

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1956-20

NEW JERSEY DIVISION  
OF CHILD PROTECTION  
AND PERMANENCY,

Plaintiff-Respondent,

v.

G.G.,

Defendant-Appellant,

and

C.B. and S.B., SR.,

Defendants.

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IN THE MATTER OF  
S.B., JR. and J.G., minors.

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Submitted March 30, 2022 – Decided May 13, 2022

Before Judges Accurso and Enright.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Essex County, Docket  
No. FN-07-0221-19.

Joseph E. Krakora, Public Defender, attorney for  
appellant (Patricia Nichols, Assistant Deputy Public  
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Matthew J. Platkin, Acting Attorney General, attorney  
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Joseph E. Krakora, Public Defender, Law Guardian,  
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Public Defender, of counsel; Melissa R. Vance,  
Assistant Deputy Public Defender, of counsel and the  
brief).

#### PER CURIAM

Defendant G.G. (Gayle)<sup>1</sup> appeals from a May 10, 2019 order finding she  
neglected her children within the meaning of N.J.S.A. 9:6-8.21(c). We affirm.

#### I.

Gayle is the mother of two children: S.B., Jr. (Junior), now nine years  
old, and J.G. (Joel), who is four years old. The children have different biological  
fathers; S.B., Sr. (Senior) is Junior's biological father and C.B. (Cole) is Joel's  
biological father. Senior and Cole are not involved in this appeal.

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<sup>1</sup> We use initials and pseudonyms to protect the confidentiality of these  
proceedings. R. 1:38-3(d)(12).

Gayle has a prior history with the Division of Child Protection and Permanency. In November 2018, the Division received a referral from Junior's school expressing concerns about his wellbeing. According to the referral, Junior, then six years old, "ha[d] been late to school [fifteen] times . . . and absent [three] times" since the beginning of the school year and walked to and from school alone. Additionally, the reporter advised that Junior: was not getting adequate food daily; had "untreated ringworm since September," causing him to pull his hair out; and he did not have a winter coat.

Division worker Natasha Lewis investigated the referral and conducted interviews of Gayle, Junior, Cole, and Gayle's mother, V.G. (Vera). Junior confirmed he often arrived at school late and walked to and from school by himself. When he overheard Gayle refute this, Junior interjected, "why are you lying?" Gayle denied having any mental health issues.

Cole later notified Lewis that Gayle suffered from bipolar disorder, "switche[d] moods quickly," and had "attempted to commit suicide years ago by taking pills." Vera also expressed concern to the Division about her grandchildren's well-being while in Gayle's care.

Ultimately, the Division did not substantiate the charges from the November 2018 referral. Instead, it recommended a follow-up with Gayle regarding supervision of the children and her mental health.

The Division received another referral from Junior's school in January 2019. The referent advised that members of the local fire department recently brought Junior to school at 10:30 a.m. after a neighbor observed him playing in the snow alone. Junior corroborated this incident happened. He reported a "stranger" instructed him to follow his car to the fire station, brought him inside, and firefighters subsequently brought Junior to school. Additionally, Junior told Lewis that he made himself breakfast before school and still walked to and from school by himself. Gayle continued to deny Junior walked to school by himself. According to Lewis, Junior's school staff also confirmed Junior appeared "unkempt" while in school.

On January 24, 2019, Gayle's parents agreed to provide Lewis with access to Gayle's building to investigate the children's well-being. Gayle's parents were able to open the door to the building but could not access Gayle's upstairs apartment. When Lewis proceeded up the stairs to the door of Gayle's apartment, she knocked several times, and loudly identified herself. Gayle did not answer the door, so Vera called the police and requested a welfare check.

Gayle's father also "attempted to knock[] the door down with his shoulders" but noticed something was blocking the door. While Vera was still on the phone with the police, she stated she believed Gayle had "barricaded herself and [her] children in the home."

Officers Chamberlin and Diaz of the East Orange Police Department arrived on scene in uniform and found the apartment door to be ajar but "stuck, like something was behind it."<sup>2</sup> Officer Chamberlin knocked on the door "three or four" times but received no answer. He also unsuccessfully attempted to push in the door, but it was blocked. The officers also tried to access the apartment via a fire escape but found it, too, was "blocked" and "boarded up."

After the officers contacted the local fire department for assistance, firefighters breached the door of Gayle's apartment. Upon entering, Lewis noticed a chair and futon mattress were blocking the door. The apartment was "pitch black" and Gayle appeared to have unscrewed all the lightbulbs in the apartment. Lewis also observed the "home was in disarray with clothes and trash all over the living room and in [the] children's room."

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<sup>2</sup> Officer Chamberlin is also referenced in the record as "Officer Chatelain."

The officers approached Gayle's locked bedroom door, knocked, and announced themselves. Firefighters were able to access the bedroom and discovered Gayle and the children inside the room. According to Officer Chamberlin, Gayle was holding a hammer in her hand and Joel in her arms. Junior was inside a "makeshift fort" consisting of a wooden bedframe with various items placed on top. Junior "stuck his head out" after officers assured him he was not in danger, but he quickly retreated after Gayle yelled "get back" and instructed Junior "not to [come out] and not to talk to [the police]." First responders were able to remove the hammer from Gayle, but when she was asked to put Joel down, she became "combative" and "cursed at" the police officers.

EMS arrived and attempted to remove Joel from Gayle's arms. Gayle bit Joel's shirt so officers "wouldn't take him off of her," and she kicked an EMS worker in the groin. Four officers had to "tackle" Gayle and restrain her "to pry [Joel] away from her." She was subsequently taken to University Hospital. The hospital records noted Gayle presented symptoms of "aggressive behavior," "agitation," and "poor judgment," and appeared "mildly paranoid."

Lewis conducted "a full walkthrough of the apartment" after Gayle was removed. She discovered there was no food in the kitchen, or in the rest of the residence, including the rooms the children were in. She also observed the

"kitchen door [was] barricaded" with a board, "mashed up pizza" was on the floor, a "pot of old pasta" was on the stove, and "clothes [were] all over."

Lewis interviewed Junior after the children were relocated to the basement of the residence to be with their grandparents. Lewis testified Junior was "crying," "shaking," and "very distraught . . . by what he had just [seen]." When he calmed down, he told Lewis he was still waking himself up for school, fixing breakfast, and walking alone to school while his mother remained asleep. He also told Lewis the family had been barricaded in the home since "either Friday or Saturday," and Gayle "made the fort and instructed him to stay inside" when police arrived. When Junior's grandparents brought him food, Lewis observed Junior "eating . . . rather quickly." Junior told Lewis he had not eaten that day or the day prior. Lewis asked Junior when he had last eaten, and he responded, "Monday," three days prior.

The Division placed the children with their maternal grandparents after the incident, but the next day, Gayle sneaked into her parents' home to regain custody of the children. Gayle's aunt contacted the police, who found Gayle and the children nearby.

When Lewis contacted Gayle and tried to explain why the children were removed, Gayle "continued to try to plead her case." She claimed her apartment

was messy on January 24 because the fire department knocked down her door. She also explained she did not have food in the apartment "because she was unable to go food shopping."

On March 5, the Division substantiated charges against Gayle for neglect, pursuant to N.J.S.A. 9:6-8.21(c)(4), due to: (1) her failure to provide her children with basic needs, including adequate food, and (2) her placing the children at a substantial risk of harm on January 24.

On May 10, 2019, Judge Nora J. Grimbergen presided over a fact-finding hearing. When the proceeding began, all parties waived opening statements without objection. The Division and defendant further agreed to admit various exhibits into evidence, including a police report, on the condition that "no third-party hearsay" would be considered "for the truth of the matter asserted in those documents." Defendant's attorney also agreed Gayle's medical records could be admitted so long as they did not contain a "complex medical diagnosis"; counsel for the Division represented "there was none . . . in those [medical records]."

The Division called Officer Chamberlin and Lewis to testify. Both corroborated the events of January 24. Lewis also testified about the Division's prior involvement with the family. Neither the defendant nor the Law Guardian



presented any witnesses nor proffered any exhibits, but the Law Guardian confirmed she agreed with the Division's position.

Following closing arguments, Gayle asked for the opportunity to testify; the judge granted her belated request. During her testimony, Gayle denied Junior walked to school by himself. She also refuted allegations about a lack of food in her apartment on January 24, stating she had food in a refrigerator in her bedroom, although her "fridge was not stockpiled." She also asserted Junior's "appetite was decreased" in the days leading up to January 24 because he was sick. Further, notwithstanding the testimony of Lewis and Officer Chamberlin to the contrary, Gayle stated her "home was not in disarray" when first responders came to her home on January 24; she also denied the police or Lewis announced who they were when they first came to her home.

In describing the January 24 incident, Gayle stated she heard "banging" at the door but did not answer it because she feared it was Cole. She also admitted she "flung" a mattress over her stairwell to barricade the door, blocked the fire escape, and obstructed the kitchen and bedroom doors with a "laundry bag that had clothes in it . . . and two totes . . . [filled] with paperwork." Further, Gayle conceded she constructed the fort in her apartment and she "wasn't all the way calm" during the incident. She explained she reacted as she did because first

responders "came bombarding [her] house." Also, she stated the police ultimately identified themselves before they breached her bedroom door but she "needed to verify that it was them." According to Gayle, once she saw the officers, she "didn't fight with them." Moreover, she stated she did not recall "kicking the EMT officer."

After Gayle testified, Judge Grimbergen allowed counsel to provide additional closing remarks. Immediately thereafter, the judge rendered her decision from the bench, finding the Division met its burden of proof in establishing Gayle abused or neglected her children, as defined under N.J.S.A. 9:6-8.21(c). The judge explained Gayle "kept her children in the home for several days without food," "with a mattress and chair barricading the door." Additionally, the judge noted Gayle did not open either her apartment or bedroom door on January 24, despite that Lewis and Officer Chamberlin knocked and "announced their presence loudly." Moreover, the judge found Gayle "exhibited bizarre and concerning behavior" when the Division worker entered her home, "which continued, causing her to be admitted to Crisis." The judge also concluded Gayle's concerns that Cole was at her apartment that day did "not reasonably explain all of her behaviors," such as telling Junior "to get back into the [makeshift] fort" once the police came to her home. Further, the

judge noted that once Gayle was removed from her home, she "was admitted into Crisis at University Hospital where she [was] observed to be aggressive and agitated with poor judgment" and "her degree of incapacity was moderate."

Next, Judge Grimbergen found Gayle's testimony was "completely inconsistent with the bulk of the other evidence without reasonable explanation" and Gayle "contradicted a number of her own prior statements in evidence." The judge also determined Gayle's "narrative seemed rehearsed" and she "presented with . . . a flat affect."

Conversely, the judge found Lewis's testimony was credible and "consistent with the other evidence that ha[d] been admitted." The judge noted Lewis "readily responded to questions" and "acknowledged facts that were not in the Division's favor on cross-examination." Additionally, the judge determined Officer Chamberlin's testimony was credible because he "maintained good eye contact," "did not hesitate in his responses," and his "responses were thoughtful and considered." Based on her factual and credibility findings, the judge was persuaded Gayle's actions "put the children at risk of harm and therefore, they [were] abused and neglected children pursuant to Title [Nine]."

## II.

On appeal, Gayle argues the judge: ignored contradictory facts and considered excluded evidence to find Gayle neglected her children; and failed to analyze and identify statutory elements under N.J.S.A. 9:6-8.21(c) to warrant a finding of neglect. Gayle also contends the State's decision to waive its opening statement deprived her of due process. These arguments are unavailing.

Our review of a Family Part's decision is limited to determining whether it is supported by substantial credible evidence and is consistent with applicable law. N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448-49 (2012) (citations omitted). A reviewing court grants particular deference to the trial court's credibility determinations, and only overturns those determinations when they are "so wide of the mark that a mistake must have been made." N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 279 (2007) (internal citations and quotation marks omitted). Consequently, we only disturb a family court's findings if they are "so wholly insupportable as to result in a denial of justice[.]" In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974)).

While we owe special deference to a trial court's fact finding because of its expertise in family matters, Cesare v. Cesare, 154 N.J. 394, 413 (1998), we

review a trial court's legal conclusions de novo, Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Applying these standards, we find no basis to disturb Judge Grimbergen's credibility and factual findings. Accordingly, her legal conclusions are unassailable.

Title Nine makes clear that "abuse or neglect" may occur when a child's "physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of" a parent's failure "to exercise a minimum degree of care . . . in supplying the child with adequate food, clothing, [or] shelter[.]" N.J.S.A. 9:6-8.21(c)(4)(a). A parent may fail "to exercise a minimum degree of care when he or she is aware of the dangers inherent in a situation and fails adequately to supervise the child or recklessly creates a risk of serious injury to that child." G.S. v. Dep't of Hum. Servs., 157 N.J. 161, 181 (1999) (citation omitted). The Division must prove its allegations of abuse or neglect by a preponderance of the evidence at a fact-finding hearing. N.J.S.A. 9:6-8.46(b)(1).

Importantly, "[c]ourts need not wait to act until a child is actually irreparably impaired by parental inattention or neglect." In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999) (citing N.J. Div. of Youth & Fam. Servs. v. A.W., 103 N.J. 591, 616 n.14 (1986)). When there is an absence of actual harm,

"a finding of abuse and neglect can be based on proof of imminent danger and substantial risk of harm." N.J. Div. of Youth & Fam. Servs. v. A.L., 213 N.J. 1, 23 (2013).

Regarding Gayle's first argument, she cites Rule 1:7-4 and essentially contends the judge not only erred in analyzing the evidence presented, but mistakenly found Gayle abused or neglected her children.<sup>3</sup> We disagree.

The record reflects Gayle's testimony was in stark contrast to that of Officer Chamberlin and Lewis, yet the testimony of the officer dovetailed with that of the Division worker. In assessing this testimony, the judge found Gayle was not credible, whereas she credited the Division's witnesses.

"When the credibility of witnesses is an important factor, the trial court's conclusions must be given great weight and must be accepted by the appellate court unless clearly lacking in reasonable support." N.J. Div. of Youth & Fam. Servs. v. F.M., 375 N.J. Super. 235, 259 (App. Div. 2005) (citing D.M.H., 161 N.J. at 382). The consistency of a witness's statements is an important consideration in determining credibility. See State v. Duprey, 427 N.J. Super.

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<sup>3</sup> Rule 1:7-4(a) provides a court "shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right, and also as required by R[ule] 3:29."

314, 323 (App. Div. 2012). A trial court may choose to disbelieve testimony if the witness's statements are inconsistent. See P.B. v. T.H., 370 N.J. Super. 586, 601-02 (App. Div. 2004) (affirming the trial court's determination the defendant was not credible because his testimony had "glaring inconsistencies"). Here, the judge's credibility determinations are amply supported by the record and are entitled to our deference.

Next, to the extent Gayle argues the judge's findings rested on inadmissible evidence, including embedded hearsay in Division's records, Junior's statements, and Gayle's medical records, her argument is belied by the record.

When establishing abuse or neglect under Title Nine, the Division must show by a preponderance of the "competent, material and relevant evidence" that the child is "abused or neglected." N.J.S.A. 9:6-8.46(b). Evidence produced by the Division "may include 'any writing [or] record . . . made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a child in an abuse or neglect proceeding of any hospital or any other public or private institution or agency,'" as long as it meets the requirements for admissibility "akin to the business records exception." N.J. Div. of Youth &

Fam. Servs. v. P.W.R., 205 N.J. 17, 32 (2011) (alteration in original) (quoting N.J.S.A. 9:6-8.46(a)(3)).

Additionally, pursuant to N.J.S.A. 9:6-8.46(a)(4), a child's statements are insufficient to support a finding of abuse or neglect without other corroborating evidence. See N.J. Div. of Child Prot. & Permanency v. A.D., 455 N.J. Super. 144, 157 (App. Div. 2018) ("[T]he mere repetition and consistency of [a child's] statements are insufficient to support a finding of corroboration under N.J.S.A. 9:6-8.46(a)(4)."); N.J. Div. of Child Prot. & Permanency v. N.B., 452 N.J. Super. 513, 522 (App. Div. 2017). In determining corroboration, "[a] child's statement need only be corroborated by '[s]ome direct or circumstantial evidence beyond the child's statement itself.'" A.D., 455 N.J. Super. at 157 (second alteration in original) (quoting N.B., 452 N.J. Super. at 522).

Regarding evidentiary rulings, "we afford '[c]onsiderable latitude . . . [to a] trial court in determining whether to admit evidence, and that determination will be reversed only if it constitutes an abuse of discretion.'" N.B., 452 N.J. Super. at 521 (alteration in original) (quoting N.J. Div. of Child Prot. & Permanency v. N.T., 445 N.J. Super. 478, 492 (App. Div. 2016)). Also, where "objectionable hearsay is admitted in a bench trial without objection, we presume that the fact-finder appreciates the potential weakness of such proofs,



and takes that into account in weighing the evidence." N.J. Div. of Child Prot. & Permanency v. J.D., 447 N.J. Super. 337, 349 (App. Div. 2016) (citing In re Civ. Commitment of A.X.D., 370 N.J. Super. 198, 202-03 (App. Div. 2004)).

Mindful of these principles and given the agreement between counsel at the outset of the hearing as to what documents would be admitted in evidence, we are not convinced Judge Grimbergen erred in reviewing the evidence presented to her or that she relied on evidence outside the record. In fact, the record shows defendant's counsel stipulated to admitting "all the documents that were created by the Division." Additionally, counsel did not object to admitting Gayle's medical records, but simply objected to the judge considering any reference in those records to a "complex medical diagnosis." We also note Gayle's medical records would have been admissible under N.J.R.E. 803(c)(6), having been created in the regular course of business, within a short period of time after the incident, and under circumstances that indicated their trustworthiness. State v. Kuropchak, 221 N.J. 368, 387-88 (2015) (citing State v. Matulewicz, 101 N.J. 27, 29 (1985)).

To the extent the judge considered statements by Junior, such as his statement to Lewis that he had not eaten for three days as of the January 24 incident, Lewis corroborated there was no food in the apartment when she

conducted a "walk through" of Gayle's home; Lewis also observed Junior hastily eat when offered food right after the January 24 incident.

Next, we are not persuaded by Gayle's contention that the judge's legal analysis was flawed. As discussed, the statutory elements outlined under N.J.S.A. 9:6-8.21(c)(4) are that: (1) the child's "physical mental, or emotional condition has been impaired or is in imminent danger of becoming impaired"; and (2) the impairment or danger of impairment "is the result of the failure of his [or her] parent . . . to exercise a minimum degree of care." Here, the judge addressed those elements and determined Gayle abused or neglected her children because she failed to provide them with adequate food, barricaded them in the apartment, and refused to answer the door when first responders arrived to check on the children, thereby placing the children at substantial risk of harm. These findings are amply supported on this record.


Lastly, we address Gayle's newly minted due process claim. "Due process requires that a parent charged with abuse or neglect 'have . . . adequate notice and opportunity to prepare and respond.'" N.J. Div. of Youth and Fam. Servs. v. T.S., 429 N.J. Super. 202, 213 (App. Div. 2013) (alteration in original) (quoting N.J. Div. of Youth and Fam. Servs. v. N.D., 417 N.J. Super. 96, 109 (App. Div. 2010)). A party cannot adequately prepare for trial "where the notice

does not reasonably apprise the party of the charges, or where the issues litigated at a hearing differ substantially from those outlined in the notice." N.J. Div. of Youth and Fam. Servs. v. B.M., 413 N.J. Super. 118, 126-27 (App. Div. 2010) (quoting H.E.S. v. J.S.C., 175 N.J. 309, 321-22 (2003)).

Prior to the May 10 fact-finding hearing, the Division provided Gayle with notice of the allegations against her by way of a verified complaint. The record also reflects Gayle "kept referring to the [v]erified [c]omplaint," when Lewis spoke to her not long after the January 24 incident. Additionally, the Division served discovery in advance of the fact-finding hearing, and the parties stipulated to the admission of certain exhibits when the fact-finding hearing commenced. Further, Gayle's counsel did not object when the Division opted to waive its opening statement. And Gayle's counsel also waived his opening statement. Given these circumstances, we are persuaded Gayle was not deprived of due process.

To the extent we have not addressed any of Gayle's remaining arguments, we are satisfied they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.  
  
CLERK OF THE APPELLATE DIVISION