

## RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court."  
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-2872-15T1

NEW JERSEY DIVISION OF CHILD  
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

M.P.,

Defendant-Appellant,

and

G.R.,

Defendant.

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IN THE MATTER OF J.R.,

Minor.

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Submitted December 19, 2017 – Decided January 2, 2018

Before Judges Fisher and Sumners.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Monmouth  
County, Docket No. FN-13-0205-13.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Jared I. Mancinelli, Designated  
Counsel, on the brief).

Christopher S. Porrino, Attorney General,  
attorney for respondent (Melissa H. Raksa,  
Assistant Attorney General, of counsel; Deidre  
A. Carver, Deputy Attorney General, on the  
brief).

Joseph E. Krakora, Public Defender, Law  
Guardian, attorney for minor (Karen Ann  
Lodeserto, Designated Counsel, on the brief).

PER CURIAM

Defendants M.P. (Mary) and G.R. (Gary)<sup>1</sup> were married and had one child, J.R. (James), who was born in 2010. They divorced in 2012. A final judgment of divorce awarded them joint legal custody of James; Mary was designated the primary custodial parent and Gary was afforded visitation on alternate weekends.

On the first day of January 2013, the Division of Child Protection and Permanency removed James from Mary's home when she began exhibiting symptoms that suggested schizophrenia. The Division commenced this Title Nine action, Mary was admitted to a psychiatric hospital, the child was placed with a maternal aunt and uncle, both parents were awarded supervised visitation, and Gary was ordered to undergo a psychological evaluation to assess his ability to exercise unsupervised visitation. In late February 2013, the trial judge granted Gary legal and physical custody of James.

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<sup>1</sup> We use only fictitious names for defendants and the child in question.

Mary thereafter continued to suffer from severe and pervasive mental health issues – including psychotic and delusional behavior – that led to a four-month stay in a psychiatric hospital. Dr. Robert J. Puglia conducted a psychological evaluation of Mary in May 2013; he concluded that Mary suffered from paranoid schizophrenia, and he recommended she only be afforded supervised visitation. Eighteen months later, Dr. Puglia determined that Mary continued to "experience serious symptoms associated with schizophrenia including pervasive delusions of a paranoid nature." He found Mary "highly delusional," not competent to go to trial, and incapable of providing a consistently safe, nurturing environment for James. On the other hand, Dr. Puglia opined that James appeared "to be doing quite well under the care of his father."

In December 2014, the Division withdrew its Title Nine claims against Mary, and the judge issued an order converting the matter to a Title Thirty case. The judge conducted a three-day hearing in August 2015, at which time he heard testimony from Gary, Dr. Puglia, and a Division caseworker. A psychiatric nurse testified on Mary's behalf.

For reasons expressed in a January 20, 2016 oral decision, the judge terminated the Title Thirty litigation, allowed Gary to

move to North Carolina with James, and awarded Mary supervised telephone contact with the child.

After Mary appealed, the Law Guardian moved for a remand for clarification because the custody-visitation determination was memorialized in this action and not the matrimonial action; Mary cross-moved for summary reversal, seeking a remand for a custody hearing in the matrimonial action. We denied those applications.

In her appeal, Mary argues:

I. THE TRIAL COURT RELIED UPON AN INCORRECT PROCEDURE IN ITS ATTEMPT TO HOLD A HEARING AS TO CONTINUING CUSTODY RIGHTS TO [JAMES] UNDER THE FN<sup>[2]</sup> DOCKET, WHICH DEPRIVED [MARY] OF ANY MEANS OF ENFORCING VISITATION AFTER THE FN LITIGATION WAS TERMINATED.

II. THE TRIAL COURT'S DECISION TO ALLOW THE CHILD TO BE REMOVED FROM THE STATE OF NEW JERSEY WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE.

We find insufficient merit in these arguments to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following.

In her first point, Mary contends the trial judge proceeded on an incorrect legal basis. There is some merit to this. The judge invoked N.J. Div. of Youth & Family Services v. G.M., 198 N.J. 382, 387-88 (2009), which permits a custody resolution

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<sup>2</sup> "FN" refers to the prefix assigned to the docket number in this action.

following a Title Nine finding of abuse or neglect. Here, the Title Nine aspects had already been withdrawn when the matter was heard; the matter proceeded under N.J.S.A. 30:4C-12, which required the judge to evaluate the child's best interests under N.J.S.A. 9:2-4(c). See N.J. Div. of Youth & Family Servs. v. I.S., 214 N.J. 8, 40 (2013). Notwithstanding that procedural misstep, the experienced judge's factual findings clearly provided a concrete basis for the same conclusion even if he mistakenly failed to invoke the best-interests standard. The judge found that Mary suffered from chronic paranoid schizophrenia so severe it rendered her incapable of safely caring for the child or even visit the child absent a supervised setting. The judge's findings, which are based on the credible evidence and, therefore, command our deference, N.J. Div. of Youth & Family Servs. v. R.I., 388 N.J. Super. 81, 88-89 (App. Div. 2006), permitted no other conclusion but that which was reached. We, thus, find the application of the incorrect standard to have been, in this particular case, harmless.

We would lastly add it would be helpful, in the event of future applications regarding these parties, that an order memorializing the disposition of the custody-visitation issues also be entered in the matrimonial action.

The orders under review are affirmed, and the matter remanded for entry of an order in the matrimonial matter in conformity with the judge's findings of fact. 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