RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0241-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

J.C.,

Defendant-Appellant,

and

K.C.,

Defendant.

____

IN THE MATTER OF A.C. AND
W.C., minors.

____

Submitted January 10, 2023 – Decided March 7, 2023

Before Judges Gilson, Rose, and Gummer.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FN-02-0086-20.

Joseph E. Krakora, Public Defender, attorney for appellant (Arthur David Malkin, Designated Counsel, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Sookie Bae-Park, Assistant Attorney General, of counsel; Jessica A. Prentice, Deputy Attorney General, on the brief).

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

PER CURIAM

J.C. (Jan), the mother of two young children, appeals from an order dismissing the complaint filed by the Division of Child Protection and Permanency (Division) under Title 30 but continuing restraints that require supervision of Jan when she is with her children.[1] Jan argues that the family court did not have the authority to dismiss the case with restraints and the evidence did not support the court's decision that it was in the best interests of the children to maintain the restraints. We disagree and affirm.

[1] We use initials and fictitious names to protect the privacy interests of the parties and the confidentiality of the record. See R. 1:38-3(d)(12).

I.

Jan and K.C. (Kyle) are married and have two children: A.C. (Andy), born in December 2012; and W.C. (Wes), born in September 2017. Jan has a long history of mental illness but has refused to acknowledge or consistently treat her illness.

The Division became involved with Jan and her family in 2018. At that time, Jan had been hospitalized for paranoid and manic behavior and refused to take medications. Kyle reported that Jan had shown signs of paranoia for several years. As an example, Kyle told a Division worker that Jan had sent a friend 170 text messages in a short period of time, including a message that stated the friend "should be shot." According to Kyle, Jan also claimed that the FBI had bugged her phone and was tracking her vehicle.

Because Jan was the children's primary caregiver at that time, the Division implemented a safety protection plan. Under that plan, Jan was required to be supervised when she was with her children.

Over the next year and a half, Jan received some therapy and psychiatric treatment, but she did not consistently take her prescribed medications or go to therapy. Consequently, Jan continued to exhibit signs of paranoia and erratic behavior, including claiming that her home was being recorded, people were

watching her, and people were conspiring against her. Kyle reported that several times during this period Jan went outside late at night and yelled that she was not crazy. He also described an incident where Jan had approached a woman she did not know and told the woman that her child was ugly.

In August 2019, Jan was involuntarily committed to a hospital for psychiatric treatment. She was diagnosed with unspecified schizophrenia spectrum and other psychotic disorders. Despite that diagnosis, Jan initially refused to undergo further psychiatric evaluations after her release from the hospital.

Several months later, in December 2019, Jan was again hospitalized after additional reports of paranoia and concerning comments. The hospital recommended that Jan engage in outpatient behavioral health services and prescribed psychiatric medications. Jan, however, refused to take the medications.

The following month, Jan was evaluated by Dr. Joseph Siragusa, a psychiatrist, and Dr. Ada Liberant, a psychologist. Dr. Siragusa diagnosed Jan with bipolar disorder I and psychosis. He recommended therapy and psychiatric services and prescribed a mood stabilizer and anti-psychotic medication. Dr. Liberant made a similar diagnosis. She diagnosed Jan with bipolar disorder with

psychiatric features and recommended therapy, psychiatric care, a mood stabilizer, and anti-psychotic medication. Both doctors agreed that Jan should continue to be supervised when she was with the children.

On January 23, 2020, the Division filed a complaint under Titles 9 and 30 seeking care and supervision of the children and restraints against Jan. Following a hearing, the family court granted that relief. The court entered an order requiring Jan to be supervised when she was with the children and prohibiting her from transporting the children in a vehicle.

Over the next eighteen months, the family court conducted several reviews and hearings. During that time, Jan received therapy and counseling from several different doctors and therapists. Various doctors reported that Jan resisted taking prescribed psychiatric medication and her mental health conditions were not improving.

In 2020, the Division withdrew its claims for abuse and neglect under Title 9 and proceeded with care and supervision under Title 30. Thereafter, in June 2021, the Division requested that the litigation be dismissed with continued restraints. At Jan's request, the family court conducted a dispositional hearing on July 20, 2021. At that hearing, the court heard testimony from Dr. Franklin MacArthur, a psychologist who had been treating Jan since August 2020, and

Lavar Parker, a Division caseworker, who had worked with Jan and her family since January 2020.

Dr. MacArthur testified that in his nearly one year of treating Jan, she had not made substantial progress in understanding her delusional behavior. He explained that Jan's refusal to take medication and her paranoid delusions impaired her ability to function as a caregiver to the children. Although Dr. MacArthur testified that he did not believe Jan would harm her children, he opined that Jan's refusal to take medication prevented her from making progress with her delusional behavior and he supported continued supervision when Jan was with the children.

Parker testified that Jan continued to exhibit signs of delusional behavior, including screaming outside her family home, using profanity, and yelling at her neighbors. He also described his observations that Jan persistently refused to take her prescribed psychiatric medications and that she had little insight into understanding why the Division was involved with her family.

On August 12, 2021, the family court issued an order and set forth its findings of fact and conclusions of law on the record. The court found the testimony of both witnesses to be credible. Noting that the evidence was largely undisputed, the court determined that Jan's paranoid and delusional behavior had

not diminished and that she still lacked insights concerning her mental health. Accordingly, the court ordered that the matter be dismissed with the restraints that Jan could not have contact with the children unless supervised by either Kyle or the maternal grandparents. The court also prohibited Jan from transporting the children in a vehicle. Finally, the court provided that the restraints could be lifted, on notice to the Division, if Jan addressed her mental health issues, complied with all treatment recommendations, and achieved a level of sustained stability. Jan now appeals from that order.

II.

Jan first argues that the family court did not have authority to close the case with restraints. She contends that when the Division dismissed the claims under Title 9, the court no longer had authority to impose restraints under Title 30. We reject that legal contention.

Title 30, provides, in relevant part:

> If, after such investigation has been completed, it appears that the child requires care and supervision by the [D]ivision or other action to ensure the health and safety of the child, the [D]ivision may apply to the Family Part of the Chancery Division of the Superior Court in the county where the child resides for an order making the child a ward of the court and placing the child under the care and supervision or custody of the [D]ivision.

[N.J.S.A. 30:4C-12.]

The court must be satisfied "that the Division has proven by a preponderance of the evidence that it is in the best interests of the child to enter the relief requested." N.J. Dep't of Child. & Fams. v. I.S., 214 N.J. 8, 38 (2013). Although care and supervision under Title 30 is generally a temporary relief, ibid., nothing in Title 30 expressly precludes ongoing protections when the case is closed. Indeed, we have recognized that Title 30 should be construed to protect children "from harm when the parents have failed or it is 'reasonably feared' that they will." N.J. Div. of Youth & Fam. Servs. v. T.S., 426 N.J. Super. 54, 65 (App. Div. 2012).

Jan cited no case prohibiting the dismissal of a Title 30 action with restraints. Although the Division cited no case expressly allowing on-going restraints, we are satisfied that the continued restraints here were within the court's authority. The family court did not enter permanent restraints. Instead, the court continued the restraints that existed during the litigation and expressly allowed Jan to apply to lift the restraints if she can show that she is stable and complying with treatment. We discern nothing inconsistent with Title 30 in allowing those continued restraints, which can be lifted in the future. Under the

circumstances of this case, that remedy is consistent with the best interests of the children. See I.S., 214 N.J. at 30.

Second, Jan contends that there was insufficient evidence to support leaving the restrictions in place. She argues that several experts who evaluated her found she was not a danger to the children; she was a good mother who never harmed her children; the medications were not necessary because two of her psychiatrists disagreed on the need for medication; and she had complied with all court orders except for taking her medications.

We accord deference to the family court's factual findings, particularly because of the court's expertise in family matters. Cesare v. Cesare, 154 N.J. 394, 413 (1998). Findings of fact are generally not disturbed unless they are "so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonable credible evidence as to offend the interests of justice." Id. at 412 (quoting Rova Farm Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)); see also N.J. Div. of Youth & Fam. Servs. v. R.L., 388 N.J. Super. 81, 89 (App. Div. 2006) (explaining that conclusions that logically flow from findings of fact are "entitled to deferential consideration upon appellate review").

The family court relied on evidence that was largely undisputed to find Jan suffered from paranoid delusions, which impaired her ability to function.

There was ample evidence that Jan failed to make significant progress in therapy. There was also substantial evidence supporting the court's finding that Jan's mental-health issues created "a risk to the safety and well-being of the children and that she's not sufficiently stable to resume unsupervised contact." The court's determinations were based on "extensive, material[,] and relevant evidence of [Jan's] chronic mental health issues," which caused "erratic and alarming" behavior.

Jan also argues that the court improperly admitted a summary report of a counselor from Family First. We reject this argument for two reasons. First, we discern no abuse of discretion in the court's determination that the report fell within the hearsay exceptions outlined in N.J.R.E. 803 and 804. See State v. Buda, 195 N.J. 278, 294 (2008). The court admitted the summary document but stated it would "give it the appropriate weight, understanding that this is a recommendation from a Division service provider and . . . it's just that." The Division then confirmed through Parker's testimony that the report was a true and accurate copy of the summary report and that Family First was a consultant to the Division. Consequently, Parker's testimony established that the report met the requirements for admission under N.J.R.E. 803(c)(6) and Rule 5:12-4(d).

Second, even if the Family First report contained hearsay, its admission was harmless error. The court noted that Family First's concerns mirrored observations of Parker, who testified. Accordingly, the judge appropriately relied on Parker's testimony, which was consistent with the observations made in the Family First report.

Finally, we reject Jan's argument that the Division did not prove that she could not parent unsupervised without medication. That argument was raised in Jan's reply brief, and we do not consider arguments that are raised for the first time in reply briefs. L.J. Zucca, Inc. v. Allen Bros. Wholesale Distribs. Inc., 434 N.J. Super. 60, 87 (App. Div. 2014). We also note that the family court specifically declined to premise its restraints on Jan's refusal to take medication. Instead, the court relied on Dr. MacArthur's unrebutted opinion that Jan failed to make significant progress in therapy.

Affirmed.

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