

RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0556-14T2

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

M.P.,

Defendant-Appellant,

IN THE MATTER OF A.P., a Minor.

Argued May 10, 2016 – Decided February 15, 2017

Before Judges Espinosa, Rothstadt and
Currier.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Union
County, Docket No. FN-20-135-13.

Clara S. Licata, Designated Counsel, argued
the cause for appellant (Joseph E. Krakora,
Public Defender, attorney; Ms. Licata, on
the briefs).

Christian A. Arnold, Assistant Attorney
General, argued the cause for respondent
(Robert Lougy, Acting Attorney General,
attorney; Andrea M. Silkowitz, Assistant
Attorney General, of counsel; Mr. Arnold, on
the brief).

Melissa R. Vance, Assistant Deputy Public Defender, argued the cause for minor (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Ms. Vance, on the brief).

The opinion of the court was delivered by
ESPINOSA, J.A.D.

The Title 9 proceeding in this case began in April 2013. After receiving a referral that defendant, M.P., had neglected the education of her son, A.P., the Division of Child Protection and Permanency (the Division) filed a verified complaint for care and supervision under N.J.S.A. 9:6-8.21 and N.J.S.A. 30:4C-11 and an order to show cause.

Less than two weeks later, the Division advised M.P. of the investigation's result. Its letter stated the "investigation determined that [child abuse, neglect, or child abuse and neglect] was Established for educational neglect with regard to" A.P. and that M.P. had been identified as responsible for the educational neglect. (Brackets in original). The letter stated further:

New Jersey Administrative Code, at N.J.A.C. 10:129-7.3c(2), defines "Established" as follows: An allegation of child abuse or neglect shall be Established if the preponderance of the evidence indicates that a child is an "abused or neglected child" as defined in N.J.S.A. 9:6-8.21, but where the act or acts committed or omitted do not warrant a finding of Substantiated as defined in N.J.A.C. 10:129-7.3c(1).

[The Division] has determined that the child is an abused or a neglected child, but, in taking into account the aggravating and mitigating factors associated with the incident, the abuse/neglect does not warrant a finding of Substantiated. The determination of whether a finding of child abuse/neglect is Substantiated or Established is an administrative decision made solely by [the Division].

A finding of Established is not disclosed to entities outside the [the Division] upon a Child Abuse Record Information inquiry, but a record of the incident is maintained in [the Division's] files. Current law provides that this information may not be disclosed except as permitted by N.J.S.A. 9:6-8.10a. A finding of Established is not subject to appeal.

On the return date of the order to show cause, the trial court appointed a law guardian for A.P. but continued legal and physical custody with M.P. The court ordered M.P. to participate in a substance abuse evaluation and sign appropriate releases. The court also ordered that A.P. was to attend school every day during the regular school year and at an elementary school summer program.

A fact-finding hearing was scheduled for October 29, 2013. By letter dated October 18, 2013, the Division advised the court:

[T]he Division will not be moving forward to trial in this case, and is seeking an immediate dismissal of litigation as there is no longer a need to continue litigation in this case. The child is attending school

on a regular basis . . . and the school reports no concerns.

On the scheduled date of the fact-finding hearing, the Division sought dismissal of the litigation, a request supported by the law guardian. However, M.P. argued that a fact-finding hearing should be held because she had "been portrayed as an abuser" and that was "not fair." M.P. asserted that, because the established finding remained in the Division's internal Statewide Protective Investigation Reporting and Information Tool (SPIRIT) Registry and she was not entitled to an administrative hearing, she should be afforded "a forum to challenge that decision." In the alternative, M.P. argued the court should order the Division to expunge the established finding from its records.

Following argument by counsel, the court granted the Division's motion and entered an order terminating the litigation. The court reserved the question whether it had the authority to order the Division to expunge the established finding made against M.P. from its computer database when no fact-finding trial had been held. Thereafter, the court found that where no fact-finding trial had been held, it lacked the authority to compel the Division to change its finding against M.P. in its internal records. M.P.'s motion for reconsideration was denied.

In this appeal, M.P. argues she was denied due process because she was entitled to contest the Division's determination that educational neglect had been "established." She argues the improper dismissal of the Title 9 litigation deprived her of the opportunity to appeal the Division's administrative decision to the Appellate Division and that the trial judge erred in denying her motion for reconsideration. She asks for the reversal of the orders terminating litigation and denying her motion for reconsideration, a remand to the trial court to issue an order requiring the Division to remove the "established" finding from its SPIRIT Registry or, in the alternative, a remand for a fact-finding hearing. The State counters that the trial judge properly exercised his discretion to dismiss the Title 9 litigation prior to a fact-finding hearing and correctly denied M.P.'s application that he order the Division to expunge the "established" finding against her. The State argues further that M.P. does not have a due process right to challenge the "established" finding of educational neglect made by the Division.

Our recent decision in New Jersey Division of Child Protection and Permanency v. V.E., ___ N.J. Super. ___ (App. Div. 2017) guides the resolution of this appeal. As in V.E., we conclude the trial judge did not abuse his discretion in

dismissing the Title 9 action. See id. at ____ (slip op at 38) (quoting N.J. Div. of Youth & Family Servs. v. N.D., 417 N.J. Super. 96, 109 (App. Div. 2010)). No further discussion of that issue is required. R. 2:11-3(e)(1)(E).

In V.E., supra, ____ N.J. Super. at ____ (slip op. at 7), the Division issued an "established" finding of abuse or neglect against V.E., the defendant mother, and then moved to dismiss the Title 9 action before a fact-finding hearing was conducted by the court. V.E. objected to the dismissal because she wanted to contest the "established" finding at an evidentiary hearing. Id. at ____ (slip op. at 7-8). We noted an "established" finding "constitute[s] a determination by the [Division] that a child is an abused or neglected child pursuant to N.J.S.A. 9:6-8.21," id. at ____ (slip op. at 16-17) (quoting N.J.A.C. 3A:10-7.3(d)), and that "all records for which abuse and neglect has been . . . 'established' . . . are retained by the Department," id. at ____ (slip op. at 20) (citing N.J.A.C. 3A:10-8.1(b)). We noted further that this retained information is subject to disclosure under N.J.S.A. 9:6-8.10a(b), id. at ____ (slip op. at 21), and may be used by the Division to determine "whether future allegations are 'substantiated' based on a pattern of abuse," as well as whether an individual is suitable as a prospective child care placement, id. at ____ (slip op. at 23) (quoting Fall &

Romanowski, N.J. Family Law, Relationships Involving Children § 30:7-1 (2015)). We concluded, "an administrative hearing is required to contest the Division's conclusion abuse or neglect is established," id. at ____ (slip op. at 33), and held:

[W]hen the Division finds parental conduct establishes abuse or neglect of a child, subjecting the individual to the ramifications of disclosure set forth in various identified statutes, a party who seeks to challenge that finding shall be entitled to an administrative hearing.

[Id. at ____ (slip op. at 37).]

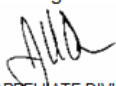
Like V.E., M.P. sought and was denied an opportunity to challenge the Division's findings. The letter informing her of the finding explicitly told her the determination that a finding of child abuse or neglect is established "is an administrative decision made solely by" the Division and "is not subject to appeal." Even though M.P. had a right to "appeal from what amounts to the agency's final decision," id. at ____ (slip op. at 36) (citing N.J.A.C. 3A:5-2.8), appellate review is inappropriate where the determination of disputed facts is necessary, id. at ____ (slip op. at 36).

M.P. asked the trial court to conduct a fact-finding hearing or, in the alternative, to direct the Division to expunge its records. Although we agree M.P. must be afforded a hearing to contest the "established" finding, we do not agree

the remedy here is either a fact-finding hearing in Superior Court or, in the absence of such a hearing, an expungement of the Division's records. The trial judge correctly denied such relief. The action of the Division in (1) advising M.P. that she had no right to appeal from its "established" finding and (2) moving for the dismissal of the Title 9 action prior to a fact-finding hearing was tantamount to a denial of her right to an administrative hearing at which she could contest the Division's finding. Therefore, we reverse the denial of her request for a hearing and remand the matter to the Office of Administrative Law for a hearing at which M.P. may contest the "established" finding of educational neglect against her. We affirm the dismissal of the Title 9 litigation.

Affirmed in part and reversed in part. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION