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Although it is posted on the internet, this opinion is binding only on the
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-4357-15T1

Y.G.P.¹

Plaintiff-Appellant,

v.

A.H.R.,

Defendant-Respondent.

Submitted April 26, 2017 – Decided July 21, 2017

Before Judges Fuentes, Carroll and Farrington.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex
County, Docket No. FD-12-1542-16.

Cella & Associates, LLC, attorneys for
appellant (Robert K. Valane, on the brief).

Respondent has not filed a brief.

PER CURIAM

Plaintiff Y.G.P. is the biological mother of R.H.G., an
eleven-year-old girl who was born in Mexico. Defendant A.H.R. is

¹ We use initials to protect the confidentiality of the parties.
See R. 1:38-3(d)(10).

the child's biological father. Plaintiff filed this action in the Family Part to permit the court to make "the predicate findings necessary for a non-citizen child to apply for 'special immigrant juvenile' (SIJ) status under the Immigration Act of 1990, as amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044." H.S.P. v. J.K., 223 N.J. 196, 199-200 (2015). As the Supreme Court explained in H.S.P., "SIJ status is a form of immigration relief permitting alien children to obtain lawful permanent residency and, eventually, citizenship." Id. at 200.

To achieve this end, the juvenile-applicant must complete a two-step process:

[F]irst, the juvenile must apply to a state court for a predicate order finding that he or she meets the statutory requirements; second, he or she must submit a petition to United States Citizenship and Immigration Services (USCIS) demonstrating his or her statutory eligibility. 8 C.F.R. § 204.11 details the findings that must be made by a juvenile court before an alien's application for SIJ status will be considered by USCIS[.] [I]n addition to a series of factual requirements, the juvenile must demonstrate that reunification with "1 or both" of his or her parents is not viable due to abuse, neglect, or abandonment. The court is then required to determine whether it is in the juvenile's best interests to return to his or her home country.

[Ibid.]

The Supreme Court emphasized in H.S.P. that "[t]he Family Part's sole task is to apply New Jersey law in order to make the child welfare findings required by 8 C.F.R. § 204.11." Ibid. In performing this function, the Family Part must apply "its expertise in family and child welfare matters to the issues raised in 8 C.F.R. § 204.11, regardless of its view as to the position likely to be taken by the federal agency or whether the minor has met the requirements for SIJ status." Id. at 200-01.

Here, in addition to her sworn statements in the verified complaint, plaintiff certified that R.H.G. was eleven years old when she clandestinely entered the United States from Mexico in January 2015. Thus, R.H.G. does not have an officially sanctioned immigration status, and she is subject to deportation. R.H.G. currently resides with plaintiff in Middlesex County, where she attends a local public school. Plaintiff claims the child is doing well socially and academically. R.H.G. wants to continue her education and attend college in this country if legally permissible.

In a certification submitted to the Family Part, plaintiff averred she is

personally acquainted with the current economic problems plaguing [R.H.G.'s] biological father, and he has expressed his inability and unwillingness to properly care for her in Mexico.

When [R.H.G.] resided in Mexico with her father, she did not have adequate food, clothing, shelter or medical care. Her father simply could not afford to provide these necessities for her. He was also extremely abusive towards her. There is no question this neglect and abuse would continue if she were to return to Mexico to live with her father.

By contrast, since R.H.G. began living with plaintiff, she has received proper food, clothes, and shelter and has excelled socially and academically. Plaintiff fears the progress R.H.G. has made can be quickly undone if she returns to her father's custody. Plaintiff petitioned the Family Part to award her custody of her daughter and to find it is not in R.H.G.'s best interest to return to Mexico. Plaintiff also urged the Family Part to find that if the child is returned to her father's custody in Mexico, it is highly probable she will be abused, neglected, and abandoned, and will have "limited academic and professional possibilities."

The Family Part decided plaintiff's petition without conducting an evidentiary hearing. Relying exclusively on the facts described in plaintiff's verified complaint and supplemental certification, the court entered an order "DEN[YING] WITHOUT PREJUDICE" what it characterized as "plaintiff's motion for [R.H.G.] . . . to be declared a dependent upon the Juvenile Court of the State and eligible for long term foster care[.]" The court

found R.H.G. was not "abandoned by her biological parents pursuant to N.J.S.A. 9:6-1." In reaching this conclusion, the Family Part cited this court's opinion in H.S.P. v. J.K., 435 N.J. Super. 147, 164-65 (App. Div. 2014), which focused on whether a juvenile was eligible for SIJ status based on 8 U.S.C.A. § 1101(a)(27)(J). Our opinion was reversed by the Supreme Court in H.S.P., supra, 223 N.J. at 201.

Plaintiff filed this appeal on June 13, 2016. As authorized by Rule 2:5-1(b),² the trial judge submitted a letter-opinion to this court "to supplement the record regarding the issues now being appealed." After briefly summarizing the allegations in plaintiff's verified complaint, the judge stated: "Applying the standard set forth in 8 U.S.C.A. § 1101(a)(27)(J) and its implementing regulation[,], 8 C.F.R. § 204.11, this [c]ourt found that the child did not meet the statutory requirements to be a special immigrant juvenile." The judge acknowledged that our Supreme Court held the Family Part does not have jurisdiction "to grant or deny applications for immigration relief." See H.S.P., supra, 223 N.J. at 200. The judge nevertheless stated that based

² Within fifteen days of the filing of an appeal, Rule 2:5-1(b) permits a trial judge "to file and mail to the parties an amplification of a prior statement, opinion or memorandum made either in writing or orally and recorded pursuant to [Rule] 1:2-2."

on plaintiff's "submissions, it found that [R.H.G.] had not been abandoned, abused or neglected by her mother, the plaintiff." In the judge's view, the underlying premise of plaintiff's claim was that "economic and academic opportunities are better here" than in Mexico. The judge held this was not "a sufficient basis to find the child dependent on this [c]ourt and eligible for long-term foster care."

In this light, the judge found an evidentiary hearing was not necessary to determine "whether it would be in the child's best interest to return to her country of origin." According to the judge, judicial economy favored deciding this case "based on the evidence set forth in [p]laintiff's [c]ertification." Plaintiff argues on appeal that the Family Part's final ruling, as reflected in its April 29, 2016 order, was inconsistent with the Supreme Court's holding in H.S.P., supra, 223 N.J. 196. Independent of this error, plaintiff argues the court erred in making factual findings without conducting an evidentiary hearing. We agree and reverse.

We start our analysis by reaffirming a fundamental tenet of appellate jurisprudence. "'[A]n appeal is taken from a trial court's ruling rather than [its] reasons for the ruling.'" N.J. Div. of Child Prot. & Permanency v. K.M., 444 N.J. Super. 325, 333–34 (App. Div.) (quoting State v. Adubato, 420 N.J. Super. 167,

176 (App. Div. 2011), certif. denied, 209 N.J. 430 (2012)), certif. denied, 227 N.J. 211 (2016). Thus, in this appeal, we review the legal viability of the Family Part's ruling as reflected in its April 29, 2016 order. The Family Part's letter-opinion submitted pursuant to Rule 2:5-1(b) is viewed only as "an amplification" of the court's reasoning in support of its prior order.

With these principles in mind, we return to the Supreme Court's decision in H.S.P. for guidance. Writing for the Court in H.S.P., our colleague Judge Cuff explained the Family Part is tasked with making the following findings:

- (1) The juvenile is under the age of 21 and is unmarried;
- (2) The juvenile is dependent on the court or has been placed under the custody of an agency or an individual appointed by the court;
- (3) The "juvenile court" has jurisdiction under state law to make judicial determinations about the custody and care of juveniles;
- (4) [] [R]eunification with one or both of the juvenile's parents is not viable due to abuse, neglect, or abandonment or a similar basis under State law; and
- (5) It is not in the "best interest" of the juvenile to be returned to his parents' previous country of nationality or country of last habitual residence within the meaning of 8 U.S.C.A. § 1101(a)(27)(J)(ii); 8 C.F.R. § 204.11(a), (d)(2)(iii) [amended by TVPRA 2008].

[H.S.P., supra, 223 N.J. at 210 (citation omitted).]

Here, factors (1), (2), and (3) are undisputed. R.H.G. is under the age of twenty-one; she is not dependent on the court and has not been placed under the custody of an agency or an individual appointed by the court; and the Family Part has jurisdiction under Title 9 and Title 30 to make determinations about her custody and care. See N.E. v. State Dep't of Children & Families, 449 N.J. Super. 379, 398–401 (App. Div. 2017). Thus, the Family Part was required to make specific findings only as to factors (4) (whether R.H.G.'s reunification with one or both of her parents is not viable due to abuse, neglect, abandonment, or a similar basis) and (5) (whether it is in R.H.G.'s "best interest" to be returned to her parents' previous country of nationality). See H.S.P., supra, 223 N.J. at 210 (citation omitted).

In determining whether the trial court performed this task, we acknowledge the Family Part's "special jurisdiction and expertise in family matters." Cesare v. Cesare, 154 N.J. 394, 413 (1998). We are bound to accept the Family Part's factual findings on appeal, provided they are supported by adequate, substantial, credible evidence in the record. Thieme v. Aucoin-Thieme, 227 N.J. 269, 282–83 (2016) (quoting Cesare, supra, 154 N.J. at 411–12).

Here, the Family Part judge found R.H.G. "had not been abandoned by her biological parents pursuant to N.J.S.A. 9:6-1." The unchallenged evidence plaintiff presented to the court does not support the judge's finding. In her certification, plaintiff affirmed under penalty of perjury that R.H.G.'s father had abandoned and abused her. If the judge had reservations about plaintiff's credibility, she should have conducted an evidentiary hearing to question plaintiff directly and seek further evidence of abandonment or abuse. Under these circumstances, a facial rejection of plaintiff's certification is unacceptable.

In the April 29, 2016 order, the judge also cited a section of this court's opinion in H.S.P., supra, 435 N.J. Super. at 164–65, in which we adopted the Nebraska Supreme Court's reasoning to hold that a juvenile is not eligible for SIJ status if reunification with either parent is feasible. We conclude that in reversing our opinion in H.S.P., our Supreme Court unequivocally rejected the analytical approach reflected in the Family Part's April 29, 2016 order. Writing for the Court, Judge Cuff made clear that as a matter of law, the Family Part is not competent to decide whether a juvenile is eligible for SIJ status:

We take this opportunity to comment on and clarify the limited role played by New Jersey State courts in the SIJ application process. Our review of the legislative scheme relating to SIJ status demonstrates that the

determination of whether a child should be classified as a special immigrant juvenile rests squarely with the federal government. "Congress chose to rely on state courts to make [initial factual findings] because of their special expertise in making determinations as to abuse and neglect issues, evaluating the best interest factors, and ensuring safe and appropriate custodial arrangements."

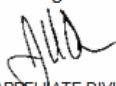
[H.S.P., supra, 223 N.J. at 211 (citation omitted).]

Furthermore, the trial judge noted that R.H.G. "is already thriving in the custody of her mother and there is no reason for the [c]ourt to exercise jurisdiction other than for immigration benefits." This statement has no relationship to any of the five factors the Family Part is required to consider and constitutes a misstatement of the relevant law. Under factor (4), the court must determine whether reunification with one or both of the juvenile's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. The fact that R.H.G. may be doing well in plaintiff's custody does not address whether she would also fare well under her father's custody.

Based on this record, we reverse the Family Part's order and remand for a de novo review of plaintiff's application before a different judge to be selected by the Presiding Judge of the Family Part. We take this measure in the interest of justice and the preservation of impartiality.

Reversed and remanded. 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