

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0409-15T1

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

S.N.,

Defendant-Appellant,

and

H.M.,

Defendant.

IN THE MATTER OF U.N.,

A Minor.

Submitted March 7, 2017 — Decided July 13, 2017

Before Judges Koblitiz and Sumners.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Hudson County,
Docket No. FN-09-356-13.

Joseph E. Krakora, attorney for appellant
(John A. Albright, Designated Counsel, on the
brief).

Christopher S. Porrino, Attorney General, attorney for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Alaina M. Antonucci, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Charles Ouslander, Designated Counsel, on the brief).

PER CURIAM

Defendant S.N. (Susan)¹ appeals from the fact-finding determination that she abused or neglected her eight-year-old adopted son U.N. (Upton) through inadequate supervision, establishing inconsistent discipline and poor boundaries, and failing to follow advice to seek psychological/psychiatric treatment for him. The Law Guardian on behalf of the child urges us to affirm and, after a thorough review of the record and the trial judge's findings, we affirm substantially for the reasons reflected in the October 4, 2013 written decision of Judge Bernadette N. DeCastro.

In 2011, Upton had immigrated to the United States from Pakistan, and was adopted by Susan and her husband, H.M. (Harry).²

¹ We use first name pseudonyms to protect the privacy of parties and the minor child and for convenience. We mean no disrespect.

² Despite being named as a defendant, Harry was not an alleged perpetrator of the abuse or neglect against Upton as Susan was his primary caretaker at the time of the Division's initial involvement

The Division of Child Protection and Permanency (Division) first became involved with the couple in March 2012, when it received a referral that Upton arrived at school with facial injuries. The Division's investigation determined that the allegations of abuse or neglect were unfounded because Upton fell off his bike.

In October 2012, the Division received another referral that Upton arrived at school with two scratches on his cheek. The Division's investigation disclosed that the scratches were the result of Upton running away from Susan. A short time later, the police were able to locate Upton and he was returned to Susan's care. The Division determined that the allegation of physical abuse was unfounded.

A third referral was made in November 2012, when the school nurse reported concerns about the type of supervision that Upton received at home because he arrived at school with facial scratches. The Division's investigation disclosed that the injuries occurred when Upton, while accompanied by Susan, hit the side of his face when jumping on stairs. Of more concern to the Division was finding that Upton had a habit of leaving home without

with the family and the incidents thereafter, which gave rise to this appeal. A few months prior to the Division's initial involvement, Harry was partially paralyzed and substantially disabled due to a stroke and heart attack, respectively. He passed away in March 2014.

permission to play in the neighborhood and engage with strangers. The Division found that allegations of physical abuse were unfounded, but recommended Upton receive a psychological evaluation due to concerns over his behavior.

Dr. Jermour A. Maddux, Psy. D., subsequently evaluated Upton. He opined that Upton's reported lying, stealing, and running away from home were "the result of inadequate supervision, poor boundaries, inconsistent discipline and an unstable attachment." Dr. Maddux "strongly recommended that [Upton] be referred immediately to individual psychological therapy with an expert in treating children with conduct disorders residing in permissive home environments." He also recommended that Upton's parents be active participants with Upton's therapy, and receive parenting skills training concerning behaviorally disturbed children.

Following Dr. Maddux's evaluation, the Division received the fourth and fifth referrals concerning Upton. An anonymous person informed the Division that Upton was roaming the neighborhood streets alone at night, most often past midnight, and stealing mail from mailboxes and spraying an unknown solvent on cars. Jersey City police made another referral that Upton ran away from home and returned, and that he has a history of running away. During the Division's subsequent investigation, Susan acknowledged that she could not sleep or go to the bathroom without Upton

leaving the house, and she was so overwhelmed that she was contemplating sending Upton back to the Pakistani orphanage from where he was adopted. Susan also mentioned that a stranger allegedly sexually assaulted Upton on an occasion when he left the home without permission.

Susan agreed to be evaluated by Dr. Maddux, who opined that "her psychological functioning put [Upton's] psychological health in sure danger of becoming impaired[]" because her parental judgement is controlled by fear of guilt and Upton's threats. Dr. Maddux recommended that "[Susan and Upton] be referred to a program or service that works with the parent and the child[.]" Additionally, he recommended that Susan "[c]onsider out of home individual parenting training specifically for caregivers of behaviorally-disturbed children[,]" which would help Susan develop a methodology for parenting that would improve Upton's behavioral issues. Dr. Maddux further opined that due to Upton's history of physically assaulting Susan and Upton's threats to harm himself and her, "another adult figure reside with the family to provide caregiving assistance[,]" and that Susan be given information regarding "Mobile Crisis Response[.]"

A sixth referral was received after Susan's arm was placed in a sling because Upton had pushed her. When she went to a local hospital for emergency care, she left Upton at home with Harry.

In the ensuing investigation, the Division also learned that Upton sustained a broken leg from being hit by a car. Susan also advised that Upton threatened to kill himself with a knife, and repeatedly hits her injured arm. Upton was removed from the home by a Dodd removal³ after Susan refused the Division's request to take or subsequently go with Upton to the hospital due to his suicidal ideations because she did not want to leave her disabled husband alone at home.

After Upton's removal, the Division amended a previously filed verified complaint and filed an order to show cause seeking custody of Upton because Susan placed him at risk of harm, pursuant to N.J.S.A. 9:6-8.21(c)(4)(a) or (b), by failing to seek psychological counseling for his emotional and behavioral issues as recommended by Dr. Maddux, and not seeking psychological/psychiatric assistance when he expressed suicidal ideations. In addition, the Division sought a finding of abuse or neglect against Susan for leaving Upton with an inappropriate caretaker, her disabled husband, when she went to the hospital due to her injured arm.

³ A Dodd removal refers to the emergency removal of a child 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. Former Senate President Frank J. "Pat" Dodd authored the Act in 1974. N.J. Div. of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 609 n.2 (App. Div. 2010).

Following an October 2, 2013 fact-finding hearing, Judge DeCastro found that Susan abused or neglected Upton "by subjecting him to a substantial risk of harm by failing to seek psychological treatment for her child's behavioral issues." The judge reasoned that Susan's failure to follow Dr. Maddux's recommendation in February 2013, that she seek individual psychological therapy for Upton due to a high potential of harm, resulted in an escalation of his highly harmful behavior. Upton continued to run away from home and interact with strangers, he was aggressive towards others, broke his leg from a car accident, was allegedly sexually abused, and threatened suicide. Judge DeCastro furthered noted that Susan ignored the substantial risk of leaving Upton with her husband, who could not supervise the child because he was primarily bedridden, amounted to "wanton and reckless" conduct because Susan was aware of Upton's dangerous conduct, thereby breaching her "minimum duty of care." Almost two years later, another judge issued an order terminating the Title Nine litigation because the Division filed a complaint seeking termination of parental rights, which was denied. That proceeding is not the subject of this appeal.

To prevail in a Title Nine proceeding, the Division must show by a preponderance of the competent, material, and relevant evidence that the parent or guardian abused or neglected the

affected child. N.J.S.A. 9:6-8.46(b). "This includes proof of actual harm or, in the absence of actual harm, the Division [is] obligated to present competent evidence adequate to establish the child was presently in imminent danger of being impaired physically, mentally or emotionally." N.J. Div. of Youth & Family Servs. v. S.I., 437 N.J. Super. 142, 158 (App. Div. 2014) (citation omitted).

Title Nine provides a child is "[a]bused or neglected" if he or she is one:

whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian . . . 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[.]

[N.J.S.A. 9:6-8.21(c)(4).]

The term "'minimum degree of care' refers to conduct that is grossly or wantonly negligent, but not necessarily intentional." G.S. v. Dep't of Human Servs., 157 N.J. 161, 178 (1999) (citing Miller v. Newsweek, 660 F. Supp. 852, 858-59 (D. Del. 1987)). 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." Id. at 181. When determining whether a child is abused or neglected, the focus is on the harm to the child, and whether that harm should have been prevented had the guardian performed some act to remedy the situation or remove the danger. Id. at 182.

"Abuse and neglect cases 'are fact-sensitive.'" Dep't of Children & Families, Div. of Child Prot. & Permanency v. E.D.-O., 223 N.J. 166, 180 (2015)(quoting Dep't of Children & Families, Div. of Youth & Family Servs. v. T.B., 207 N.J. 294, 309 (2011)). We give considerable deference to the family court's factual determinations because it has "the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand . . . [and] a 'feel of the case' that can never be realized by a review of the cold record." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 293 (2007)). "Only when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' should an appellate court intervene and make its own findings to ensure that there is not a denial of justice." Ibid. (quoting N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007)).


Susan contends that Judge DeCastro's finding of abuse and neglect was not supported by substantial evidence, noting a lack

of objective evidence that she was willful or wanton with respect to Upton's imminent safety. Susan maintains that Dr. Maddux did not conclude she was the cause of Upton's behavioral issues, and her rejection of Dr. Maddux's parenting strategy for her own methods, is a clear indication that she was not grossly negligent. She contends that leaving Upton in Harry's care for two hours while she sought urgent medical care for her arm does not establish that she was grossly negligent or reckless, or placed him in imminent and substantial danger. She further argues that her decision not to seek emergency attention concerning Upton's threat to kill himself, did not create a substantial risk of harm because she reasonably perceived that the threat was not legitimate.

Here, the record amply supports Judge DeCastro's findings. She found that despite Susan's admission of being overwhelmed in trying to care for Upton, Susan failed to pursue any of the recommendations by Dr. Maddux to address Upton's significant behavioral issues. While Susan did not cause Upton's behavioral issues, we agree with Judge Decastro that Susan's disregard of the Division's assistance constitutes abuse or neglect under the law.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION