general, qualified to parent J.M.G., provided she maintained her psychiatric treatment

to sustain her emotional stability and tolerance for anxiety. Santina found that defendants had been fully compliant with their psychiatric treatment, and that V.M. "appeared to be stable," and had made considerable progress under Cantillon's care.

Santina agreed with Cantillon's diagnosis that V.M. suffered from PTSD, a condition that if properly treated will resolve, and was not schizophrenic, delusional or psychotic, conditions that tend to deteriorate over time. She admitted that Seltzer had found that V.M.'s paranoia had approached "delusional proportions." However, she explained that individuals suffering from PTSD tend to become paranoid that someone might hurt them. Such paranoia, typical for PTSD sufferers, did not indicate that V.M. had a psychotic disorder.

In her report, Santina explained that the primary concern in this case arose because V.M. became agitated at the time of J.M.G.'s delivery and refused to sign a form authorizing a c-section. Although the psychiatrists that evaluated V.M. at the time of her labor and delivery found her competent to make decisions, and not displaying psychotic symptoms, her behavior was subsequently interpreted as psychotic by some evaluators. Santina disagreed with those evaluators, explaining that people who suffer from PTSD are very sensitive to issues about physical

intactness and may over-react to stressful situations, particularly when their physical integrity feels threatened. V.M. was stressed given this was her first pregnancy, she had a fever, the baby was premature, and her obstetrician was not available, so she was being treated by an unfamiliar physician. She found that

> [g]iven [V.M.'s] PTSD and the anxiety associated with it, it is not surprising that she panicked at the time of delivery. Her agitation and exaggerated response to being approached about the possibility of a Cesarean section are consistent with the emotional vulnerability present in a PTSD sufferer. Additionally, [V.M.] had stopped all of her medication because of her pregnancy. Therefore, she did not have the buffer to her anxiety that would have been provided by her medication.
>
> It should be noted that [V.M.] calmed down and apologized after the delivery. Staff notes described her as always behaving appropriately with the baby, asking intelligent questions, and responding well to the teaching from staff. She became upset at the hospital when informed that DYFS had taken the child. Again, this is an understandable reaction that does not indicate psychosis or personality disorder.
>
> . . . .
>
> Additional concerns about [V.M.'s] emotional stability and ability to attend safely to [J.M.G.] have been raised . . . by Dr. Nadelman . . . . I agree that based on the observations . . . by Dr. Nadelman that there were some responses that were cause for concern. . . . [V.M.'s] occasional lapses in attention . . . and at times

> intrusive or poorly attuned responses were areas of parenting that needed to be considered and addressed. I also consider [V.M.'s] anxiety and stress tolerance to have been issues of concern. I do not agree that these issues make [V.M.] a risk to [J.M.G.] of harming her as suggested by Dr. Nadelman. They would primarily pose a risk of inadvertent neglect if [V.M.] was unable to attend to [J.M.G.] during times of stress.
>
> Since January [] 2007, [V.M.] has been complying with medication and therapy provided by . . . Cantillon. Her condition has improved, and is likely to continue to improve as she participates in treatment. Therefore, the extreme reactivity to stress that was shown at the time of [J.M.G.'s] delivery and during the subsequent months of DYFS involvement has been ameliorated to a large degree. It is recommended that [V.M.] continue to receive medication and psychotherapy to facilitate ongoing improvement in her stress tolerance, concentration and emotional stability.

With regard to B.G., Santina found that he showed

> no indication of posing a risk of abuse or neglect to [J.M.G.]. He is capable of effectively parenting her, and is able to provide her with a secure, safe and loving home. While there is legitimate concern over [V.M.'s] emotional stability and level of anxiety historically, it is my opinion that [B.G.] would cooperate with transitional measures to ensure [J.M.G.'s] safety if the Division agreed to plans for re-unification.

Nonetheless, Santina did not recommend "immediate and unconditional" return of the child to defendants, but instead recommended that they be allowed

> longer in-home visitation, and therapeutic visitation in which they can be observed and coached in preparation for assuming parenting responsibility for [J.M.G.] [V.M.] should continue in her individual treatment. Should visitation proceed well, then it is recommended that overnight visits be implemented towards the goal of re-unification. When and if [J.M.G.] is placed with her biological parents, in-home aides should be provided to assist the parents in the transition to assuming custody . . . .

On February 19, 2008, Santina conducted a bonding evaluation between B.G. and J.M.G., and found that:

> [J.M.G.] showed numerous indications of attachment to [B.G.] during this observation. She used him as a base to explore the room. She showed clear differential attention and responsiveness to him over me. She spontaneously sought physical closeness with him and at times when he moved away, she quickly tried to re-establish physical contact. . . . When he left the room, she appeared sad and continued to look in the direction from which he exited the room. When the visit ended, she protested and held onto [B.G.].
>
> Throughout the observation, [B.G.] maintained continuous sustained attention to [J.M.G.] He was patient at all times, and consistently gentle in his guidance of her. He was sensitive to her emotional reactions and physical cues, showed general pleasure in her accomplishments and was quick to soothe her when she became distressed. He allowed her the space to explore her own abilities and interests, while maintaining a safe distance from her and readiness to intervene for her safety. He was attentive and responsive to safety issues. He accepted her negative responses to his

> requests without any irritation or impatience . . . .

Santina concluded that there was a "strong, mutual and loving bond" between B.G. and J.M.G. "The quality of their interaction and his parenting skills were good. The only thing lacking was that he did not check the child's diaper until the DYFS worker questioned whether she was wet. He then changed the diaper appropriately."

With regard to V.M., Santina observed that J.M.G. napped on her mother's lap for a portion of the session, and when she awoke, smiled and made eye contact with her. J.M.G. smiled broadly when V.M. praised her, and sat in her mother's lap and leaned against her. When V.M. left the room, J.M.G. tried to follow her, and when both parents left the room, her distress escalated.

Santina found that defendants

> showed very good parenting skills during this bonding observation. They were attentive to safety issues, emphatically attuned to their daughter, attentive to her emotional and physical needs, and very good at structuring her activities. The only concern was that they needed to be reminded to check her diaper. Once reminded, they addressed it appropriately. [Defendants] . . . communicated very effectively with [J.M.G.] in age-appropriate vocabulary. The conversation . . . was relaxed and pleasant. There was good cooperation between both parents in attending to [J.M.G.]. The three of them functioned as a family unit. Both

> parents were gentle, patient and reassuring to J.M.G.

Santina found that "[t]he observations made during this bonding evaluation are not consistent with Dr. Nadelman's assertion that there is not a positive bond between [J.M.G.] and her parents, or her conclusion that neither parent is capable of effectively parenting."

Santina conducted a bonding evaluation between J.M.G. and her foster parents at her office.[4] She found that the overall quality of J.M.G.'s responsiveness was better with B.G. alone and with defendants together, than with the foster parents. J.M.G. appeared "more relaxed, smiled more, was less resistant, and more seeking a physical affection," with defendants. "With the foster parents, particularly the foster father, J.M.G. was frequently resistant to overtures of affection."

The foster parents showed good parenting skills and were attentive to safety issues and structured J.M.G.'s activities. However, the foster parents informed Santina that

> they would prefer a closed adoption with no continuing contact of [J.M.G.] with her parents. They added that they were told the mother "has issues." They said that they

[4] Santina conducted both the bonding evaluations with defendants as well as with the foster parents in her office. We again contrast this with Nadelman's conducting the foster parent evaluation in their home while the defendants' evaluation was conducted in her office.

> had been told that [the mother] said she was going to hurt the baby and that the crisis team had to be called. The foster mother added that the mother had been bipolar for more than 10 years and was not complying with treatment or medication. She said that the mother's reality was distorted. The foster mother added, "She's domineering." She stated that the father could not protect the baby, and there were no signs that he would leave her. The foster mother stated, "she's our baby."

Santina found that Nadelman had

> concluded that there was a strong growing positive attachment between [J.M.G.] and her foster parents. The observations during this evaluation did not corroborate that assertion. While [J.M.G.] showed some positive responsiveness to her foster parents, she also showed some resistance that was not present during her interactions with her biological parents.

Gerard Figurelli, a psychologist and an expert witness presented on behalf of V.M., opined that V.M. had the "capacity to act adequately in a parenting role" if she remained compliant with recommended psychiatric treatment. He found that V.M.'s psychologically based symptoms were being adequately treated by Cantillon, and that V.M. showed no indication that she was delusional. B.G. was also a considerable source of emotional support for V.M. As part of the psychological evaluation, Figurelli administered a series of psychological tests to V.M., which he found revealed that she

> experiences a limited number of cognitive-affective symptoms of anxiety of subsyndromal to mild levels of intensity.
>
> [V.M.'s] PAI [Personality Assessment Inventory] subscale profile indicates that she experiences a relatively stable and positive self-concept -- a characteristic that allows her to respond adaptively to most life stressors. [V.M.] describes herself as being a reasonably satisfied individual, with a clear sense of her needs, wants and goals. [V.M.'s] PAI profile suggests that her interpersonal style is characterized by strong needs for affiliation and positive regard from others. This need may result in social behavior . . . that is viewed as attention-seeking and/or dramatic by others[.]
>
> [V.M.'s] PAI test results indicate that she experiences a level of stress in her life that is comparable to most adults, with the demands of her social environment being adequately buffered by the availability of individuals to whom she feels she can turn for needed emotional support. Test results indicate that this combination of just-mentioned factors is a positive sign of her capacity for her adequate future emotional adjustment. [V.M.'s] PAI test results, integrated with life history information and other clinical data available . . . reveal no evidences of clinically significant psychopathy or sociopathy . . . .

Figurelli further explained that:

> There are people who are unable to control their angry and aggressive impulses and act them out. I don't think we would characterize [V.M.'s] threats of litigation or attempts at litigation as acting out her anger. They may be less than adequately directed or misdirected attempts to express

> her anger and frustration. That's how I would view it and not . . . as a psychological problem with the handling of her anger. It might be more a problem with her perception of the nature of certain situations, at least those that occurred in the past.

Figurelli also conducted a bonding evaluation of J.M.G. and defendants. He found that defendants consistently displayed a caring, attentive and affectionate attitude toward their daughter. They were appropriately cognitively and verbally stimulating in their interaction with J.M.G., and encouraged and supported her independent behavior. Moreover, J.M.G.

> appeared to feel comfortable and safe in her interaction with her birth parents. [J.M.G.] remained spontaneous in her interaction with her parents during the course of this session. [Defendants] appropriately allowed for and encouraged her self-initiated assertive behaviors.
>
> [B.G.] consistently displayed a caring, affectionate, supportive, attentive and loving attitude toward [J.M.G.] throughout. Both parents acted consistently appropriately in their parental role . . . . At no time did either of them engage in any inappropriate behaviors directed toward [J.M.G.], directed toward each other, or displayed in general.
>
> [Defendants] remained attentive to the needs and wants that [J.M.G.] presented; consistently accurately identified them; and consistently responded to them in an appropriate manner during the course of this session. It appears that, in spite of the disruption in the continuity of their relationship resulting from [J.M.G.'s]

> placement, that [J.M.G.] maintains a sense of familiarity and a sense of positive attachment in her interaction with her biological parents.

Nonetheless, Figurelli found that J.M.G. "appears to be developing a significant attachment to her foster parents. They appear to be the central parental attachments she has formed up to the present time - which would be expected given the history of her placement with them." Figurelli concluded that:

> [S]eparating [J.M.G.] from her foster parents would present her with a significant emotional loss. Transitioning [J.M.G.] from the care of her foster parents to her biological parents would present her with a significant stressor to which she would have to adjust. However, . . . reunification of [J.M.G.] with her biological parents is a realistic goal to pursue. [Defendants] displayed no attitudes or behaviors . . . that suggests [sic] that they do not possess the capacity to accurately identify and respond appropriately to the needs and wants that [J.M.G.] presents. Rather, it is the impression that they display their commitment and their capacity to parent her.
>
> Given her apparently adequate development to date, the progress that [defendants] appear to have made during therapeutic visitation sessions with [J.M.G.], . . . and [defendant's] appropriate handling of their parental role . . . it is the opinion of this examiner that [J.M.G.] can make the transition to the care of her biological parents without experiencing harm that is severe and enduring in nature. Terminating her relationship from her biological parents - especially when termination is not an unavoidable or necessary option - would

> expose [J.M.G.] to the severe and enduring psychological harm of losing the opportunity to develop her relationship with her biological parents and accrue the benefits of its potential impact on her long-term psychosocial development.

V.M. testified that she and B.G. had purchased a crib, carriage, car seat, cradle, bath tub, and changing table for J.M.G. V.M. said that they lived in an area with a really good school system and were in the process of interviewing pediatricians. If J.M.G. were returned to them, V.M. planned to stay at home with the child, and would use the daycare center across the street from their apartment if she needed to run an errand when B.G. was not at home. B.G. testified that his work hours were flexible and he anticipated being able to return home if he was needed.

The law guardian recommended that the court terminate B.G.'s and V.M.'s parental rights.

Dr. Ronald Crampton, a psychiatrist, was appointed by the judge in the guardianship proceeding to address "solely and primarily . . . the issue of the chronicity and ability of the primary homemaker parent [V.M.], along with the parent father [B.G.] to some degree, to provide the necessary safety factor for [J.M.G.]." Crampton, who was semi-retired, limited his practice to evaluations for schools and for DYFS. He did not contact any of the psychiatrists, including Cantillon, involved

in this case, nor did he review Seltzer's clinical notes, which he described as "worthless," because she had not signed each page. Crampton appears to have reviewed Shnaidman's report, and said he may have reviewed Nadelman's report, but admitted that he does not really put a lot of emphasis on psychological, as opposed to psychiatric reports.

Instead, Crampton evaluated V.M. on September 17, 2008, over the course of approximately two hours. Based on that evaluation, he disagreed with Cantillon's diagnosis of PTSD, and concluded that V.M. suffered from "delusional disorder, mixed type," a relatively rare disorder, of which the essential features are the presence of one or more non-bizarre delusions that persist for at least one month. "A common characteristic of individuals with Delusional Disorder is the apparent normality of their behavior and appearance, particularly when their delusional thinking is not being addressed or acted on. In general, individuals with this disorder are more likely to experience impairments in social and marital functioning than intellectual and occupational functioning."

He found that V.M. may also have experienced episodes of depression and symptoms associated with panic disorder and PTSD. He noted that it was possible that these diagnoses had "been euphemistically applied due to their relative lack of

stigmatization as opposed to the psychotic disorders." He suspected that because of V.M.'s "general physical appearance, apparent intelligence, marital status, identity in the community and her ability to relate, along with no grossly apparent disorganized thinking, have convinced some that she is devoid of a major mental disorder." However, the frequently prescribed, relatively robust dosages of antipsychotic medication, Seroquel and Haldol, indicated that she had a serious mental disorder.

With regard to the chronic nature of V.M.'s condition, he described the course of a delusional disorder as quite variable, noting that there "can be waxing and waning of the delusional beliefs with full periods of remission that can be followed by subsequent relapses. In some cases, the disorder remits within a few months with no relapse." Generally, the disorder does not develop until an individual is in his or her early thirties.

If Crampton had been involved in V.M.'s care from the inception, he said he would first have ascertained whether defendants were married, and then would have had B.G. undergo a paternity test (facts not disputed in the record). He would also want to ascertain whether J.M.G. was developing normally, and would want to treat defendants separately.

The question of whether J.M.G. would be safe in V.M.'s care was "difficult to predict." He admitted that mental disorders

do not necessarily preclude an individual from being a successful parent. He noted that:

> There appears to be a consensus that any safety concerns regarding [J.M.G.] are more related to issues of potential neglect than physical abuse. This examiner cannot fully endorse this impression. There is evidence that [V.M.] is capable of exhibiting extreme agitation, volatility, hostility, and potentially dangerous impulsivity. There is concern that the unpredictable nature of her disordered thinking, suspiciousness, social isolation and lapses in judgment do not bode well for a very young and vulnerable child. There is also concern that [V.M.] may become so overly preoccupied with her own thoughts, feelings and beliefs that the child may, at the very least, become deprived of [V.M.'s] attention. It is this consultant's view also, that too often, inordinate attention or misguided emphasis is given to parenting classes, bonding evaluations and supervised visits. . . . The value and relevance of these interventions are particularly suspect when there are psychiatric conditions that have not been fully recognized or inadequately treated.

He recommended that

> with[in] a reasonable degree of medical certainty, . . . [V.M.] not have unrestricted access to [J.M.G.] at this time. By "unrestricted," it is meant that [V.M.] should not be permitted to be alone with [J.M.G.] without authorized supervision. This recommendation is prompted primarily by [V.M.'s] documented threats of abduction. "At this time," suggests the conceivability that with careful planning, consistent psychiatric treatment, qualified individual and family psychotherapy and other appropriate supportive services as determined by the

> prospective mental health providers, [V.M.], at some future time, may attain a level of adaptation that would enable her to have increased access to her child that might subsequently lead to full custody.

Crampton evaluated B.G. on September 24, 2008, and found

> [B.G. was] not suffering from a major mental disorder. The diagnosis of Shared Psychotic Disorder (Folie ′a Deux) has been suggested elsewhere. While it is reported that [B.G.] has reacted passively or acquiescently in the presence of his wife's verbally expressed delusions, there is no confirmation that he has actually adopted or incorporated these same distorted beliefs. Unless this is established, the diagnosis of Shared Psychotic Disorder cannot be applied. There is evidence that [B.G.] employs a variety of defense mechanisms, e.g. altruism, denial, devaluation, idealization and possibly others, but there is insufficient evidence of specific personality traits that rise to the level of a personality disorder. As [B.G.] is not severely mentally impaired, the question of chronicity, as it related specifically to [B.G.'s] mental functioning, is not a matter of concern.

He concluded that:

> If this matter concerned only custodial issues regarding [B.G.] as a single parent, the issue, from a psychiatric perspective, would not be difficult to resolve. The parents living together, with the mother having a major mental disorder, complicate matters. [B.G.'s] devotion to his wife may appear commendable but his denial of her emotional and mental impairments is a matter of concern. The parents have indicated that they have or will comply with mental health treatment but this examiner is not satisfied

> that the precise needs of the parents are being adequately addressed. This would not be as critical if not for the potential ramifications for a vulnerable child. Because of these issues, it cannot be recommended, with a reasonable degree of medical certainty, that the child be placed in the care of both parents at this time.

Nonetheless, Crampton did not recommend termination of V.M.'s and B.G.'s parental rights. Moreover, he stated that if reunification was the goal, J.M.G. should be regularly monitored by a child psychiatrist or psychologist. At the conclusion of all testimony and the presentation of relevant reports, the judge determined DYFS had successfully established each of the four prongs of the termination case by clear and convincing evidence.

II.

Both defendants challenge the judge's decision to terminate their parental rights.[5] Among the primary issues raised,

[5] Both parties also challenge the judge's determination dismissing the protective service (Title 9) action and reinstituting the guardianship proceeding. We need not relate the procedural steps undertaken by the judge in taking this action. Our review of the record indicates that his prime motivation for so doing was procedural and administrative. In essence, the judge concluded that DYFS had failed to prove prongs two and four and rather than dismiss the action, he ultimately appointed an independent expert to render an opinion. Any conflict between the various orders that he signed and the action taken are resolved by a review of the transcripts, which reveal that he intended to move forward on the guardianship action. As we note, infra, however, the independent expert did (continued)

defendants assert that DYFS failed to establish the statutory elements by clear and convincing evidence. In considering these arguments, we first discuss basic principles that inform our decision.

Parents have a fundamental constitutional right to enjoy a relationship with and to raise their children. "The right of a parent to raise a child and maintain a relationship with that child, without undue interference by the State, is protected by the United States and New Jersey Constitutions." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 102 (2008); N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007); Moriarty v. Bradt, 177 N.J. 84, 103 (2003), cert. denied, 540 U.S. 1177, 124 S. Ct. 1408, 158 L. Ed. 2d 78 (2004); In re Guardianship of K.H.O., 161 N.J. 337, 346 (1999). "[T]he termination of parental rights implicates a fundamental liberty interest." N.J. Div. of Youth & Family Servs. v. B.R., 192 N.J. 301, 305 (2007). That constitutional protection, however, is "tempered by the State's parens patriae responsibility to protect the welfare of children." In re Guardianship of J.N.H., 172 N.J. 440, 471 (2002). "In balancing those competing

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(continued)
little to resolve the ultimate issues involved so the judge could have dismissed the guardianship proceeding at the end of the first trial.

concerns, a court must ensure that the statutory and constitutional rights of the parent or guardian are scrupulously protected." N.J. Div. of Youth & Family Servs. v. G.M., 198 N.J. 382, 397 (2009).

DYFS must prove each of the four prongs in N.J.S.A. 30:4C-15.1a, set forth infra, by clear and convincing evidence. N.J. Div. of Youth & Family Servs. v. C.M., ___ N.J. ___ (2010) (slip op. at 30). "A finding of the agency's failure to meet that standard requires dismissal of the complaint." Pressler, Current N.J. Court Rules, comment on Rule 5:9 (2010). In N.J. Div. of Youth & Family Servs. v. D.M., ___ N.J. Super. ___ (App. Div. 2010) (slip op. at 2), the majority opinion identified the issue presented on appeal as

> whether a parent's parental rights may be terminated when the New Jersey Division of Youth and Family Services . . . fails to prove all prongs of the best interests of the child standard, but nevertheless, the child may suffer serious psychological or emotional harm by severing the bond between the child and his or her foster parents. We conclude that any harm the child may suffer from severing that bond cannot, in and of itself, serve as a legally sufficient basis for termination of the parent's parental rights. We hold that in such a case, DYFS must still prove by clear and convincing evidence that the parent's actions or inactions substantially contributed to the forming of that bond to where any harm caused to the child by severing the bond rests at the feet of the parent. Because we find an absence of that proof, we reverse

> and remand for further proceedings consistent with this opinion.

We observed, in language relevant to our analysis here, that:

> The Court's recent decision in [C.M., supra, supports our conclusion that termination of parental rights cannot be justified by evidence that a child may suffer serious psychological or emotional harm by severing the bond between the child and his or her foster parents without evidence that the parent substantially caused, directly or indirectly, the harm to the child. The Court reaffirmed the principle that to terminate a parent's parental rights, DYFS bears the burden of proving by clear and convincing evidence each of the four statutory prongs of the best interests of the child standard. C.M., supra, ...
>
> That S.M. [the child] would have bonded with her foster parents between the conclusion of the first termination proceeding and the remand proceeding should not have come as a surprise, D.M. [the mother] having been improperly separated from S.M. while the first appeal was pending. As noted by the Court "[i]t is well-established that the period of time a child has spent in foster care is not determinative of whether parental rights to that child should be terminated, as '[t]he protection of parental rights continues when a child is placed in foster care.'" C.M., supra, . . . (quoting K.H.O., supra,, 161 N.J. at 347). Indeed, "[i]n respect of the first prong of the test for terminating parental rights, . . . [the] Court has made clear that '[t]he statute requires that the State demonstrate harm to the child by the parent' and that the '[h]arm, in this context, involves the endangerment of the child's health and

> development resulting from the parental relationship.'" Ibid. (quoting K.H.O., supra, 161 N.J. at 348). Here, as previously stated, we found the record devoid of any evidence, much less clear and convincing evidence, that D.M. substantially contributed to the forming of the bond between S.M. and her foster parents.
>
> [D.M., supra, ___ N.J. Super. ___ (slip. op. at 38-39.).]

The judge in his initial oral decision found that prongs two and four of the best interest of the child test remained "open." Rather than dismiss the action, the judge sought additional testimony from a court appointed expert - Crampton - to assist him in making a final determination. See In re Guardianship of J.C., 129 N.J. 1, 22 (1992) (advising that judges should not hesitate to call on independent experts where necessary). But see P.T. v. M.S., 325 N.J. Super. 193, 216 (App. Div. 1999) (cautioning that judges must not abdicate their decision-making role to an expert). The judge had the authority to appoint an expert under Rule 5:3-3(a), and to obtain additional testimony under Rule 5:9-3, which provides:

> At any time during or after the hearing, the court may require the production of additional testimony, may subpoena additional witnesses, or may direct that notice of the proceedings be given to any person whose interests may be prejudiced or affected by the entry of a judgment. The court may continue the hearing as the situation requires and shall direct the

> manner in which any required notice shall be given.

We consider the issues raised on this appeal based on the entire record established in this proceeding.

In challenging the proofs presented, both defendants claim the judge erred in terminating their parental rights to J.M.G. because DYFS failed to establish each of the four statutory elements of N.J.S.A. 30:4C-15.1a by clear and convincing evidence. The Experts in Maternal and Neonatal Health, Birth, and Child Welfare (amicus), join and argue that the judge improperly considered V.M.'s refusal to consent to a c-section.

Consistent with N.J.S.A. 30:4C-15.1a, DYFS can initiate a petition to terminate parental rights on the grounds of the "best interests of the child" if the following standards are met:

> (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. Such harm may include evidence that separating the child from his resource family parents would cause serious and enduring emotional or psychological harm to the child;
>
> (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.

The four factors, are not "discrete and separate" but rather "relate to and overlap with one another to provide a comprehensive standard that identifies a child's best interests." K.H.O., supra, 161 N.J. at 348. DYFS must prove each of the four factors by clear and convincing evidence. G.L., supra, 191 N.J. at 606. Recently we found that the filing of a guardianship complaint pursuant to N.J.S.A. 30:4C-15(c), regarding the "best interests of the child," does not require that DYFS first initiate an action under Title 9. N.J. Div. of Youth & Family Servs. v. A.P., 408 N.J. Super. 252, 259 (App. Div. 2009), certif. denied, 201 N.J. 153 (2010).

"Termination of parental rights severs all ties and contacts between a parent and a child. The object is to allow the child the opportunity for a permanent placement with a new family, where the child can grow and thrive with the end goal of adoption." E.P., supra, 196 N.J. at 92.

The scope of our review of a trial court's decision to terminate parental rights is limited. G.L., supra, 191 N.J. at 605. We "will not disturb the family court's decision to

terminate parental rights when there is substantial credible evidence in the record to support the court's findings." E.P., supra, 196 N.J. at 104. See also N.J. Div. of Youth & Family Servs. v. M.C., 201 N.J. 328, 336 (2010). We defer to the trial court's credibility determinations and its "feel of the case" based upon its opportunity to see and hear the witnesses. G.M., supra, 198 N.J. at 396. An exception to this rule exists "[w]here the issue to be decided is an 'alleged error in the trial judge's evaluation of the underlying facts and the implications to be drawn therefrom. . . .'" G.L., supra, 191 N.J. at 605 (quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188-89 (App. Div. 1993)).

Under the first prong of the statute, the State must show that the child's safety, health, or development has been or will continue to be endangered or harmed by the parental relationship. N.J.S.A. 30:4C-15.1a; E.P., supra, 196 N.J. at 103-4; G.L., supra, 191 N.J. at 607. The harm shown "must be one that threatens the child's health and will likely have continuing deleterious effects on the child." K.H.O., supra, 161 N.J. at 352.

The harm required to satisfy this prong need not be physical, emotional or psychological harm, the result of the action or inaction of the biological parents can suffice.

Matter of Guardianship of K.L.F., 129 N.J. 32, 44 (1992); N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 605 (1986). "Although a particularly egregious single harm can trigger the standard, the focus is on the effect of harms arising from the parent-child relationship over time on the child's health and development." K.H.O., supra, 161 N.J. at 348. Harm cannot be presumed because "presumptions have no place in termination analysis." G.L., supra, 191 N.J. at 608.

Here, the trial judge found that DYFS established by clear and convincing evidence prong one, in that the proofs presented showed that in April 2006, while in St. Barnabas hospital, defendants denied V.M.'s psychiatric history, denied her prior use of psychiatric medication (dating back twelve years), denied that a psychiatric consultation had been necessitated by her conduct in the hospital, and refused to follow up with the mental health services which were recommended by the hospital psychiatrist. The judge also found that V.M. and B.G. held themselves out as a family unit, and that B.G. supported V.M.'s conduct at the hospital and her decision not to disclose her prior mental health history to the hospital staff or to DYFS. J.M.G.'s safety was compromised by this conduct.

On appeal, defendants and amicus argue that the State failed to prove the first prong because V.M. had the fundamental

right to refuse to consent to a c-section and thus the court cannot consider such a decision in the context of child welfare laws. DYFS argues that there was sufficient evidence to support prong one but does not respond to the arguments regarding V.M.'s right to refuse to undergo a c-section.

Although there was evidence presented at the guardianship trial regarding V.M.'s refusal to consent to a c-section, the judge did not rely on that evidence in finding that DYFS had established prong one. In contrast to the Title 9 trial, V.M.'s failure to consent to a c-section did not form a major portion of the evidence presented in the guardianship trial, nor was it a "major consideration" in the court's decision. V.M., supra, 408 N.J. Super. at 249. Moreover, despite the Title 9 court's reliance on V.M.'s conduct in refusing the procedure, on appeal the majority determined that it need not address this issue because there was sufficient other evidence to support the trial court's finding of abuse and neglect as to V.M. Id. at 224. We need not address this issue here except to note that to the extent the judge considered the issue, it has no place in this termination proceeding.

Next, defendants argue that the State failed to establish actual harm to J.M.G. "Courts need not wait to act until a child is actually irreparably impaired by parental inattention

or neglect." In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999). See In re Guardianship of A.A.M., 268 N.J. Super. 533, 549-50 (App. Div. 1993) (noting sufficient grounds to terminate parental rights even though the child was removed at four days old, and the mother never had opportunity to exercise parental role). The mental illness of a parent which affects his or her ability to carry out his or her parental responsibilities can be a basis for termination of parental rights. See, e.g., N.J. Div. of Youth & Family Servs. v. A.G., 344 N.J. Super. 418, 438-9 (App. Div. 2001) (holding that termination of parental rights was appropriate even though parents were morally blameless because their mental deficiencies put child at risk), certif. denied, 171 N.J. 44 (2002).

Here, there was sufficient evidence that V.M.'s past conduct including her mental illness, exposed J.M.G. to a risk of harm. Her combative behavior during the delivery (excluding her refusal to consent to the c-section), psychiatric history, the opinions of Jacoby and Seltzer, and her refusal to take the prescribed medication or to participate in outpatient treatment, support a finding that V.M. was not in a proper mental state to safely care for J.M.G. and therefore placed the child's health and safety at risk. V.M., supra, 408 N.J. Super. at 250.

Moreover, the experts, including Singer and Nadelman, opined that placing J.M.G. with V.M. would expose her to a risk of psychological harm. Although Santina and Figurelli opined that notwithstanding her condition, V.M. was qualified to parent her daughter, they conditioned that opinion on V.M.'s remaining compliant with the recommended psychiatric treatment. Amatrudi and Nadelman observed instances where V.M.'s inability to understand J.M.G.'s cues (placing her in an activity seat), lack of attention (failing to observe that J.M.G. had walked out of the room), and reliance on Amatrudi for help (bottle incident) exposed the child to a risk of harm. The requisite harm by V.M. to J.M.G. was clearly and convincingly established.

The case against B.G. presents more significant problems. B.G. argues that the trial judge erred in terminating his parental rights, because viewed independently, he is a fit parent and has not caused harm to his daughter. The "termination of one parent's rights is not appropriate merely because the other parent is unfit or has surrendered his or her rights." N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 288 (2007). "Parental rights are individual in nature and due process requires that fitness be evaluated on an individual basis." Ibid. Nonetheless, "the conduct of one parent can be

relevant to an evaluation of the parental fitness of another parent." Id. at 288-89.

Viewed independently, the experts, Santina, Figurelli, and Crampton, agreed that B.G. was clearly qualified to parent J.M.G. The concurring opinion in V.M. noted that B.G. could not have "forced his wife to cooperate with the hospital staff," and a finding of abuse and neglect was not supported by the record. V.M., supra, 408 N.J. Super. at 251. There was also evidence, that except for his initial aversion to changing J.M.G.'s diaper, a single event bordering on the trivial in a termination proceeding, B.G. was responsive to his daughter's cues, was able to comfort her, and displayed a caring, loving and attentive attitude toward her. Further, there was evidence that B.G. had attended every supervised visit with his daughter, had bonded to her, ran a successful business, and maintained appropriate housing.

Nonetheless, "[t]he harm caused by circumstances attendant to the parent-child relationship is as pertinent as any harm caused directly by a parent." M.M., supra, 189 N.J. at 289. "[T]he harms need not be inflicted by the parent personally." Ibid. "Rather, the relevant inquiry focuses on the cumulative effect, over time, of harms arising from the home life provided by the parent." Ibid. A parent's association with third-

parties, including a spouse, may be an appropriate consideration. Ibid.

> The crucial inquiries are whether the parent's association with others causes harm to the child and whether the parent is unable or unwilling to provide a safe and stable home. That the threat to the child is created by the presence of another parent is irrelevant to the determination of whether the child is at risk.
>
> [Id. at 289-90.]

In M.M., supra, 189 N.J. at 269-70, the mother, who was cognitively limited, emotionally immature, had erratic tendencies, and abused alcohol, posed a risk to her infant son. Viewed independently, the father was a capable, responsible, and devoted parent, who maintained full-time employment, complied with all DYFS requirements, and was not addicted to drugs or alcohol, nor did he suffer from mental disorders. Id. at 272. The DYFS psychiatric expert agreed that the father would "appear to be appropriate as a parent for custody." Ibid. But for the presence of the mother, the father would be able to parent his son. Ibid. However, the father remained "deeply committed to the mother notwithstanding the risk that she poses to their son, and the couple remains together." Ibid.

The Court found that the trial court correctly evaluated the father's parental rights in light of his cohabitation with the mother. Id. at 290. "[T]he record is replete with evidence

that justifies the trial court's conclusion that the father failed to provide a home in which the son was not in constant danger." Id. at 281-82. "Although we are mindful of the mother's limitations, it is the father who established the dangerous situation at home, who maintains those conditions, and who is unable or unwilling to substantially alter those conditions." Id. at 282. The mother's presence in the home created an unstable environment and posed a serious risk to the son. Ibid. "Although it was imperative that the father provide a daycare plan that could guarantee that the son would not be left alone with the mother, he did not provide a suitable plan under the circumstances." Ibid. The Court found the State had established prong one of the best interests of the child test. Id. at 283.

Similarly here, although B.G., independently, would be a fit parent, at the time of J.M.G.'s birth, he failed to provide a home in which J.M.G. would not be in danger. He failed to even acknowledge that V.M. suffered from mental health issues or that V.M.'s actions at the time of the birth of their daughter created valid concerns by the hospital staff.

We conclude that the State met its burden of proof as to prong one for both V.M. and B.G.

The result under the second prong warrants a different result. Under the second prong, the State must show that 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." N.J.S.A. 30:4C-15.1a(2). In that respect,

> [w]hile the second prong more directly focuses on conduct that equates with parental unfitness, the two components of the harm requirement, N.J.S.A. 30:4C-15.1(a)(1) and (2), are related to one another, and evidence that supports one informs and may support the other as part of the comprehensive basis for determining the best interests of the child.
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> [In re D.M.H., supra, 161 N.J. at 379.]

"The State can satisfy the second prong if it can show 'that the child will suffer substantially from a lack of stability and a permanent placement and from the disruption of [his or] her bond with foster parents.'" M.M., supra, 189 N.J. at 281 (quoting K.H.O., supra, 161 N.J. at 363). "[T]he issue becomes whether the parent can cease causing the child harm before any delay in permanent placement becomes a harm in and of itself." A.G., supra, 344 N.J. Super. at 434.

In addressing this factor, the judge summarized Singer's, Nadelman's, Santina's, and Figurelli's reports and testimony. The judge found that there was a profound disagreement among the

experts. The judge was critical of Santina, and differed with some of the findings of the other experts, but essentially detailed the evidence without making credibility determinations and without attaching specific weight to his observations. The judge found that:

> the second and fourth prongs are still open as to whether . . . [defendants] are . . . unable to eliminate the harm that this mental health situation has created. That harm, to be clear, is one of neglect and not abus[e] of [J.M.G.], such that her safety would be placed in jeopardy should she be returned to their home.
>
> What the plaintiff [DYFS] has not . . . through no fault of its own, [been] able to present is psychiatric testimony and evidence that deals with the chronicity condition, . . . with respect to the primary caretaker . . . [V.M.], that is able to satisfy this Court, by clear and convincing evidence, in a review of this entire case. And, thus, an independent . . . insight and view, as noted by . . . Justice Handler, recommended to trial judges, if presented in a situation such as this.

The judge did not anticipate that counsel would recall Nadelman and Santina, but left that decision to them.

At the conclusion of the reopened guardianship trial, the judge found that DYFS had established by clear and convincing evidence that defendants were unable to eliminate the harm facing the child. In support of that finding the judge cited to the level of police involvement, including that defendants

called the police while at St. Barnabas, requested that Frommer be accompanied by a police escort, and called the Newark police department regarding the judge in the Title 9 proceeding. The judge found V.M.'s explanations regarding her call to the Newark police department were "unbelievable and totally without credibility." The judge further noted V.M.'s difficulty interacting with several of the parenting class facilitators and the health care professionals at the Overlook outpatient program.

The judge found that this conduct supported the "inference that [V.M.] has the capacity and ability to reach out to challenge any perceived or imagined recommendation, including orders of the Court, putting authority figures such as the Division, its agents and even the original judge at serious question by reason of her questioning and conduct." According to the judge, the opposition to authority figures, in addition to defendants' social isolation, would place J.M.G. at risk as defendants interacted with her physician and teachers.

The judge also made several credibility findings - findings not made at the conclusion of the first hearing. He determined that defendants' had not successfully challenged Nadelman's testimony on cross examination, and accepted her findings regarding defendants' psychological evaluations and the bonding

evaluations. "Nadelman carefully but clearly stated the harm" to J.M.G. of removal, which the judge found was "fair and direct."

Next, although he said he "respected" Figurelli's opinion, who the judge found was a "competent and experienced forensic professional," the judge noted that Figurelli concluded that the transition back to defendants would require close monitoring. Moreover, Figurelli was not aware of some of the "parenting program problems," or V.M.'s hospitalization at Overlook which the judge considered important in making a determination. "Such concerns leave his opinion . . . one that cannot be honored simply because it is minimized by the lack of information . . . ."

With regard to Santina, the judge found that her "ability to essentially rationalize many of the key factual and personality issues such that it rendered her observations somewhat less credible[.]" He found that Santina's conclusion that V.M. was able to adequately parent J.M.G. was not supported by the record. Moreover, he found that Santina "certainly was forceful in her testimony and examination", but nonetheless did not recommend an immediate transfer of custody to defendants.

Conversely, the judge found that Crampton, his appointed expert, was "open, honest, direct and reasonable in his

presentation." Crampton "presented as unbiased and disinterested," and concluded that V.M., alone, or in combination with B.G., was unable to safely assume a parenting responsibility.

Our difficulty with the judge's analysis is that with the exception of Crampton's "neutral" testimony, the evidence on which the judge relied in finding that DYFS established prong two is the same evidence that led the judge to conclude that DYFS had not established prong two in the first trial. At the conclusion of that hearing the judge specifically found that the factor remained "open." The evidence submitted in the first hearing, and found inconclusive by the judge, included V.M.'s medical and psychiatric history, Seltzer's records, the DYFS caseworker observations and reports, Singer's report, parenting class reports, and testimony by Nadelman, Cantillon, Santina, and Figurelli.

Clearly the evidence submitted was conflicting. Nadelman testified that family reunification would not be in J.M.G.'s best interest because both parents remained unable to recognize or remedy the high risk of harm to their child, even after almost two years of treatment and medication. Cantillon, Santina, and Figurelli disagreed with that opinion, and even Crampton did not advocate termination of parental rights.

Additionally, although the evidence was undisputed that defendants had extreme difficulties with some of the psychiatrists, psychologists, and parenting class facilitators they were referred to by DYFS, they ultimately attended weekly counseling sessions with Essex, obtained a psychiatrist (Cantillon) that they were comfortable with, were compliant with treatment, completed parenting classes, and attended all supervised visitation sessions. In our view, this compliance demonstrates a willingness on defendants' part to eliminate the harm. Moreover, B.G. asserted that he was willing to hire a nanny or to enroll J.M.G. in the daycare center located across the street from their apartment. And, although clearly defendants' behavior in threatening and filing lawsuits, and calling the police, did not, to say the least, make working with them productive or pleasant, they were able to work with some authority figures, B.G. was able to successfully operate a business, and defendants enjoyed what appeared to be a happy and stable marriage.

Moreover, the bonding evaluation evidence, submitted in the first trial, but not the reopened trial, was disputed. Nadelman testified that J.M.G. was beginning to show an increased attachment to her foster parents; Santina found that J.M.G. had developed a stronger bond with defendants, than with her foster

parents, particularly her foster father. Figurelli found that J.M.G. can make the transition to defendants without experiencing severe and enduring harm. There was evidence that J.M.G., who was not a special-needs child, had an attachment to defendants.

We agree with the trial judge that DYFS did not establish prong two by clear and convincing evidence in the first trial. We find nothing in the reopened trial that advances DYFS' position. The court's expert, Crampton, opined that defendants were still not ready to parent J.M.G., but he did not advocate termination of their parental rights. Crampton, who evaluated V.M. over the course of only two hours, diagnosed her as suffering from a delusional disorder, a rare disorder, and a completely new diagnosis, not previously diagnosed by her treating physicians or the experts. In making that diagnosis, Crampton admitted he did not review Seltzer's records (who had treated V.M. from 1993 to 2005), because each page of the records was not signed. Inexplicably, Crampton testified that if he had been involved in V.M.'s care from the inception, he would first have ascertained whether defendants were married, and then would have had B.G. undergo a paternity test; factors not in dispute. He did not indicate what, if any, different medications V.M. should be taking, and admitted that in some

cases a delusional disorder remits within a few months, with no relapse.

Crampton's testimony did, however, tend to confirm Nadelman's opinion that V.M. was capable of exhibiting extreme agitation, disordered and unpredictable thinking, and that she could become so preoccupied with her own thoughts that she would inadvertently neglect J.M.G. He confirmed that B.G.'s denial of V.M.'s mental impairments was a matter of concern. However, given Crampton's brief evaluation of V.M., particularly when compared to the time that Cantillon, and even Nadelman, spent with her, his new diagnosis, his failure to recommend termination, and the otherwise conflicting expert testimony, we conclude that DYFS did not establish this factor by clear and convincing evidence as to either V.M. or B.G. The testimony of the witnesses in the first trial failed to establish the prong; the testimony in the second trial was suspect, at best. This is not the "stuff" for termination of parental rights and does not approximate a finding of clear and convincing evidence. DYFS did not establish that defendants were unable or unwilling to eliminate the harm established in prong one.

The third prong requires DYFS to undertake reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the

home and the court has considered alternatives to termination of parental rights. N.J.S.A. 30:4C-15.1a(3). "Reasonable efforts" are defined as

> attempts by an agency authorized by the division to assist the parents in remedying the circumstances and conditions that led to the placement of the child and in reinforcing the family structure, including, but not limited to:
>
> (1) consultation and cooperation with the parent in developing a plan for appropriate services;
>
> (2) providing services that have been agreed upon, to the family, in order to further the goal of family reunification;
>
> (3) informing the parent at appropriate intervals of the child's progress, development and health; and
>
> (4) facilitating appropriate visitation.
>
> [N.J.S.A. 30:4C-15.1c.]

The judge found that this prong was "well satisfied" in that DYFS had provided services to defendants, in the form of counseling and supervised visitation, and to the child.

On appeal, defendants argue that DYFS failed to provide them with in-home parenting services and "reunification" services.

The evidence supports a finding that DYFS met its burden of proof under this prong by providing a variety of services specifically designed to reunite the family, including

counseling and parenting classes. We conclude that this finding was supported by the evidence.

The fourth prong requires the State to prove that "[t]ermination of parental rights will not do more harm than good." N.J.S.A. 30:4C-15.1a(4). This prong "serves as a fail-safe against termination even where the remaining standards have been met." G.L., supra, 191 N.J. at 609. "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." E.P., supra, 196 N.J. at 108. A child's need for permanency is an important consideration under the fourth prong. M.M., supra, 189 N.J. at 281.

"When a parent has exposed a child to continuing harm through abuse or neglect and has been unable to remediate the danger to the child, and when the child has bonded with foster parents who have provided a nurturing and safe home, in those circumstances termination of parental rights likely will not do more harm than good." E.P., supra, 196 N.J. at 108. Even under those circumstances, our courts have cautioned that DYFS must show "that separating the child from his or her foster parents would cause serious and enduring emotional or psychological harm." J.C., supra, 129 N.J. at 19.

At the conclusion of the first trial in June 2008, the judge found that DYFS had failed to prove this prong by clear and convincing evidence. After Crampton testified in December 2008, the judge found that J.M.G., who was forming a bond with her foster parents, needed stability and permanency, something defendants were unable to provide. At that point the judge made specific findings on credibility, accepting Nadelman's testimony as credible, and finding that Santina's testimony was not.

On appeal, defendants argue DYFS failed to meet its burden on this prong because there was conflicting evidence as to whether termination of their parental rights would do more harm than good.

We are again presented with the same dilemma that confronted us regarding prong two. All of the evidence, except Crampton's testimony that defendants were still not ready to parent J.M.G., had been presented by June 2008, when the judge found that this factor remained "open." As the judge found, the bonding evidence was clearly contradictory. Crampton did not conduct a bonding evaluation. We again conclude that DYFS failed to establish by clear and convincing evidence the requisite elements of prong four.

As to the last two issues raised by defendants, we find no merit as to the claim that defendants were deprived of effective

assistance of counsel. The thrust of that argument is that counsel failed to object to the procedure and the appointment of an independent expert. We have addressed those issues supra, and conclude that the argument of ineffective assistance of counsel is of no merit warranting further discussion. R. 2:11-3(e)(1)(E).

Finally, B.G. argues that in the event of a remand, the matter should be assigned to a different judge because the trial judge made credibility findings.

Rule 1:12-1(f) provides that "[t]he judge of any court shall be disqualified on the court's own motion and shall not sit in any matter, . . . when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." A motion for recusal must be made to the judge sought to be disqualified. In considering such an application, the trial judge must be mindful of whether because of his credibility determinations and other relevant factors extant in this contentious matter, he may have a commitment to his findings. Carmichael v. Bryan, 310 N.J. Super. 34, 49 (App. Div. 1998); In re Guardianship of R., 155 N.J. Super. 186, 195 (App. Div. 1977). The application for recusal should be made to the trial

judge if the remand judge is the trial judge who heard this matter in the first instance.

We conclude that DYFS has failed to establish prongs two and four by clear and convincing evidence. Our Legislature has made it clear that the process of determining whether to terminate parental rights must follow a "rigorous" step-by-step analysis. C.M., supra, ___ N.J. ___ (slip op at 3). It is insufficient for DYFS to merely make a convincing argument that termination is in the best interests of the child; it much establish each of the four standards outlined in N.J.S.A. 30:4C-15.1a by clear and convincing evidence.

> [C]lear-and-convicing evidence is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the precise facts in issue.
>
> [C.M., supra, __ N.J. ___ (slip op at 31) (quoting In re Seaman, 133 N.J. 67, 74 (1993)).]

Prior to the Supreme Court's decision in C.M., the termination of parental rights could still be accomplished even in the absence of satisfaction of the four prongs by clear and convincing evidence if DYFS established termination was in the best interests of the child. See J.C., supra, 129 N.J. at 25. However, C.M. clarified that each of the four prongs of N.J.S.A.

30:4C-15.1a must be met; if not, DYFS has failed to carry its burden of proof. C.M., supra, __ N.J. ___ (slip op. at 31) ("In determining whether a parent's parental rights to a child are to be terminated, it is those four standards and their application - and only those four standards - that command our focus.").

"[A] court may not terminate parental rights unless each of the four standards set forth in N.J.S.A. 30:4C-15.1(a) is satisfied, even if, as in this case, the record indicates that denying termination of parental rights and compelling reunification of a child with his or her natural parents 'would cause the [child] serious psychological or emotional harm.'" N.J. Div. of Youth & Family Servs. v. D.M., ___ N.J. Super. ___ (Skillman, concurring) (slip op at 3-4)(quoting In re Guardianship of J.C., 129 N.J. 1, 25 (1992)).

This troublesome termination proceeding involves an intact family with V.M. suffering from significant psychiatric problems that have not been defined, but according to some of the experts may be resolvable with treatment and medication. J.M.G. cannot be lost in this process. She is "the beating heart at the center of this controversy," C.M., supra, ____ N.J. ____ (slip op. at 2) (La Vecchia, J., dissenting), and she is entitled to the benefit of permanency with parents who hopefully will be in a position both physically and mentally to sustain her.

Unfortunately, that decision cannot yet be made. In the interim, she has been the beneficiary of a loving foster home but at the same time, she has a sustained relationship with loving parents. Termination is among the most extraordinary remedies that can be exercised by a court. We must insist that the remedy be reserved for those instances where the State meets the extraordinary burden imposed by the law. That burden has not been met here.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.