RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2922-15T3

NEW JERSEY DIVISION OF CHILD PROECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

B.G.,

Defendant-Appellant,

and

Y.G.,

Defendant.

IN THE MATTER OF H.G. and Y.G.,

Minors.

Submitted December 12, 2017 – Decided February 2, 2018

Before Judges Yannotti, Carroll, and Leone.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FN-02-0190-13.

Joseph E. Krakora, Public Defender, attorney for appellant (Arthur David Malkin, Designated Counsel, on the briefs).

Christopher S. Porrino, 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 minors (Todd Wilson, Designated Counsel, on the brief).

Defendant B.G. (Mother) appeals the trial court's February 12, 2016 order limiting her to supervised visits with her two children. We affirm.

I.

Mother and defendant Y.G. (Father) had two daughters, H.G. (born in 1999) and Y.G. (born in 2001). The Division first became involved with Mother's family in 2001, and received several referrals arising out of her mental hospitalization and her subsequent unfounded accusations against Father.

On September 27, 2012, a psychiatric hospital contacted the Division because Mother nearly had driven her car into Father's car while the children were in the car, attempting to prevent father from leaving with H.G. Mother's brother brought her to the hospital, where she was committed.

The Division referred Mother for assessment by the Center for Evaluation and Counseling, Inc. (CEC). Based in part on CEC's

preliminary report regarding Mother's mental health, on November 16, 2012, the Division filed a verified complaint for care and supervision with restraints pursuant to both N.J.S.A. 9:6-8:21 and N.J.S.A. 30:4C-12. That same day, the family court signed an Order to Show Cause, which granted care and supervision to the Division, joint legal custody to both parents, and physical custody to father. Mother was restricted to supervised visitation.

In lieu of a fact-finding hearing, on March 1, 2013, Mother stipulated orally and in writing that: "On or about September 27, 2012 she was operating her vehicle with a purpose to block the father's car and almost hit the father's car while the children were in the father's vehicle, thereby placing the children at substantial risk of harm as contained in the complaint[.]" Mother also "agree[d] that these acts or omissions constitute abuse or neglect pursuant to law." The court found her admissions were sufficient for a finding of abuse and neglect under N.J.S.A. 9:6-8:21(c)(4).

Mother was repeatedly ordered to undergo psychological and psychiatric evaluation and treatment, including partial hospitalization, therapy, and medication monitoring. As detailed in the family court's February 12, 2016 opinion, Mother was non-compliant with treatment, recommendations, medications, and the court orders prohibiting unsupervised visitation.

The family court found "[t]he Division's efforts to stabilize the family in order to reunify the defendant Mother with the children have been ineffective," and the Division requested a dispositional hearing. The family court conducted a four-day dispositional hearing. The court admitted documentary evidence, including two CEC Forensic Team Assessments. The court also heard testimony from Diana Rodriguez, the caseworker currently assigned to the family. Rodriguez testified about the treatment offered to Mother, Mother's noncompliance, and Mother's erratic behavior. Rodriguez also testified that Mother continually insisted she was not crazy and did not need medication or treatment.

On February 12, 2016, the family court issued an opinion and order terminating the litigation based on the dispositional hearing. The court found "the Division has proven by a preponderance of the evidence that [Mother] suffers from a serious mental illness, for which she refuses consistent treatment and medication." As a result, she was "unable to achieve stability, which impairs her ability to safely parent her children." Thus, the court found "it would be irresponsible and inappropriate to permit [Mother] to have unsupervised contact with her children, as such contact would place the children at imminent risk of substantial harm." The court's order continued legal custody with Mother and Father, and continued physical custody with Father.

The court ruled that Mother "shall have visitation supervised by the maternal grandmother or another Division approved supervisor until further order of the court."

II.

We must hew to our deferential standard of review. "[W]e generally defer to the factual findings of the trial court because it has the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand; it has 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. R.D., 207 N.J. 88, 112 (2011) (citations omitted). "Particular deference is afforded to family court fact-finding because of the family courts' special jurisdiction and expertise in family matters." N.J. Div. of Child Prot. & Permanency v. N.C.M., 438 N.J. Super. 356, 367 (App. Div. 2014) (citing Cesare v. Cesare, 154 N.J. 394, 413 (1998)). We must examine "whether there was sufficient credible evidence to support the trial court's findings." N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 342 (2010). "We will not overturn a family court's factfindings unless they are so 'wide of the mark' that our intervention is necessary to correct an injustice." N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012) (citations omitted).

III.

Mother claims the family court lacked an adequate basis for the supervisory requirement. She argues the Division failed to show, by a preponderance of the evidence, that she has a mental health issue which, if left untreated, could put her children at substantial risk of harm. Specifically, Mother contends that the Division failed to present admissible evidence from a psychiatrist. She also asserts that some evidence before the court "consist[ed] of hearsay and double hearsay[.]"

We find the family court had ample evidence at the dispositional hearing showing Mother had a mental health issue. The court received into evidence two CEC assessment reports. The 2012 CEC report included the following findings. Mother is "a mentally ill, emotionally unstable adult who exposed her daughters to highly erratic and irrational behavior." "She has a history of multiple psychiatric hospitalizations and decompensations due to psychotropic medicine non-compliance." She "has been preoccupied with persecutory delusional thinking" which she recognizes is "delusional." She "has a history of command auditory hallucinations that overrode her parenting judgment." "The extremity of her poor judgment is suggestive of residual deficiencies in reality testing." "Given [her] history, she presents a risk for repeated decompensation associated with

episodes of repeated medication noncompliance." She "was not viewed as sufficiently stable to resume unsupervised contact with the children."

The 2013 CEC report included the following findings. Mother "has continued to present as a mentally ill, emotionally unstable adult who continues to present a risk to her children." "She reported that she decreased her psychotropic medication without the approval of her psychiatrist," and "appeared to have decompensated since her previous assessment." "She appeared actively delusional during this assessment." "She had little regard for restriction placed upon her contact with her children, and was viewed as likely to continue to violate restraints, and disrupt her children's lives." She was still regarded as a decompensation risk who was insufficiently stable to resume unsupervised contact.

These CEC assessment reports were properly admitted as business records under N.J.R.E. 803(c)(6). See N.J. Div. of Child Prot. & Permanency v. N.T., 445 N.J. Super. 478, 487 (App. Div. 2016). They were prepared by the Division's psychological consultant, and were based on its licensed associate counselor's first-hand factual observations of Mother. See id. at 493-95 (citing N.J.S.A. 9:6-8.46(a)(3), Rule 5:12-4(d), and In re Guardianship of Cope, 106 N.J. Super. 336, 343 (App. Div. 1969)).

As the family court noted, "case law in our State has traditionally admitted 'routine' [observations and] findings of experts contained in medical records that satisfy the business record exception, but has excluded 'diagnoses of complex medical conditions' within those records." James v. Ruiz, 440 N.J. Super. 45, 63 (App. Div. 2015) (citing State v. Matulewicz, 101 N.J. 27, 32 n.1 (1985)). Mother objected only to "any type of mental health diagnosis" because it was "complicated" and "subjective." As Mother admits, the family court did not admit or consider the reports' psychological diagnosis of Mother's specific mental illnesses. See N.T., 445 N.J. Super. at 501-02 (citing N.J.R.E. 808).[1]

Moreover, this dispositional hearing was subject to lesser evidentiary requirements. Mother notes that "[i]n a fact-finding hearing . . . only competent, material and relevant evidence may be admitted." N.J.S.A. 9:6-8.46(b) (emphasis added).[2] By contrast, "[i]n a dispositional hearing and during all other stages of a proceeding under this act, only material and relevant evidence

[1] Neither the family court nor we consider the reports' diagnoses of schizoaffective disorder and bipolar disorder.

[2] Mother notes "[t]he Division must provide sufficient competent and credible evidence to satisfy the court" in proceedings under N.J.S.A. 30:4C-12 as well. N.J. Div. of Youth & Family Servs. v. T.S., 426 N.J. Super. 54, 65 (App. Div. 2012).

may be admitted." N.J.S.A. 9:6-8.46(c) (emphasis added). At a fact-finding hearing, a report is "'competent'" evidence if it "meets certain admissibility requirements akin to the business records exception." N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 32 (2011). The Legislature's omission of the requirement that the evidence be "competent" at a dispositional hearing suggests the court has some flexibility "in respect of the standards for admissibility of evidence." See N.J. Div. of Youth & Family Servs. v. R.D., 207 N.J. 88, 114 (2011).

Mother argues "no conclusion should be received unless the report contains a statement of the facts or procedures upon which it is based." N.J. Div. of Youth & Family Servs. v. I.Y.A., 400 N.J. Super. 77, 90-91 (App. Div. 2008) (quoting Cope, 106 N.J. Super. at 343-44). However, the CEC reports had extensive renditions of the facts upon which they were based.

The trial court found the CEC reports described "the method of preparation, that it was made by the Division's contracted professional consultants with first-hand knowledge and reasonably contemporaneous with evaluations," "in the regular course of

business." The court concluded the reports had "a reasonably high degree of reliability and, as such are trustworthy."[3]

Indeed, the Division offered to call a psychiatrist who recently treated Mother at the Vantage Health System. Mother objected and, in lieu of testimony, consented to the admission of the Vantage reports, including the diagnosis that Mother had schizoaffective disorder, bipolar type. Having consented to the admission of the Vantage reports' diagnosis, Mother cannot claim it could not be considered. M.C. III, 201 N.J. at 340-42. In any event, as the family court stated, the precise diagnosis was not needed for the court at a dispositional hearing to conclude that Mother's erratic behavior required her visitation be supervised.

In addition, the family court had before it records from the psychiatric hospitals in which Mother was repeatedly and often involuntarily committed. Mother notes "hospitalization alone is not sufficient to sustain a finding of abuse or neglect." I.Y.A., 400 N.J. Super. at 93. However, at a dispositional hearing,

[3] This case bears no resemblance to I.Y.A., where the Division at a fact-finding hearing did not produce a psychological evaluation of the mother or proffer an expert medical report regarding her condition. Cf. I.Y.A., 400 N.J. Super. at 91-93; see Div. of Youth & Family Servs. v. R.D., 412 N.J. Super. 389, 405 (App. Div. 2010) (distinguishing I.Y.A.), rev'd on other grounds, 207 N.J. 88 (2011).

hospitalization records can corroborate that a parent has sufficient mental issues to justify supervising visitation.

Further, the family court credited the testimony of the caseworker. The caseworker detailed Mother's history of erratic behavior often requiring police intervention, her hospitalizations and court-ordered mental health treatment, her non-compliance with mental health treatment and medications, her violations of judicial orders, and her lack of comprehension of her mental health problems, which supported the risk of unsupervised visitation.

The caseworker's testimony was corroborated by the Division's own reports. The family court could "consider the statements in the report[s] that were made to the author by Division staff personnel, or affiliated medical, psychiatric, or psychological consultants, based on their own first-hand factual observations[.]" N.T., 445 N.J. Super. at 487, 495-96.

The family court could also consider the statements of Mother and the children related by the caseworker and the Division's reports. Id. at 497; N.J.S.A. 9:6-8.46(a)(4); N.J.R.E. 803(b). Mother admitted she suffered from schizophrenia and bipolar disorder, and that she refused to take prescribed medication. The children related Mother's refusal to follow restrictions and her erratic behavior, including her admitted driving at Father's car, which the court found represented "an egregious lapse of judgment

and reckless indifference for the safety of her children." The children also expressed their concern with unsupervised visitation.

Finally, the family court itself saw and heard Mother's behavior in the courtroom. The court observed Mother "presented as completely out of control and without the ability to self-regulate," and "demonstrated an absolute lack of insight her condition and her dire need of treatment." Though a judge is not a mental health expert, the court can assess whether inappropriate behavior in an environment controlled by the judge gives rise to concerns about inappropriate behavior in an uncontrolled environment in front of the children. See Cesare, 154 N.J. at 411-12 (deferring to the family court because the court sees, observes and hears the persons appearing before it).

Mother argues that judges "cannot fill in missing information on their own or take judicial notice of harm" without an expert. N.J. Div. of Youth & Family Servs. v. A.L., 213 N.J. 1, 28 (2013). But the Court in A.L. did "not require expert testimony in abuse and neglect actions" even for fact-finding hearings. Id. at 29. "In many cases, an adequate presentation of actual harm or imminent danger can be made without the use of experts." Ibid. That was true at this dispositional hearing where the only issue was whether Mother's behavior justified supervising her visitation. Cf. id.

at 27-29 (addressing the medical issue of whether prenatal drug use endangers a child). There was ample evidence supporting the family court's conclusion that Mother's mentally-disturbed behavior justified supervision of her visitation with the children.[4]

Lastly, Mother stresses she stipulated to abuse or neglect in violation of N.J.S.A. 9:6-8.21(c)(4) by almost hitting Father's car while the children were passengers, "thereby putting the children at substantial risk of harm as contained in the complaint." She argues that, because she did not stipulate to her mental illness, the family court could not properly consider her mental illness at the dispositional hearing. We disagree.

Mother cannot claim lack of notice that her mental state would be at issue. The complaint alleged that she "had a history of mental illness and was diagnosed with Paranoid Schizophrenia" at the time she drove at Father's car, and that immediately after

[4] Indeed, "[a] psychiatric disability can render a parent incapable of caring for his or her children," and justify a finding of abuse or neglect, N.J. Div. of Youth & Family Servs. v. I.H.C., 415 N.J. Super. 551, 585-86 (App. Div. 2010) (quoting I.Y.A., 400 N.J. Super. at 94), or the termination of parental rights, N.J. Div. of Youth & Family Servs. v. A.G., 344 N.J. Super. 418, 424, 436-40 (App. Div. 2001); see N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 450-51 (2012). Thus, Mother's psychiatric problems could justify the less-consequential order for supervised visitation at a dispositional hearing.

doing so she was committed to a psychiatric hospital. Her mental state was the focus both before and after her stipulation.

More importantly, Mother misapprehends the role of a dispositional hearing. After the family court determines, by evidence or stipulation, that a "child is an abused or neglected child" at the "fact-finding hearing," N.J.S.A. 9:6-8.44, the court must hold a "dispositional hearing" with the broad mandate "to determine what order should be made," N.J.S.A. 9:6-8.45. "Notably, the court has multiple alternatives in determining the appropriate disposition." N.J. Div. of Youth & Family Servs. v. G.M., 198 N.J. 382, 399 (2009).

The appropriate orders at a dispositional hearing may include "making an order of protection in accord with section 35 hereof." N.J.S.A. 9:6-8.51(a). Under section 35, the court may order a parent to stay away from the child except for visitation on terms provided by the family court:

> The court may make an order of protection in assistance or as a condition of any other order made under this act. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by a person who is before the court and is a parent or guardian responsible for the child's care or the spouse of the parent or guardian, or both. Such an order may require any such person: a. To stay away from the home, the other spouse or the child; [or] b. To permit a parent to visit the child at stated periods; . . . .

[N.J.S.A. 9:6-8.55.]

In determining whether an order of protection is necessary, a family court can consider all relevant circumstances, including the parent's mental health. E.g., F.M., 211 N.J. at 450.

Mother argues an order of protection is limited to one year under N.J.S.A. 9:6-8.53. However, "[b]y its own terms, N.J.S.A. 9:6-8.53 only applies to a dispositional order that releases the child to 'the custody of his parent or guardian responsible for his care at the time of the filing of the complaint.'" Div. of Youth & Family Servs. v. G.M., 398 N.J. Super. 21, 41 (App. Div. 2008) (quoting N.J.S.A. 9:6-8.53(a)), aff'd as modified, 198 N.J. 382, 403-04 (2009). Mother insists that was not the case here. She claims she was responsible for the children's care when the complaint was filed but the children were released into Father's custody in the dispositional order. Thus, N.J.S.A. 9:6-8.53 does not apply here.[5]

For all these reasons, we affirm the family court's order requiring Mother's visitation with the children be supervised.

[5] The Division concedes that Mother has the ability to file a motion under the FD docket to modify the order requiring the supervision of visitation based on changed circumstances.

IV.

On appeal, Mother argues for the first time that the trial court denied Mother due process by failing to conduct either a fact-finding hearing under Title Nine, or a summary hearing under Title Thirty. However, Mother waived the right to a fact-finding hearing by stipulating she had committed a specific act — driving to block and almost hitting Father's car while the children were passengers — and that her act "plac[ed] the children in substantial risk of harm" and "constitute[d] abuse or neglect."

In the colloquy, Mother admitted those facts and acknowledged she was giving up her right to a fact-finding trial. Mother signed and initialed a "Voluntary Stipulation/Admission to Child Abuse or Neglect Pursuant to N.J.S.A. 9:6-8.21(c)," stating "you understand that by agreeing to enter into a stipulation/admission, you give up your right to a fact-finding hearing (also known as a trial)" at which the Division "must prove by a preponderance of the evidence that you abused or neglected your child," and that "you [are] giving up your right to trial of your own free will." The family court "accept[ed] this stipulation as having been knowingly and voluntarily made with the benefit of competent counsel."

By thus stipulating, Mother waived her right to a fact-finding hearing. Appropriate "factual stipulations triggering a finding

of abuse or neglect" are "permissible or appropriate," because they permit the parties "to agree on relevant facts, thereby narrowing the area of dispute," avoiding "the production of evidence and promoting the efficient administration of justice." N.J. Div. of Youth & Family Servs. v. J.Y., 352 N.J. Super. 245, 265 (App. Div. 2002).

Based on that March 1, 2013 stipulation in lieu of a fact-finding hearing, the family court could proceed to hold a dispositional hearing. See N.J.S.A. 9:6-8.47(a). Here, the dispositional hearing was repeatedly postponed because of Mother's misconduct, her hospitalizations, and other reasons. See N.J.S.A. 9:6-8.48. In 2015, the court held a four-day dispositional hearing under the 2012 complaint, and then terminated that litigation.[6]

Mother contends the family court had to conduct a new fact-finding hearing because the Division filed a new complaint. In March 2014, the Division learned that Mother was defiantly violating the court's restrictions barring unsupervised visitation, including by picking the children up from school and going with them to Father's home when he was not present. The Division conducted an emergency removal of the children to a

[6] Mother claims a disposition hearing occurred on March 28, 2013. Although that box was checked on the order, that hearing was scheduled, labelled, and conducted as a compliance review.

resource home while it was determined whether Father could enforce the restrictions.

That March 13 removal was conducted without a court order, pursuant to the Dodd Act. N.J.S.A. 9:6-8.29. The Dodd Act requires the Division to file a complaint "within two court days after such removal takes place." N.J.S.A. 9:6-8.30. On Monday, March 17, the Division filed a "complaint for custody pursuant to a Dodd removal." At a hearing that same day, the Division effectively withdrew its complaint for custody by agreeing that custody of the children could be returned to Father. See N.J.S.A. 9:6-8.31(a), (d). The court was not required to have a fact-finding hearing on a complaint for custody the Division had already dismissed.

Father retained custody at all subsequent proceedings, which were conducted under the 2012 complaint. No fact-finding hearing was necessary for that complaint because Mother had stipulated to abuse or neglect. Thus, the court properly proceeded to the dispositional hearing.

Mother received due process. She was given the opportunity for a fact-finding hearing to prove abuse or neglect, but waived it. She also had the opportunity to present evidence and cross-examine at the dispositional hearing, but chose not to do so.

"Both the fact-finding hearing and the dispositional hearing are critical stages in Title Nine proceedings. Those hearings must be conducted 'with scrupulous adherence to procedural safeguards,' and . . . 'meticulous adherence to the rule of law.'" G.M., 198 N.J. at 401 (citations omitted). Mother has failed to show violation of those standards, let alone plain error. R. 2:10-2.[7]

Affirmed.

[7] In G.M., the trial court improperly transferred custody from one parent to another without holding a dispositional hearing. 198 N.J. at 399-402. Here, the court held a dispositional hearing. Moreover, Mother and Father agreed in their FD proceeding that Father should have physical custody. This case thus does not pose the issue raised in G.M.