

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1107-16T3

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

S.S.,

Defendant-Appellant,

and

O.R. and D.T., SR.,

Defendants.

IN THE MATTER OF Z.R. and D.T., JR.,

Minors.

Submitted January 17, 2018 – Decided January 30, 2018

Before Judges Carroll and Mawla.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FN-02-0145-16.

Joseph E. Krakora, Public Defender, attorney
for appellant (Celeste Dudley-Smith,
Designated Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Jason W. Rockwell, Assistant Attorney General, of counsel; Mehnaz Rahim, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Noel C. Devlin, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant S.S. appeals the Family Part's order of May 23, 2016 concluding, after a fact-finding hearing, that she abused and neglected her eight-year old daughter, Z.R., and her five-year old son, D.T., Jr., in violation of N.J.S.A. 9:6-8.21(c). We affirm, substantially for the reasons set forth in Judge William R. DeLorenzo, Jr.'s written opinion that accompanied the order.

Judge DeLorenzo's twenty-page opinion sets forth the facts in detail, and we incorporate by reference the judge's factual findings here. The judge conducted the fact-finding hearing on April 4, 2016, at which plaintiff Division of Child Protection and Permanency (Division) presented the testimony of caseworker Lori Laverty, supervisor Debbie Gomez, and Elmwood Park Police Officer Francesca Rodriguez. Additionally, expert psychologist Anthony V. D'Urso, Psy.D., testified on behalf of the Division regarding the children's psychological evaluations at Audrey Hepburn Children's House (AHCH), where Dr. D'Urso served as supervising

psychologist. Neither defendant nor the children's Law Guardian presented any witnesses at the hearing.

In his comprehensive opinion, Judge DeLorenzo carefully reviewed the testimony and evidence presented at the hearing. He found the testimony of Laverty, Gomez, and Rodriguez credible, based on their manner of testifying and their lack of personal interest in the outcome of the proceedings. The judge also accepted the findings and recommendations of Dr. D'Urso, who concluded that both children had suffered physical abuse, neglect, and emotional abuse by defendant. As a result, Z.R. displayed symptoms of post-traumatic stress disorder and needed intensive therapy. Dr. D'Urso diagnosed D.T., Jr. as suffering from adjustment disorder with anxiety, nocturnal enuresis, and recommended he also receive therapy.

Judge DeLorenzo concluded the Division established by a preponderance of the evidence that defendant both abused and neglected the children under N.J.S.A. 9:6-8.21(c). The judge elaborated:

The [c]ourt finds that [defendant] failed to exercise a minimum degree of care and placed her children at a substantial risk of harm when she left her [eight-year] old in charge of her [five-year] old, home alone, overnight, for an extended period of time. There is also ample evidence corroborated by the consistent reporting of physical abuse by the children to Rodriguez, Laverty[,] and

AHCH. In addition, physical abuse was clinically supported by Dr. D'Urso for the [c]hildren.

Is not disputed that [defendant] left her [eight-year] old daughter and [five-year] old son home alone, on a regular basis, overnight, Mondays through Fridays, when she left work and returned as late as 2:00 a.m. to 3:00 a.m., and even as late as 6:00 a.m. to 7:00 a.m., during the holidays while she worked at the post office. [Defendant] confirmed in her contact with the Division, that since the last two weeks of summer and until December 11, 2015, the day that the children were removed from her custody, this was their living arrangement. [Defendant] stated to the Division worker that she was aware that [Z.R.] was afraid of being home alon[e] overnight and had thrown up on at least one occasion due to fear, she ignored [Z.R.'s] concerns and continued to leave her children alone overnight. [Defendant] mentioned that [Z.R.] was "developmentally" capable of being home alone and taking care of [D.T., Jr.].

[Defendant] conceded that she had made a "bad choice" and that the [c]hildren, in fact, were not safe home alone without adult supervision. They did not know what to do in case of an emergency. [Z.R.] did not even know to call 9-1-1. [Z.R.] did, however, know how to call her mother and father, who lived in Jamaica. [Defendant] further reported, however, that she had told [Z.R.] to stop calling her on occasion because she was "calling her too much at work." In the absence of adult supervision, [eight-year] old [Z.R.] was solely responsible for making breakfast, dinner, packing lunch and snacks, and walking D.T., Jr. to school. There were days when the [c]hildren did not even see their mother. [Defendant], therefore, failed to exercise a minimum degree of care by leaving [Z.R.] in charge of [D.T., Jr.], when taking [Z.R.'s]

young age, her reaction to being left home alone, and lack of knowledge of what to do in case of an emergency into account. Clearly, [Z.R.] herself was in need of adult supervision.

In regards to physical abuse, the [c]hildren consistently and independently reported that since they moved to the United States in June 2015, their mother "beat" them sometimes with her hand and sometimes with objects such as a hairbrush and/or a belt, making them cry. The [c]hildren reported being afraid of their mother and expressed fear that she would hit them again if they were to return home. Through their respective psychological evaluations[,] physical abuse and neglect was clinically supported. The [c]hildren were also consistent in reporting that [defendant] would punish them by putting them inside the closet. It was also determined through the evaluation[s] that the [c]hildren suffered actual harm as [Z.R.] was diagnosed with [p]ost-traumatic [s]tress [d]isorder and [D.T., Jr.] with [a]djustment [d]isorder with anxiety due to their traumatic experience at home.

. . . .

Here, [defendant] did not hit the [c]hildren with only her hands but also objects including a broom stick. No marks or bruises were observed on the [c]hildren. Nevertheless, [Z.R.] told the Division that she was not in school for one week to hide bruises or marks. In addition, overwatering flowers would not call [for Z.R.] being hit with a broom stick.

Defendant now appeals. She argues that the record is insufficient to establish abuse and neglect by a preponderance of the evidence. She contends she genuinely believed Z.R. was capable

of caring for herself and D.T., Jr. while she worked, and that no harm befell the children by leaving them alone. She further contends the children's claims of physical abuse lack corroboration, and the trial court erred in finding that she physically abused the children after the Division previously determined physical abuse was not established.

Our standard of review of the Family Part's fact-finding determination is limited. On appeal from orders issued in Title 9 and Title 30 cases, we accord considerable deference to the trial court's credibility determinations and findings of fact, so long as those findings are supported by adequate, substantial, and credible evidence. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 278-79 (2007). We maintain that deference "unless the trial court's findings 'went so wide of the mark that a mistake must have been made.'" Id. at 279 (quoting Snyder Realty Inc. v. BMW of N. Am. Inc., 233 N.J. Super. 65, 69 (App. Div. 1989)). Moreover, we do not readily second-guess the factual findings of the Family Part in general, given that court's special expertise in matters concerning children. Cf. Cesare v. Cesare, 154 N.J. 394, 411-12 (1998) (noting that "matrimonial courts possess special expertise in the field of domestic relations").

Applying that limited and well-settled scope of review, we affirm the trial court's finding of abuse and neglect,

substantially for the sound reasons expressed in Judge DeLorenzo's May 23, 2016 written opinion. We add only a few comments.

N.J.S.A. 9:6-8.21(c) defines various circumstances that can comprise the abuse or neglect of a child. Among other things, the statute specifically covers:

[A] child 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, as herein defined, to exercise a minimum degree of care . . . in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court[.]

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

Our Supreme Court has noted that the purpose of Title 9 is "to protect children 'who have had serious injury inflicted upon them' and make sure they are 'immediately safeguarded from further injury and possible death.'" N.J. Div. of Youth & Family Servs. v. A.L., 213 N.J. 1, 18 (2013) (quoting N.J.S.A. 9:6-8.8(a)). "The law's paramount concern is the safety of the children, and not the culpability of parental conduct." Ibid. (quoting N.J. Div. of Youth & Family Servs. v. R.D., 207 N.J. 88 (2011); G.S. v. N.J. Div. of Youth & Family Servs., 157 N.J. 161, 177 (1999)). "The focus in abuse and neglect matters . . . is on promptly protecting

a child who has suffered harm or faces imminent danger." Ibid. (citing N.J.S.A. 9:6-8.21(c)(4)).

A court's finding of abuse or neglect must be based on a preponderance of the evidence when the proof is considered in its totality. N.J.S.A. 9:6-8.46(b)(1); N.J. Div. of Youth & Family Servs. v. C.M., 181 N.J. Super. 190, 201 (App. Div. 1981) ("In child abuse and neglect cases the elements of proof are synergistically related. Each proven act of neglect has some effect on the [child]. One act may be substantial or the sum of many acts may be substantial."). Notably, the Title 9 proof standard is less stringent than in guardianship cases for the termination of parental rights, which must instead be proven by clear and convincing evidence. See N.J.S.A. 30:4C-15.1(a).

The proofs adduced before Judge DeLorenzo amply met these evidentiary standards. As the judge found, the Division established, by a preponderance of the credible evidence, that defendant physically abused the children through excessive corporal punishment, and that she neglected them by leaving them home alone for long periods of time including overnight on numerous occasions.

The evidence of neglect is readily apparent from the record. Defendant did not dispute leaving her young children home unattended for substantial periods, including overnight. Z.R. was

clearly fearful, as demonstrated by her phone calls to her father in Jamaica, her numerous calls to defendant at work, and the fact she became physically ill and did not otherwise know what to do in the case of emergency.

The children's claims of abuse and neglect are amply corroborated by their psychological evaluations at AHCH. Dr. D'Urso found: "[Z.R.] is symptomatic of [p]ost[-]traumatic [s]tress [[d]isorder. She has experienced repeated physical abuse by her mother, neglect[,] and adverse childhood experiences." Dr. D'Urso opined that Z.R. had a "broken attachment" with defendant and suffered harm as a result of her mother's physical and emotional abuse and neglect. Dr. D'Urso similarly concluded that D.T., Jr. was experiencing nightmares and anxiety caused by defendant's abuse and neglect, and, like Z.R., required therapy as a result.

Contrary to defendant's contention, the trial court was not bound by the Division's initial finding that physical abuse was not established because no marks or bruises were observed on the children. Importantly, the Division's conclusion in that regard came before the children were evaluated at AHCH and Dr. D'Urso had determined their allegations of physical abuse were clinically supported. Moreover, the Division's complaint for custody provided defendant with ample notice of the Division's allegations

that she had subjected the children to excessive corporal punishment, and defendant does not argue otherwise on appeal.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION