SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1774-20

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

B.P.,

Defendant-Appellant,

and

L.K.S.,

Defendant.

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IN THE MATTER OF M.S.,
a minor.

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Argued November 2, 2022 – Decided November 10, 2022

Before Judges Haas and DeAlmeida.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FN-07-0275-20.

T. Gary Mitchell, Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; T. Gary Mitchell, of counsel and on the briefs).

Nicholas Dolinsky, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Donna Arons, Assistant Attorney General, of counsel; Nicholas Dolinsky, on the brief).

Noel C. Devlin, Assistant Deputy Public Defender, argued the cause for minor (Joseph E. Krakora, Public Defender, Law Guardian; attorney; Meredith Alexis Pollock, Deputy Public Defender, of counsel; Nancy P. Fratz, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant B.P.[1] appeals from the Family Part's December 9, 2020 order[2] determining that she abused or neglected her daughter, M.S., by providing false information to the hospital after giving birth to the child and then failing to return to provide care for the child as she promised. Defendant challenges the

[1] We refer to defendant, her child, and other family members by initials to protect their privacy. R. 2:1-38-3(d)(12).

[2] This order became appealable as of right after the trial court entered a final order terminating the litigation on January 20, 2021.

trial judge's finding that this conduct constituted abuse or neglect under N.J.S.A. 9:6-8.21(c)(4). Defendant also contends that the trial judge erred by failing to apply the New Jersey Safe Haven Infant Protection Act (Safe Haven Act), N.J.S.A. 30:4C-15.5 to -15.11, and by making rulings which allegedly indicated the judge had a bias against her. The Law Guardian supports the judge's finding that the Division of Child Protection and Permanency (Division) met its burden of proving abuse or neglect by a preponderance of the evidence. Based upon our review of the record and applicable law, we affirm.

Defendant gave birth to M.S. at a hospital. Defendant and M.S. tested positive for marijuana,[3] and the hospital notified the Division. A Division caseworker interviewed defendant at the hospital the next day. Defendant stated she used marijuana once while pregnant to help stimulate her appetite.

The caseworker told defendant that she would need to complete a home assessment in order for M.S. to be discharged from the hospital. Defendant stated she was willing to work with the Division, and would participate in a substance abuse evaluation and parenting classes. Defendant also stated she had recently been laid off from her job as a daycare teacher, but was receiving food stamps, and had applied for WIC benefits for M.S. Defendant gave the

[3] Otherwise, M.S. was a healthy baby.

caseworker her phone number, and the numbers for M.S.'s biological father and for defendant's grandmother.

The next day, defendant left the hospital. When the caseworker attempted to call defendant to arrange the home assessment, she found that the number defendant gave her was a non-working number. The person who answered the phone at the number defendant gave for her grandmother stated the grandmother did not live there. The caseworker contacted the hospital and learned that defendant also gave the hospital non-working phone numbers during the intake process.

The caseworker called the hospital and a social worker told the caseworker defendant was at the hospital. The social worker put defendant on her phone and defendant told the caseworker she was surprised the numbers were incorrect. Defendant later called the caseworker back from a different phone number and again arranged to meet the caseworker at her home in the late afternoon. Defendant also stated she was going out to pick up supplies for M.S.

The caseworker attempted to go to the home address defendant provided and learned there was no house at that address. Further investigation revealed that defendant had also given a false name to the Division and the hospital.

At that point, the Division filed a complaint and order to show cause seeking custody of M.S. The trial court granted the Division's application and the Division placed the child in a non-relative resource home. The Division was finally able to locate defendant after the hearing on the order to show cause.

The Division substantiated defendant for abuse or neglect under N.J.S.A. 9:6-8.21(c)(5) for willfully abandoning M.S. However, the Division later determined it would proceed under a claim for abuse or neglect under N.J.S.A. 9:6-8.21(c)(4).

The trial court held a fact-finding hearing. The Division caseworker was the only witness. Following the hearing, the trial judge rendered a comprehensive oral decision concluding that defendant abused or neglected under N.J.S.A. 9:6-8.21(c)(4). The judge stated:

> [Defendant] willing[ly] and knowingly deceived and mis[led] the hospital and the caseworker into thinking that she was willing to care for her newborn. By providing the false information and not returning for the child, she failed to exercise a minimum degree of care in supplying the child with adequate food, clothing and shelter although offered reasonable means to do so and she failed to provide the child with proper supervision or guardianship by unreasonably putting the child at a substantial risk of harm. The Division has met its burden. [Defendant] never clearly and unambiguously stated her desire to surrender, in fact it was just the opposite. Although she provided a false name, she provided the name of her grandmother and

> the name of the father. [Defendant] mis[led] the caseworker into thinking she wanted to care for her child and that she would comply with recommended services. [Defendant] did not express frustration, concern or depression at the thought of being a first time mother. She did not ask for help. She could have provided the name of a relative to care for the child. She could have granted the Division custody, temporary custody, so any necessary medical or legal decisions could be made if required. She walked away from her newborn without putting any plan in place leaving the [Division] to assume her responsibilities.

By the time of the hearing, the Division was able to contact M.S.'s biological father and his mother. The paternal grandmother agreed to care for the child, and defendant and M.S.'s father agreed to this plan. On January 20, 2021, the trial judge granted physical custody of the child to the paternal grandmother, with the grandmother, defendant, and M.S.'s father sharing joint legal custody, and dismissed the litigation. This appeal followed.

On appeal, defendant argues that the trial judge: (1) erred by concluding that she abused or neglected M.S. under N.J.S.A. 9:6-8.21(c)(4); (2) should have applied the Safe Haven Act; and (3) demonstrated bias against her based upon the decisions the judge made. We disagree and affirm substantially for the reasons set forth by the trial judge in her thorough oral decision.

Our task as an appellate court is to determine whether the decision of the family court is supported by substantial credible evidence in the record and is

consistent with applicable law. Cesare v. Cesare, 154 N.J. 394, 412 (1998). We owe particular deference to a trial judge's credibility determinations and to "the family courts' special jurisdiction and expertise[.]" Id. at 413. Unless the judge's factual findings are "so wide of the mark that a mistake must have been made[,]" they should not be disturbed, even if we would not have made the same decision if we had heard the case in the first instance. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (quoting C.B. Snyder Realty, Inc. v. BMW of N. Am., Inc., 233 N.J. Super. 65, 69 (App. Div. 1989)). "It is not our place to second-guess or substitute our judgment for that of the family court, provided that the record contains substantial and credible evidence to support" the judge's decision. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012).

Through the admission of "competent, material and relevant evidence," the Division must prove by a preponderance of the evidence that the child was abused or neglected. N.J.S.A. 9:6-8.46(b). In pertinent part, N.J.S.A. 9:6-8.21(c)(4) defines an "abused or neglected child" as:

> 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 [or her] parent or guardian . . . to exercise a minimum degree of care . . . 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 . . . in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof . . . .

Our Supreme Court has interpreted a failure to exercise a minimum degree of care to mean parental conduct that is "grossly negligent or reckless." N.J. Div. of Child Prot. & Permanency v. Y.N., 220 N.J. 165, 180 (2014) (quoting N.J. Div. of Child Prot. & Permanency v. T.B., 207 N.J. 294, 306 (2011)). For that reason, conduct that is merely inattentive or only negligent is insufficient to support a finding of abuse or neglect. Ibid. (citing N.J. Dep't of Youth & Family Servs. v. J.L., 410 N.J. Super. 159, 168-69 (App. Div. 2009)). Determining "[w]hether a particular event is to be classified as merely negligent or grossly negligent defies 'mathematical precision.'" N.J. Div. of Child Prot. & Permanency v. E.D.-O., 223 N.J. 166, 185 (2015) (alteration in original) (quoting Div. of Youth & Family Servs. v. A.R., 419 N.J. Super. 538, 544 (App. Div. 2011)).

Applying these principles to the facts of this case, we are satisfied the trial judge properly concluded that the Division met its burden of demonstrating defendant abused or neglected M.S. by failing to exercise a minimal degree of care for her after the child's birth. After the hospital learned that defendant and

the baby tested positive for marijuana and contacted the Division, defendant stated she would cooperate with the Division's offer of services, including a home assessment. She told the Division that although she had recently lost her job, she had food stamps and had already applied for WIC benefits for the child.

However, defendant deliberately gave the Division and the hospital a false name and incorrect telephone numbers. By chance, the Division was still able to contact defendant when she was at the hospital and defendant again agreed to the home assessment. The Division then learned that the address defendant gave for her residence did not exist.

None of defendant's actions can reasonably be classified as inattentive or merely negligent. And defendant's actions caused real harm to M.S. Because defendant could not be located, M.S. remained in the hospital longer than necessary. The Division ultimately had to place the child with a non-relative resource home because the contact information defendant provided rendered the agency unable to make other arrangements. See N.J. Div. of Youth & Fam. Servs. v. C.S., 367 N.J. Super. 76, 111 (App. Div. 2004) (stating that "[c]hildren have their own rights, including the right to a permanent, safe and stable placement"). In short, the record amply supports the judge's conclusion that

defendant's intentional failure to provide an appropriate plan for M.S.'s care and security constituted abuse or neglect under N.J.S.A. 9:6-8.21(c)(4).

As she did before the trial judge, defendant argues that her actions in expressing a desire to care for M.S., while deliberately giving false information to the Division and then absenting herself from the baby's life, should have been construed as an invocation of the Safe Haven Act. This argument lacks merit.

"The three main principles behind [the] Safe Haven [Act] are safety for the child, anonymity, and immunity from prosecution for the biological parents." In re Doe, 416 N.J. Super. 233, 239 (Ch. Div. 2010). N.J.S.A. 30:4C-15.7(b) provides:

> If a person who voluntarily delivers a child who is or appears to be no more than 30 days old to, and leaves the child at an emergency department of a licensed general hospital in this State and does not express an intent to return for the child, . . . the hospital shall
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> (1) take possession of the child without a court order;
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> (2) take any action or provide any treatment necessary to protect the child's physical health and safety; and
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> (3) no later than the first business day after taking possession of the child, notify the Division . . . that the hospital has taken possession of the child.
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> [(emphasis added).]

"In passing the Safe Haven [Act], the New Jersey Legislature found that 'New Jersey and the nation have experienced sorrow in the knowledge that newborn infants are sometimes abandoned in life-threatening situations and that some of these children have been harmed or have died as a consequence of their abandonment.'" Doe, 416 N.J. Super. at 239-40 (citing N.J.S.A. 30:4C-15.6(a)). "The Legislature acknowledged that parents of unwanted infants are often under severe emotional stress and that they may need a safe way to surrender their children to prevent them putting the infants in dangerous or life-threatening situations." Id. at 240 (citing N.J.S.A. 30:4C-15.6(b)).

Here, defendant told the Division caseworker she would accept the services the Division offered her, and agreed to a home assessment. She stated she had already been making financial plans for the child and had the support of her grandmother. Even after she left the hospital, defendant continued to tell the caseworker she would cooperate in the care for her child. Surrenders under the Safe Haven Act are performed with a disinterest in reunification. N.J.S.A. 30:4C-15.7. Because defendant clearly "express[ed] an intent to return for" M.S., her actions simply cannot be construed as an invocation of the Safe Haven Act.

Finally, we discern no basis for defendant's contention that the trial judge was biased against her. Instead, the record reflects that the judge thoroughly considered defendant's contentions and properly found them lacking in merit. "Bias cannot be inferred from adverse rulings against a party." Strahan v. Strahan, 402 N.J. Super. 298, 318 (App. Div. 2008). Thus, the mere fact that the judge made adverse rulings against defendant does not suggest the judge was biased against her.

Affirmed.