

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-0700-16T2

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

K.C.,

Defendant-Appellant,

and

M.B.,

Defendant.

IN THE MATTER OF D.C.,

Minor.

Submitted January 9, 2018 – Decided April 24, 2018

Before Judges Fasciale, Sumners and Moynihan.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FN-02-0063-16.

Joseph E. Krakora, Public Defender, attorney
for appellant (Marina Ginzburg, Designated
Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Victoria Kryzsiak, 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 K.C. appeals the trial court's decision that he abused or neglected his eleven-year-old daughter D.C. (Denise)¹ when she was left unattended in a retail store after she had been left unattended in a trailer park the day before. He contends the Division of Child Protection and Permanency (Division) failed to prove he abused or neglected her under N.J.S.A. 9:6-8.21(c)(4) by not providing her a minimum degree of care and thereby placing her in imminent risk of future harm. Defendant blames the unreliable care of a babysitter for leaving Denise unattended at the trailer park. In regards to the store incident, he acknowledges that, even though he was at work, he should have done something when Denise did not answer the cell phone he gave her. Yet, he believes he was not reckless because he provided her with the phone and money to buy food. After a thorough review of the record and

¹ We use pseudonyms to protect the identity of the minor victim.

Judge Jane Gallina-Mecca's findings, we affirm substantially for the reasons reflected in her well-reasoned oral decision.

We begin by noting that prior to the incidents in dispute, the Division had extensive contact with defendant and Denise's mother, who is not a party to this litigation, resulting in multiple removals. In 2011, on the eve of a guardianship trial, the Division agreed to return Denise to defendant's care because he had just married and was willing to participate in services. Nonetheless, referrals continued regarding the care and supervision provided to Denise, before and after defendant separated from his wife. However, no abuse or neglect was substantiated or established until August 2015.

On August 6, the Moonachie Police Department responded after defendant's purported friend Lucy called, reporting:

[Denise] was . . . unattended [in a trailer park and that] [s]he had been watching her for a while, but that she was not supposed to be in her care. She was familiar with the child and [defendant], and that someone dropped her off there earlier in the morning and after a while she became concerned, [and] called [the police] . . . because her father did not return.

According to the investigating Division worker, Denise indicated that when her summer camp ended in July, she was dropped off at the trailer park for Lucy to watch her while defendant went to

work. When Denise arrived at Lucy's home that morning, Lucy told her to go to Denise's friend's home, which she did. A few hours later, she returned to Lucy's home but was refused entrance and was told to go back to her friend's home. Instead, Denise wandered through the trailer park until she was picked up by the police. According to the responding police officer, it was inconclusive "whether or not there was [a child-care] arrangement . . . with the caller, [Lucy] and [defendant]" which is why the matter was deferred to the Division.

While at the police station, the Division worker noted Denise had a body odor and very matted hair. Denise stated that she could not recall the last time she showered; probably a week and a half ago. Defendant assured the worker that he would find an appropriate caregiver moving forward. He also informed the worker that he left Denise in Lucy's care, and thought she was at Lucy's home the entire time. Defendant claimed he did not check on Denise all day because he was too busy at work. He also told the worker that Denise was old enough to know that she needed to bathe and that he was too busy to remind her each day.

The next day, defendant left Denise with a male friend while he went to work. The friend took Denise to a local "big box" retail store but lost track of her; she wandered through the store from about 8:30 a.m. until around 3:00 p.m. When she got hungry,

she purchased a sandwich inside the store with the ten dollars given to her. Someone notified the police, who saw that Denise was unattended and took her to the police station to figure out who was caring for her. Denise stated she was unsure who was supposed to watch over her that day. She claimed that her dad's friend told her someone would pick her up from the store later but did not know when or where. She had her dad's cell phone but did not know how to contact him, his friend or anyone else. She disclosed that her dad worked in Little Ferry but did not know where.

Sometime after police had picked up Denise, defendant went looking for her at the store. He indicated his friend was supposed to take Denise to buy a few items from the store and then take her to his job. When they did not show-up, his calls to the friend and Denise went unanswered. Despite having no idea what was going on with Denise, defendant remained at work explaining that he needed to make money. Thereafter, the Division removed Denise from defendant's care, and placed her in a resource home. Seven months later, defendant pled guilty in criminal court to fourth-degree cruelty and neglect of children, N.J.S.A. 9:6-3.

Following a two-day fact-finding hearing, Judge Gallina-Mecca found that "based upon a totality of the circumstances, . . . [defendant's actions] fully satisfies the statutory standard of

gross[] negligen[ce] or reckless . . . conduct that created an imminent risk of harm to [Denise]." In support of her decision, the judge reasoned:

While an ordinary, reasonable parent would have been frantic with worry, the defendant father had no remorse or concern whatsoever for the safety and well-being of his daughter. His utter lack of insight can be gleaned from his remark that he had to work and what was he supposed to do. Most concerning is the fact that the defendant father's complete lack of judgment comes just one day after a similar incident where he failed to make an adequate plan for [Denise] and she was picked up by the police because she was wandering unattended in a trailer park. The defendant father assured the Division that he would have an appropriate plan to care for his daughter the following day, which clearly he did not.

She further added "certainly leaving the child to fend for herself without knowing her whereabouts for an entire workday fell so wide of the mark of what an ordinary, reasonable person would understand in terms of the potentially dangerous consequences, [which] is nothing short of reckless disregard."

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) (second alteration in original) (citation omitted).

N.J.S.A. 9:6-8.21(c)(4) 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, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof

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." N.J. Div. of Child Prot. & Permanency v. E.D.-O., 223 N.J. 166, 180 (2015) (citation omitted). 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) (citing 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)).

Guided by these principles, we are convinced that Judge Gallina-Mecca's findings of abuse or neglect are supported by adequate, substantial, and credible evidence. As the judge thoroughly and thoughtfully explained in her decision, defendant's gross negligence consistently put his eleven-year-old daughter in

"imminent danger and substantial risk of harm" by leaving her with or forcing her in the hands of uncaring or incompetent adults, compounded with him being more concerned about his job than her welfare.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION