

RECORD IMPOUNDED

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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0159-15T2

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

S.L.,

Defendant-Appellant,

and

L.M.,

Defendant.

IN THE MATTER OF M.A.M.-L.,
a Minor.

Submitted February 13, 2017 – Decided March 13, 2017

Before Judges Haas and Currier.

On appeal from the Superior Court of New
Jersey, Chancery Division, Family Part, Camden
County, Docket No. FN-04-430-14.

Joseph E. Krakora, Public Defender, attorney
for appellant (Jared I. Mancinelli, Designated
Counsel, on the briefs).

Christopher S. Porrino, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; James D. Harris, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Rachel E. Seidman, Assistant Deputy Public Defender, on the brief).

PER CURIAM

Defendant S.L.¹ appeals from a July 21, 2015 order that awarded custody of her now eight-year-old son, M.A.M.-L. (Martin) to his father, L.M. (Leo). Defendant contends that she was denied due process because the judge and the parties at the dispositional hearing were uncertain as to the appropriate legal standard to be used to determine the issue of custody. After reviewing this argument in light of the record and applicable principles of law, we disagree and affirm.

We derive our factual summary from the fact-finding and dispositional hearings. Defendant and Leo lived together from Martin's birth in 2008 until Leo moved out in November 2013. Martin has several disabilities, including a diagnosis of autism.

In December 2013, plaintiff, the New Jersey Division of Child Protection and Permanency (Division), received a referral that

¹ We use initials and pseudonyms for the purposes of confidentiality.

defendant was barricaded inside her apartment with her five-year-old son. After the police broke a window and removed the front door to gain entry into the home, defendant was found lying on the floor, unconscious and half-dressed. The home was in a "deplorable" state with garbage and clothes strewn throughout. Martin was placed in the custody of his father where he remained throughout the litigation.

Defendant was hospitalized, but she had no memory of the events. She advised that she had been previously diagnosed with anxiety and depression, and was taking several medications. Upon her discharge from the prior treatment facility, defendant stated she was instructed to wean herself off the medication. On the day of this incident, defendant stated she blacked out. She conceded she had experienced several prior episodes of mental crisis and recalled at least one previous period of a black-out.

Plaintiff presented a complaint for the care and supervision of Martin. Following a hearing at which defendant and other witnesses testified, the court granted the relief requested by plaintiff and ordered that Martin continue living with his father. Defendant had supervised visitation and was ordered to undergo a psychological evaluation.

A fact-finding hearing was held in April 2014 to determine whether defendant had abused and neglected Martin under N.J.S.A.

9:6-8.21(4)(c). The judge found that plaintiff had not met its burden that defendant had acted in a reckless or grossly negligent manner. The court observed that defendant had recently weaned herself off medication, and had encountered several extraordinary stressors in her life. The judge noted defendant's testimony that she had barricaded herself in the apartment because of a fear of Leo; she had obtained a restraining order against him in May 2013.

The judge further found that the Division had not proven that the conditions in the apartment were sufficient "to rise to the level of neglect or a failure to exercise a minimum degree of care that would put the child in imminent danger." She determined, however, that the case should remain open in order to provide services to the family under Title 30. Custody of Martin remained with Leo; defendant was accorded unsupervised parenting time after school and on weekends.

The April 10, 2014 order memorialized the judge's finding that defendant did not abuse or neglect her child, and stated: "Rather, the involvement of the Division was necessary to ensure the health & safety of the child[] due to [defendant's] mental health under Title 30." In addition, the order required the Division to remove the substantiation of defendant and to provide proof of its action.

In a compliance review in October 2014, defendant advised that she had filed for custody under the domestic violence docket; Leo responded that he had an application for custody pending on the non-dissolution calendar. In its October 7 order, the judge dismissed the custody application filed by defendant as it was preempted by the pending abuse and neglect case; a trial date was set for the custody motion and a G.M.² hearing.

At a subsequent case management conference in December 2014, the judge advised all parties several times that the dispositional hearing for the abuse and neglect application would be heard simultaneously with defendant's custody application.³

The fact-finding hearing began in April 2015.⁴ Defendant's counsel advised that her expert would be opining on both the issue of the safety of returning the child to her, and the best interests of the child. Experts presented by both the Division and the Law Guardian testified as to their opinions on both issues.

² N.J. Div. of Youth & Family Services v. G.M., 198 N.J. 382 (2009) (holding that the court must hold a dispositional hearing in an abuse and neglect case to determine if a child may safely be released to the custody of the parent who was responsible for their care at the filing of the complaint or whether a different disposition is appropriate).

³ The judge vacated the prior order dismissing defendant's custody application.

⁴ Judge Donald J. Stein, a different judge, presided over the fact-finding hearing.

On July 21, 2015, Judge Stein issued a comprehensive oral decision. After reviewing the witnesses' testimony and making credibility assessments, he determined that there was a safety issue with Martin and his mother. The judge noted that defendant refused to accept Martin's autism diagnosis, which required a strict regimen. He determined there was a "significant danger" that the plan would not be followed by defendant. In addition, the judge noted his concern for defendant's medical condition and its likelihood of reoccurrence, remarking that he did not find defendant's testimony on this subject "convincing."

Judge Stein also considered the factors under N.J.S.A. 9:2-4 for a determination of the child's best interests. The assessment of the criteria led him to conclude that it was in the best interests of Martin to remain in the custody of Leo. The judge terminated the abuse and neglect litigation, and custody was awarded to Leo with continued unsupervised parenting time for defendant.

The sole issue defendant presents on appeal is her argument that all counsel and the court were "confused" over the proper legal standard to be applied in the dispositional hearing, and therefore, the custody ruling cannot stand. Defendant relies on the colloquy that took place between counsel and Judge Stein following the testimony of her expert. The judge was asked how

he intended to procedurally handle his ruling. The Law Guardian stated: "Procedurally, Your Honor, we were thinking that this would be the time in which the Court would decide Prong 1 safety. And then depending on the outcome of that answer to that question then move onto Prong 2." The judge responded:

I think the argument is that it's a two step tier. Number one, whether it's safe or not and then if it is, best interest. So what the argument is that at this point I should decide that, point one, to see if it's necessary to go to point two.

All counsel agreed with this procedure.

After a brief recess, however, counsel reconvened and the judge advised:

I was a little uneasy when you made that request and everybody agreed. But when I just re-read G.M., in a Title 9 case you have to make a finding as to being safe to return to home and best interest. But my reading of G.M. just says if it's Title 30 just do best interests.

. . . [I]f you want me to I'll make both findings[.] But I don't think we should bifurcate it But I want to make both findings.

There were no objections to his proposal; testimony was taken from additional witnesses and closing arguments presented, referring to both the safety issue and best interests standard.

Defendant asserts that the first procedural error leading to "confusion" was the initial judge's failure to formally dismiss

the Title 9 action after she declined to make an abuse and neglect finding. We reject that argument. The judge advised all counsel and parties that she had not found abuse and neglect against defendant. She continued, stating that she intended to keep the case open as a Title 30 matter since the family was in need of services. Her rulings were memorialized in a contemporaneous order. Over the next year, there were numerous case management and compliance hearings. Each time an order was entered it provided a date for the G.M. hearing. The parties had been advised several times that the judge intended to conduct the custody application and disposition hearing simultaneously.

The record does not support defendant's assertion of "confusion." To the contrary, defendant's counsel advised the court she was presenting an expert who would be opining on both the issue of safety and best interests of the child. All counsel agreed with the judge's proposal to rule on both issues at the close of the hearing. Defendant's reliance on G.M., supra, 198 N.J. at 388, is inapposite as, unlike in G.M., Judge Stein conducted a dispositional hearing and made a determination as to the child's safety.

We similarly find defendant's reliance on New Jersey Division of Youth and Family Services v. N.D., 417 N.J. Super. 96 (App. Div. 2010) to be unpersuasive. In N.D., we found it a violation

of the appellant's due process rights when she did not have adequate notice that the hearing would address whether it was safe to return the child to her custody. See Ibid. The scheduling order advised that the best interests of the child was the anticipated issue. There were no similar notice violations here; all were aware for months before the commencement of the hearing that both issues would be addressed by the court.

After concluding that the Division had failed to substantiate abuse and neglect, the family part judges here properly relied on Title 30, N.J.S.A. 30:4C-12, to permit the Division to provide needed services to the family. See N.J. Dep't. of Children and Families, Div. of Youth and Family Servs. v. I.S., 214 N.J. 8, 32 (2013) (finding that following a determination of no abuse and neglect, a trial court can turn to Title 30 to provide children with needed services). There is no dispute by any of the parties as to Judge Stein's ultimate custody determination. The contention that anyone was confused during the proceedings is without merit.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION