

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0156-15T4
A-0157-15T4

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

D.M. and C.M.,

Defendants-Appellants.

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

Submitted March 21, 2017 – Decided June 27, 2017

Before Judges Koblitz, Rothstadt, and Sumners.

On appeal from the Superior Court of New
Jersey, Chancery Division, Family Part, Hudson
County, Docket No. FN-09-298-13.

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Designated Counsel, on the brief).

PER CURIAM

In these two appeals, calendared back-to-back and consolidated for the purpose of this opinion,¹ defendants D.M. (Diane)², and her mother C.M. (Carla), challenge the Family Part's July 12, 2013 order concluding they abused or neglected Diane's child within the meaning of Title 9, N.J.S.A. 9:6-8.21 to -8.73. In reaching its decision, the Family Part relied upon Diane's drug and alcohol abuse, her exposing her child to incidents of violence with other family members, and her refusal to abide by a safety plan. As to Carla, the court relied on her failure to keep Diane away from the child and her inability to provide adequate shelter for him, both of which also constituted violations of an agreed upon safety plan. On appeal, defendants argue there was insufficient evidence to support the court's conclusions.

¹ We previously consolidated these matters for other administrative purposes.

² We use pseudonyms to refer to the family members to protect their privacy.

We conclude that the Family Part's decision was supported by substantial credible evidence that demonstrated both defendants' conduct recklessly created a substantial risk to the child's mental health and physical safety. See N.J. Div. of Youth & Family Servs. v. A.L., 213 N.J. 1, 8-9 (2013). Accordingly, we affirm.

The salient facts are derived from the fact-finding hearing record. Twenty-six year old³ Diane's only child is J.M. (Joey), who was born on October 20, 2003.⁴ Carla is Diane's mother.

The Division's first involvement with the family was in 2008. At that time, Carla had custody of Joey and was having problems caring for Joey, allegedly due to Diane's drug abuse. The Division investigated, found Carla's home to be in deplorable condition, provided services, and closed its file. The Division received another referral in 2012 based upon allegations of violence between Diane and Carla that were witnessed and later confirmed by Joey. According to Carla, these altercations were the result of Diane's drug abuse. The Division filed a complaint to permit it to

³ Diane's age at the time of the fact-finding hearing.

⁴ Joey's father, R.P., had been incarcerated for many years and played no role in Joey's life. The Division did not seek any relief against R.P.

investigate.⁵ The court ordered Diane to undergo a substance abuse evaluation and Carla to be psychologically evaluated.

On January 14, 2013, the Division responded to a referral from Joey's school that Carla was concerned with Diane's drug use and Joey's performance in school. Carla also reported an incident that occurred over New Year's Eve when Joey saw his intoxicated mother naked on a bathroom floor. The same day, a caseworker met with Joey at school. Joey confirmed that he heard his mother vomiting in the bathroom and although he denied seeing his mother use drugs or alcohol or seeing his mother and grandmother fight in the home, he "fidget[ed] with his hands throughout the interview" and "remained protective of [Diane] throughout the interview."

The same day, the Division caseworker also met with Carla at the family home, where she reported instances of domestic violence between her and Diane. Carla admitted to previous attempts to remove Diane from the home, but Diane would return and Carla would let her back in so as not to upset Joey. Carla also explained Joey was in individual therapy to help deal with the contentious relationship between her and Diane. During this visit, the caseworker observed the home to be in a deplorable condition, with

⁵ See N.J.S.A. 30:4C-12.

an immense amount of personal belongings and renovation supplies and equipment filling the rooms and hallways of the home. She later testified that she was concerned about the family's ability to maneuver in the home in the event of an emergency. The caseworker provided Carla with Chore services, which could assist her in cleaning and organizing her home, and Carla agreed to correct the problem.

At the end of the visit, the Division executed a safety protection plan with Carla. Under the terms of the plan, Carla would have Diane immediately leave the home where Carla and Joey resided and agreed she would correct her hoarding-like behavior by January 18, 2013. The Division also "substantiate[d] the allegations of physical injury/environment injurious to health and welfare" against Diane and Carla.

The following day, the caseworker met with Diane at the family home and observed her belongings packed. Diane admitted to a history of drug and alcohol abuse, but denied current use even though during the interview she had slurred speech, glassy eyes, and could not remain still. Diane also agreed to submit to a urine screen test the same day at the Division office, and she tested positive for cocaine and phencyclidine (PCP).

On January 18, 2013, the Division caseworker visited the family home again to assess whether progress had been made in

removing the bags of clothing and construction materials. She observed Carla had made progress and encouraged her to continue and informed Carla of Diane's positive drug screening from January 15. The caseworker reiterated the terms of the safety protection plan that restrained Diane from the home, and it was at this meeting that Carla also agreed she would not allow Diane to have unsupervised contact with Joey.

The Division caseworker returned to the home on January 25, 2013, and observed remodeling had begun and continued progress had been made in removing the hoarded clothing and construction materials from the home. The caseworker explained to Carla that cleaning still needed to be done and that Chore services had been attempting to reach her. Carla explained she would return their call, and at the conclusion of the visit, the caseworker reiterated the terms of the safety protection plan which barred Diane from the home and from having unsupervised contact with Joey. On February 6, Diane submitted to another drug test, which was positive for PCP.

The Division received another referral on February 14, that indicated Joey disclosed to his therapist that he had recently witnessed a fight between Diane and her cousins in which Diane was struck with a metal bat. Joey was being seen by a therapist since 2012 to deal with the stress caused by Carla's and Diane's

relationship with each other. On the same day, a Division permanency worker visited the home and found Joey asleep in his bed alongside Diane. She also observed the home was again in extreme disarray with dishes in the sink, bags of clothing and other items all over, and rooms overflowing with items to the point where it made ingress and egress difficult.

When Carla was questioned about Diane's presence in the home, especially given the safety protection plan, Carla stated Diane had come over the previous night and stayed over because Joey did not have school that day and explained Diane does whatever she wants. Joey confirmed that Diane was picking him up from school and that he went with her to her boyfriend's home. The permanency worker then informed Carla that on February 6, Diane tested positive for PCP.

The Division determined a "Dodd removal"⁶ was necessary to protect Joey and he was removed from the home due to the tumultuous home environment, Carla allowing Diane to have unsupervised

⁶ "A 'Dodd removal' refers to the emergency removal of children from the home without a court order, pursuant to the Dodd Act, which, as amended, is found at N.J.S.A. 9:6-8.21 to -8.82. The Act was authored by former Senate President Frank J. 'Pat' Dodd in 1974." N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 26 n.11 (2011) (quoting N.J. Div. of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 609 n.2 (App. Div. 2010)).

contact with Joey, Diane having two positive drug screens, and Carla violating the existing safety protection plan.

The Division filed a complaint for care, custody, and supervision of Joey on February 19, and the court awarded the Division custody and care of Joey. Joey remained in the Division's custody until September 2013.⁷

The court conducted a fact-finding hearing at which the Division relied on the testimony of its two caseworkers as well as documentary evidence, including photographs of Carla's home. Neither Carla nor Diane testified or called any witnesses on their behalf.

After considering the evidence, Judge Bernadette DeCastro entered the court's fact-finding order and issued a written decision setting forth her reasons for finding that both Diane and

⁷ In September 2013, the Division reunited Joey with Diane, while maintaining supervision over him. The court granted Diane legal and physical custody and dismissed Carla from the litigation. Joey, however, was later placed by Diane with Carla due to Diane's ongoing struggle with drugs and alcohol. In July 2014, the Division again conducted a Dodd removal from Carla's custody alleging she failed to protect him from Diane by not supervising him closely enough, giving Diane an opportunity to have unsupervised time with Joey in contravention of another safety plan. The court ultimately found the Division had not met its burden of proof and returned Joey to Diane's legal custody and Carla's physical custody. In July 2015, the court awarded Carla and Diane joint legal custody of Joey, with Carla having physical custody and Diane only allowed supervised contact with Joey, and it terminated this litigation.

Carla abused or neglected Joey. The judge first recounted the history of the Division's involvement with the family and its attempts to address the concerns raised by Diane's drug issues, her violent behavior, and the deplorable condition of Carla's home. Judge DeCastro recognized that Carla's and Diane's violation of the safety plan alone could not justify a finding of abuse or neglect, but "given the totality of the circumstances," and citing to N.J.S.A. 9:6-8.21(c)(4)(b), she found that Carla and Diane placed Joey at a substantial risk of harm. The judge noted that the plan "demonstrated that [Carla] was aware of her daughter's drug use which could pose a risk to" Joey. Relying on Joey's statements to the caseworker, she also found Diane placed Joey at risk when "she engaged in an act of domestic violence with her cousin in the presence of and while caring for [Joey]." As to Carla, the judge observed that despite the Division notifying Carla that Diane had tested positive for drugs on January 15, Carla still permitted Diane to have unsupervised contact with Joey less than three weeks later at the party where the metal bat incident occurred. Furthermore, Judge DeCastro cited to N.J.S.A. 9:6-8.21(c)(4)(a) and found Carla failed to provide adequate shelter to Joey, due to the large amount of clutter and hoarding-like behavior that permeated the home, which created a safety hazard, as depicted in the photographs that were in evidence.

The judge entered a fact finding order and eventually terminated the litigation in 2015. This appeal followed.

We begin our review by recognizing it is limited and narrow. We defer to the Family Part's factual findings "when supported by adequate, substantial and credible evidence." N.J. Div. of Youth & Family Servs. v. S.I., 437 N.J. Super. 142, 152 (App. Div. 2014) (quoting N.J. Div. of Youth & Family Servs. v. Z.P.R., 351 N.J. Super. 427, 433 (App. Div. 2002)). "Where 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,' we expand the scope of our review." N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007) (quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188-89 (App. Div. 1993)). The trial judge's interpretation of the law and the application of such legal conclusions to the facts are subject to plenary review. See Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). In our review, we consider the totality of the circumstances in abuse or neglect proceedings. P.W.R., supra, 205 N.J. at 39.

"New Jersey's child-welfare laws balance a parent's right to raise a child against 'the State's parens patriae responsibility to protect the welfare of children.'" N.J. Div. of Child Prot. & Permanency v. Y.N., 220 N.J. 165, 178 (2014) (quoting A.L., supra,

213 N.J. at 17-18). "The adjudication of abuse or neglect is governed by Title 9, which is designed to protect children who suffer serious injury inflicted by other than accidental means." S.I., supra, 437 N.J. Super. at 152 (citing G.S. v. N.J. Div. of Youth & Family Servs., 157 N.J. 161, 171 (1999)); see also N.J.S.A. 9:6-8.21 to -8.73. Title 9 is intended to safeguard children who have been abused or are at risk of imminent harm. A.L., supra, 213 N.J. at 18, 22. "To that end, Title [9] provides for the civil prosecution of a parent or guardian who abuses or neglects a child." Y.N., supra, 220 N.J. at 178 (citing N.J.S.A. 9:6-8.33).

N.J.S.A. 9:6-8.21(c)(4) provides that a child is "abused or neglected" when his or her

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

A parent "fails to exercise a minimum degree of care when he or she is aware of the dangers inherent in a situation and fails adequately to supervise the child or recklessly creates a risk of serious injury to that child." N.J. Div. of Child Prot. & Permanency v. E.D.-O., 223 N.J. 166, 179 (2015) (quoting G.S., supra, 157 N.J. at 181). Therefore,

the primary question under Title 9 is whether [the child] . . . "ha[d] been impaired" or w[ere] in "imminent danger of becoming impaired" as a result of [their parent's] failure to exercise a minimum degree of care by unreasonably inflicting harm or allowing a "substantial risk" of harm to be inflicted.

[A.L., supra, 213 N.J. at 22 (second alteration in original) (quoting N.J.S.A. 9:6-8.21(c)(4)(b)).]

"Accordingly, Title 9 initially looks for actual impairment to the child. . . . [W]hen there is no evidence of actual harm, the focus shifts to whether there is a threat of harm." E.D.-O., supra, 223 N.J. at 178. "[T]he standard is not whether some potential for harm exists." Id. at 183 (quoting N.J. Dep't of Youth & Family Servs. v. J.L., 410 N.J. Super. 159, 168-69 (App. Div. 2009)). "[A] finding of abuse and neglect can be based on proof of imminent danger and a substantial risk of harm." Id. at 178 (emphasis added) (quoting A.L., supra, 213 N.J. at 23).

Applying this statutory standard, "something more than ordinary negligence is required to hold the actor liable." G.S.,

supra, 157 N.J. at 178. Proscribed is "conduct that is grossly or wantonly negligent, but not necessarily intentional." Ibid. The standard "implies that a person has acted with reckless disregard for the safety of others." Id. at 179. However, whether a particular event is mere negligence, as opposed to gross or wanton negligence, can be difficult to determine. See N.J. Dep't of Children & Families v. T.B., 207 N.J. 294, 309 (2011) (describing the "continuum between actions that are grossly negligent and those that are merely negligent"). As we recently explained:

"[T]he elements of proof are synergistically related." [N.J. Div. of Youth & Family Servs. v. V.T., 423 N.J. Super. 320, 329 (App. Div. 2011)] (citation and internal quotation marks omitted). In this regard, "[o]ne act may be substantial or the sum of many acts may be substantial" to prove abuse or neglect. Id. at 330 (citation and internal quotation marks omitted). A court need not wait until a child is actually harmed or neglected before it can act to address parental conduct adverse to a minor's welfare.

[S.I., supra, 437 N.J. Super. at 154 (final alteration in original).]

"Strict adherence to the statutory standards . . . is important because the stakes are high for all parties concerned." Y.N., supra, 220 N.J. at 179. Consequently, whether a parent has engaged in acts of abuse or neglect is considered on a case-by-case basis and must be "analyzed in light of the dangers and risks

associated with the situation," N.J. Dep't of Children & Families v. R.R., 436 N.J. Super. 53, 58 (App. Div. 2014) (quoting G.S., supra, 157 N.J. at 181-82), and evaluated "at the time of the event that triggered the Division's intervention." E.D.-O., supra, 223 N.J. at 170.

At a fact-finding hearing, N.J.S.A. 9:6-8.44, the Division must prove abuse or neglect by a preponderance of the evidence, and "only competent, material and relevant evidence may be admitted." N.J.S.A. 9:6-8.46(b); see also P.W.R., supra, 205 N.J. at 32 (holding the State bears the burden to present proofs to establish abuse or neglect, as defined in the statute); N.J. Div. of Youth & Family Servs. v. S.S., 372 N.J. Super. 13, 24 (App. Div. 2004) (explaining the State must "demonstrate by a preponderance of the competent, material and relevant evidence the probability of present or future harm" to the minor child), certif. denied, 182 N.J. 426 (2005).

In cases involving allegations of parental drug abuse, while courts have recognized "the societal concern that no child come under the care of an intoxicated parent[,] . . . 'not all instances of drug ingestion by a parent will serve to substantiate a finding of abuse or neglect.'" N.J. Div. of Child Prot. & Permanency v. R.W., 438 N.J. Super. 462, 469-70 (App. Div. 2014) (quoting V.T., supra, 423 N.J. Super. at 332). Rather than "filling in missing

information, an understandable response by judges who regularly witness the evils inflicted on children by their parents' drug use, judges must engage in a fact-sensitive analysis turning on 'particularized evidence.'" Id. at 470 (quoting A.L., supra, 213 N.J. at 28). So too in cases involving allegations of domestic violence, "the act of allowing a child to witness domestic violence does not equate to abuse or neglect of the child in the absence of additional proofs." N.J. Div. of Youth & Family Servs. v. I.H.C., 415 N.J. Super. 551, 584 (App. Div. 2010); see also N.J. Div. of Youth & Family Servs. v. D.F., 377 N.J. Super. 59, 69 (App. Div. 2005) (reversing finding of abuse or neglect based on domestic violence due to lack of harm to the child).

Here, we conclude the totality of the evidence in the record supports Judge DeCastro's conclusion that Carla and Diane abused or neglected Joey. While exposing a child to an episode of domestic violence is not enough to substantiate a finding of abuse or neglect especially where the child exhibited no signs of distress, see S.S., supra, 372 N.J. Super. at 22-26, Diane's exposure of Joey to the effects of her drug abuse and her outbursts of violence subjected the child to a substantial risk of harm. Specifically, Joey explained to the caseworker, and the caseworker testified as such, that when his mother was involved in an altercation with her cousin, he was crying, worried about his

mother, and tried to help her. Indeed, Joey discussed this violence with his therapist, whose services were required for this very reason.

Diane also tested positive on several occasions over a one-month period when she was serving in the role of an unsupervised caretaker responsible for Joey – albeit in direct contravention to the safety protection plan. There were at least two occasions when Diane had unsupervised contact with Joey within several days of having a positive drug screen, and both occasions involved Diane taking Joey somewhere. And, even though Diane now claims on appeal there were other adults present when Joey was in her care to ensure his safety, there was no evidence at the fact-finding hearing that anyone but Diane was supervising Joey. Her undisputed conduct was sufficient to support the judge's finding of abuse or neglect.

The record also provides sufficient evidence to support the judge's finding of neglect against Carla. The Division introduced a series of photographs of the home that corroborated and enhanced the testimony of those witnesses who observed the apartment on January 14, 2013 and February 14, 2013. Those pictures verify that the Division workers confronted a situation that posed an imminent risk of physical harm to the occupants. Specifically, the rooms and hallways of the home were overflowing with blankets

and bags filled with clothing and other things. There were so many items hoarded in the home that the kitchen cabinets were partially blocked from being opened and the hallways were nearly inaccessible because they were crowded with bags and boxes of items. The kitchen table and Joey's bed also were piled high with bags, plastic containers, and other items. The home was also filled with electronics, construction equipment and paint cans, ladders, a bicycle, pots and kitchen items, and other refuse. Carla's permitting her home to become a fire hazard, which she recognized was a hazard to Joey, was not an "unforeseen peril[] or accident[, but constituted a] reckless disregard for the consequences." G.S., supra, 157 N.J. at 178.

Carla relies on our decision in Doe v. G.D., 146 N.J. Super. 419, 430-31 (App. Div. 1976), aff'd, sub. nom., Doe v. Downey, 74 N.J. 196 (1977), in arguing that abuse or neglect cannot be based upon a caretaker's "failure to keep the apartment clean" Her reliance is misguided as the finding of abuse or neglect was not based on her failure to keep a clean apartment, but rather was based on the imminent risk of harm the hoarded items created for Joey in the event of an emergency. In Doe, the mother of an infant was charged with abuse or neglect. Id. at 423. Following a fact-finding hearing, the trial judge found that the child had not suffered physical injury or abuse, but nevertheless determined

that the child's mental and emotion health were in imminent danger of being impaired because of the child's substandard and dirty housing conditions. Id. at 428. On appeal we reversed, determining that substandard, dirty and inadequate sleeping conditions "may be unfortunate incidents of poverty," but "do not establish child neglect or abuse." Id. at 431.

While the trial court here did not discuss Doe, the hoarding within Carla's home was not an indication of poverty. There is no evidence in the record that her home lacked food, running water, or electricity. Furthermore, Carla's economic status did not prevent her from removing the piles and bags of clothing from the home. In fact, she demonstrated an ability to clear the home of hoarded items as the caseworker noted when she returned to the home on January 25, 2013. The Division also provided Carla with services that would help her rid the home of the excessive amount of hoarded belongings, but she refused these services. In sum, Carla simply displayed an indifference to the imminent risk of harm that such deplorable conditions posed for Joey. Accordingly, the finding of abuse or neglect does not violate the holding in Doe.

Carla also ignored the safety protection plan implemented by the Division and the court orders designed to protect Joey from the risk of harm to which Diane exposed him. While her permitting

contact with Diane without more did not necessarily give rise to abuse or neglect, under the totality of the circumstances, including evidence of Carla's awareness and acknowledgement of the danger that Diane posed to Joey through her drug abuse and violent outbursts, and Carla's intentional disregard of that danger, supported a finding of abuse or neglect. See N.J. Div. of Child Prot. and Permanency v. J.L.G., ___ N.J. Super. ___, ___ (App. Div. 2015) (slip op. at 10), aff'd o.b., ___ N.J. ___ (2017) (finding the focus in an abuse or neglect determination should be on whether the guardian "should have . . . prevented" the harm by "perform[ing] some act to remedy the situation or remove the danger").

To the extent we have not specifically addressed any of Diane's or Carla's remaining arguments, we find them without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION