

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-5430-15T4

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

A.H.,

Defendant-Appellant.

IN THE MATTER OF S.K. and Z.S.,

Minors.

Argued December 12, 2017 – Decided January 3, 2018

Before Judges Fisher and Sumners.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex
County, Docket No. FN-12-0095-15.

Anne E. Gowen, Designated Counsel, argued the
cause for appellant (Joseph E. Krakora, Public
Defender, attorney; Anne E. Gowen, on the
brief).

Arundhati Mohankumar, Deputy Attorney
General, argued the cause for respondent
(Christopher S. Porrino, Attorney General,
attorney; Melissa H. Raksa, Assistant Attorney

General, of counsel; Arundhati Mohankumar, on the brief).

Karen Ann Lodeserto, Designated Counsel, argued the cause for minors (Joseph E. Krakora, Public Defender, attorney; Karen Ann Lodeserto, on the brief).

PER CURIAM

In this appeal, we consider whether defendant A.H. abused or neglected her two children – S.K. (Sally¹), who was born in 2003, and Z.S. (Zeke), who was born in 2007 – by leaving them home during the evening of August 22-23, 2014, when she left to commit a robbery. In deferring to the trial judge's findings, see N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008), rendered after a hearing at which only representatives of plaintiff Division of Child Protection and Permanency testified, we affirm.

There are few relevant facts; the appeal focuses on the inferences drawn by the judge from largely undisputed facts. Defendant, who lived with her two children in Perth Amboy, committed, along with her boyfriend, a robbery in another part of town² at approximately 2:30 a.m., on August 23, 2014. She was arrested outside her home by police approximately four hours later

¹ The names of the children are fictitious.

² The record does not reveal the distance between defendant's home and the robbery site.

as she chased after her boyfriend who had apparently taken her phone; in her statement, Sally recounted that her mother ran out of the home without stopping to put her pants on. Based on the circumstances, as well as statements provided by Sally,³ the judge found defendant left the children home alone when she ran out of the house after her boyfriend at approximately 6:30 a.m. When interviewed at the county jail by a Division representative, who testified at the fact-finding hearing, defendant admitted she committed the robbery because she was "thousands of dollars" behind in rent. From these and other facts, the judge drew reasonable inferences that defendant left her young children alone and unsupervised when she left the home to commit a robbery that evening. For the reasons set forth in an oral opinion, an order was entered memorializing the judge's finding that the children were abused or neglected within the meaning of N.J.S.A. 9:6-8.21(c).

In appealing, defendant argues, with regard to the robbery, that: (1) there was no evidence from which the judge could conclude the children were not supervised by someone else when defendant left the home, and (2) the judge erred by relying on inadmissible

³ As thoroughly explained in her decision, the judge found Sally's statements were sufficiently corroborated and therefore permitted, pursuant to N.J.S.A. 9:6-8.46, the statements' use in determining Sally and Zeke were abused or neglected.

hearsay in a police report. As to the other later event, defendant argues that: (3) in leaving the home to retrieve her phone from her boyfriend the children were left alone "only briefly" and not for a sufficient period of time to constitute abuse or neglect. We find insufficient merit in these three arguments to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following few comments about the first two.

First, the judge did not rely on inadmissible hearsay. In her findings, the judge considered the concern about hearsay and painstakingly explained that she would not rely on the hearsay contained in the police report and the Division's investigative file. The facts upon which the judge found that defendant left the children home alone during the evening for an extended period of time came either from the testimony of the Division representative, defendant's own admissions, or other admissible evidence.

Second, it may be true there was no direct evidence to support the judge's finding that the children were left unsupervised when their mother went off to commit a robbery. But the judge, as factfinder, was entitled to draw an inference from the circumstances that defendant did not leave the children in care of a responsible adult. As the evidence revealed, the children were put to bed, and the mother dressed to go out rather than to go to bed. Although no one testified whether another adult was

present once defendant departed, the judge could reasonably draw that inference.⁴ The judge was also entitled to infer that, because defendant admitted she committed a robbery elsewhere in Perth Amboy late that evening, the children were left unsupervised for more than a few minutes.

The judge further explained, through her comparison of these circumstances to Dep't of Children v. T.B., 207 N.J. 294 (2011), and N.J. Div. of Youth & Family Servs. v. J.L., 410 N.J. Super. 159 (App. Div. 2009), that defendant failed to exercise the minimum degree of care required by N.J.S.A. 9:6-8.21(c). Recognizing that the statute requires in such circumstances more than mere negligence – as was the case in T.B., 207 N.J. at 297-98, 309-10 (where the parent left a child unattended on the mistaken belief the child's grandparents were present in another portion of the house) and J.L., 410 N.J. Super. at 161, 168 (where the parent remained in a nearby park as two young children ran to their home, which was in view of the park, to change their clothes) – the judge was entitled to find from the facts and the inferences drawn

⁴ We would add that the judge was entitled to reach this same conclusion by drawing an adverse inference against defendant due to her failure to take the stand and testify that another adult was left to supervise the children. See Washington v. Perez, 219 N.J. 338, 352 (2014) (recognizing, as has been long held, that the failure to offer testimony within the party's power to produce permits an inference that the missing testimony would be unfavorable to that party's case).

that defendant was grossly negligent and reckless in leaving the children unattended in the middle of the night so she could go out and commit a robbery.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION