

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2559-20

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

S.A.,

Defendant,

and

G.R., Jr.,

Defendant-Appellant.

IN THE MATTER OF G.R., III
and M.R., minors.

Submitted March 29, 2022 – Decided April 21, 2022

Before Judges Smith and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Essex County, Docket
No. FN-07-0120-20.

Joseph E. Krakora, Public Defender, attorney for
appellant (Patricia Nichols, Assistant Deputy Public
Defender, of counsel and on the briefs).

Matthew J. Platkin, Acting Attorney General, attorney
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Attorney General, on the brief).

Joseph E. Krakora, Public Defender, attorney for
minors (Meredith Alexis Pollock, Deputy Public
Defender, of counsel; Neha Gogate, Assistant Deputy
Public Defender, of counsel and on the brief).

PER CURIAM

In this appeal, we consider whether defendant father abused or neglected his children by placing them at substantial risk of harm pursuant to N.J.S.A. 9:6-8.21(c)(4) when he shot a gun in the home, knowing the children were also in the home, and when he held his infant son in one arm while holding a knife in the other hand or having a knife nearby during an admitted "crisis situation" with police. The trial court found defendant abused and neglected both children by placing them at substantial risk of harm. We agree and affirm.

On October 18, 2019, the Madrigal¹ family was in the process of splitting up. Bianca, the biological mother of Max, age 2, and Manny, age two months, had finished packing and was about to leave with the children. Bruno, the biological father, was upstairs alone on the third floor where the family slept. A single shot from Bruno's gun was discharged, causing the police to respond to the home. When Bianca heard the gunshot, she ran upstairs and found Bruno sitting on the bed with a gun in his lap. She asked him what happened but he did not respond. She took the gun from Bruno and secured it by placing it under a bed on the second floor. Bianca handed Manny to Bruno when she took the gun from him so he could "say goodbye" to his son.²

When the gun went off the children were not on the third floor, but Bruno knew they were in the house and did not know exactly where they were. A shell casing was found on the stairs leading to the third floor and a bullet hole was found entering the third floor living room wall, exiting through the third-floor bedroom wall. Upon arrival, police examined the gun and learned it was loaded, containing nine live rounds and one in the chamber.

¹ We employ pseudonyms to protect the privacy of the parties and children. R. 1:38-3(d)(12).

² The record does not address where Max was at the moment Bianca took the loaded gun from Bruno or whether he was being supervised by an adult.

When police arrived, Max was with Bianca but Manny was still with Bruno on the third floor. Police attempted to speak to Bruno through the closed door leading to the third-floor, attic apartment. They could not see Manny at that time. Bruno eventually opened the door and stood halfway up the stairs holding Manny. There was a verbal standoff between Bruno and police on the stairs leading to the third-floor landing. According to the sworn testimony of Officer Pluta, Bruno held Manny in one arm and a black-handled knife in the other hand.³ Despite repeated requests, Bruno refused to hand Manny over to Bianca or the police. He was not menacing Manny with the knife or threatening to harm him, but he was agitated; cursing and yelling at the police to leave. Eventually, Bruno handed the baby over to Bianca and barricaded himself in the third-floor bedroom. After approximately twenty minutes, he came out and was taken to Rutgers UMDNJ Crisis center for evaluation.

³ In his interview with DCPD on October 23, 2019, Bruno denied holding a knife while holding Manny, but admitted he had knives next to him on the stairs during the standoff with police and while he held Manny. He told DCPD he had the knives on the stairs "to protect himself against the police." Bianca corroborated Bruno's statement to DCPD, stating Bruno took a knife when he learned police were coming, but she "did not recall" Bruno ever having a knife in his hand while holding Manny on the stairs. Both statements in DCPD's records are admissible pursuant to N.J.R.E. 803(b)(1) and N.J.R.E. 803(c)(25).

The Division of Child Protection and Permanency substantiated Bruno for neglect/risk of harm because Bruno "shot a gun off in the home and held knives in the presence of the children that could have harmed others." Bianca was not substantiated. After a fact-finding hearing on February 7, 2020, where Officer Pluta and the DCPD caseworker testified, the trial court issued an oral opinion, finding Bruno neglected both children pursuant to N.J.S.A. 9:6-8.21 because "he placed his children at substantial risk of harm when he shot a gun in the home while the children were also in the home." Further, the court found he placed Manny "at substantial risk of harm when he refused to comply with police while holding [Manny] in one hand while he had a knife in the other."

Bruno urges us to reverse the finding of neglect against him, claiming the trial court committed error in finding Bruno violated the statute by shooting a gun in the home while the children were also in the home; by refusing to comply with the police while holding Manny and a knife; and by acting grossly and wantonly negligent while in the midst of a mental health crisis. Bruno alternatively claims he was in the midst of a mental health crisis and claims the gun discharged accidentally while he was cleaning it, and he was not holding a knife while he held Manny. Bruno also claims the trial court erred in relying upon hearsay statements in the DCPD record in reaching its conclusions.

Our review of the trial judge's factual finding of abuse or neglect is limited; we defer to the court's determinations "when supported by adequate, substantial, credible evidence." N.J. Div. of Youth & Fam. Servs. v. I.Y.A., 400 N.J. Super. 77, 89 (App. Div. 2008) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). The trial court is best suited to assess credibility, weigh testimony, and develop a feel for the case, and we extend special deference to the Family Part's expertise. N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 342-43 (2010); Cesare, 154 N.J. at 413. Unless the trial judge's factual findings are "so wide of the mark that a mistake must have been made" they should not be disturbed. N.J. Div. of Youth & Fam. 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 & Fam. Servs. v. F.M., 211 N.J. 420, 448-49 (2012).

Title Nine was enacted "to provide for the protection of children . . . who have had serious injury inflicted upon them by other than accidental means." N.J.S.A. 9:6-8.8(a). This legislation is intended "to assure that the lives of innocent children are immediately safeguarded from further injury and possible

death and that the legal rights of such children are fully protected." Ibid. In construing this provision, our courts have emphasized the primary concern of Title Nine is the protection of children, not the culpability of parental conduct. See G.S. v. Dep't of Human Servs., 157 N.J. 161, 177 (1999) (citing State v. Demarest, 252 N.J. Super. 323, 331 (App. Div. 1991)). A court does not have to wait until a child is actually harmed or neglected before it can act in the interest of that minor. N.J. Div. of Youth & Fam. Servs. v. V.M., 408 N.J. Super. 222, 235-36. (App. Div. 2009) ((Carchman, J. concurring) citing In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999)). Nor does harm to the child need to be intentional in order to substantiate a finding of abuse or neglect. See M.C. III, 201 N.J. at 345.

In determining a case of abuse or neglect, the court should base its determination on the totality of the circumstances. N.J. Div. of Youth & Fam. Servs. v. V.T., 423 N.J. Super. 320, 329 (App. Div. 2011). We recognize that what constitutes abuse or neglect depends, in large measure, on the context of the situation. N.J. Division of Youth & Fam. Servs. v. J.L., 410 N.J. Super. 159, 168 (App. Div. 2009).

Pursuant to N.J.S.A. 9:6-8.21(c)(4), an "[a]bused or neglected child" includes "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 parent or guardian . . . to exercise a minimum degree of care" (emphasis added). While the phrase "minimum degree of care" is not defined within the statute, our Supreme Court has recognized this standard refers to conduct that is "grossly or wantonly negligent, but not necessarily intentional." G.S., 157 N.J. at 178; see also Dep't of Child. & Fams., Div. of Youth & Fam. Servs. v. T.B., 207 N.J. 294, 298 (2011). "Where an ordinary reasonable person would understand that a situation poses dangerous risks and acts without regard for the potentially serious consequences, the law holds him responsible for the injuries he causes." G.S., 157 N.J. at 179. Compare T.B., 207 N.J. at 309-10 (finding no gross negligence where a mother accidentally left her four-year-old son home alone, reasonably believing that his grandmother was there) with N.J. Div. of Youth & Fam. Servs. v. A.R., 419 N.J. Super. 538, 545-46 (App. Div. 2011) (upholding a finding of gross negligence where a father placed his ten-month-old child on a bed with no railings next to a radiator, despite his recognition of the potential danger of the situation). The standard for determining whether a parent has committed child neglect is not whether some potential for harm exists; a parent fails to exercise a minimum degree of care when he is "aware of the dangers inherent in a situation and fails to adequately

supervise the child or recklessly creates a risk of serious injury to the child." G.S., 157 N.J. at 181.

The critical issue before us pursuant to subsection (4) of the statute is whether there is sufficient admissible evidence in the record to support a finding Bruno's conduct that day amounted to a grossly negligent deprivation of a minimum degree of care. The trial court had no obligation to accept defendant's version of events -- that the gun accidentally went off while he was cleaning it -- when contrasting those statements with the eyewitness testimony of Officer Pluta who testified as to the surrounding circumstances; the gun was loaded and contained ten rounds and Bruno was belligerent and in crisis. Bianca told DCPD she asked Bruno about the gunshot noise and he did not respond. Specifically, Bruno did not tell Bianca he was cleaning the gun and it accidentally discharged. He also did not tell police the gun accidentally discharged when they arrived at the scene. By his own admission, Bruno was licensed to carry a gun in Florida and knew the risks inherent in a loaded gun. Nevertheless, he fired a weapon knowing Max and Manny were in the house but not knowing where. The action of firing a weapon, for whatever motive, without knowing where the children

were, was grossly negligent and supports a finding of failure to exercise a minimum degree of care.⁴

With respect to the knife, defendant argues the trial court relied upon hearsay evidence in the police report stating Bruno brandished "what looked to be a knife." Bruno claims he was not holding a knife when he was holding his son during the standoff with police on the stairs. The court relied upon the uncontroverted, eyewitness testimony of Officer Pluta that Bruno was holding a knife in one hand and Manny in the other during the altercation of the stairs. Officer Pluta did not rely on the police report and answered the question affirmatively twice.

Moreover, counsel for Bruno did not cross-examine Officer Pluta with respect to the knives at all, only the gun. When DCPD moved its records into evidence at the fact-finding hearing, defendant objected to certain hearsay statements of Officer Pluta, the paternal grandmother, and the paternal aunt in those records and hearsay statements in the police report. DCPD did not object to redacting the statements of the paternal grandmother and aunt. The court

⁴ Although not relied upon by the trial court, allowing Bianca to take possession of a loaded gun, while two-year old Max was in her care, whether Max was present in the room with them or not, and leave the room with the gun, would also provide sufficient evidence of wantonly negligent behavior.

overruled defendant's objection as to the admissibility of Officer Pluta's hearsay statements "because he testified and could have been cross-examined by it." "The doctrine of invited error operates to bar a disappointed litigant from arguing on appeal that an adverse decision below was the product of error, when that party urged the lower court to adopt the proposition now alleged to be error." M.C. III, 201 N.J. at 340 (quoting Brett v. Great Am. Recreation Inc., 144 N.J. 479, 503 (1996)). Appellant may not raise objections on appeal which it failed to preserve at the trial court. Id. at 341-40. While counsel objects the trial court improperly considered hearsay evidence about the standoff from the investigation summary, Officer Pluta testified to the same events, which the trial court properly considered. Counsel for defendant did not cross-examine Officer Pluta with respect to any testimony regarding the knives. In short, we find no error in the trial court's reliance on Officer Pluta's direct eyewitness testimony.

Finally, both Bruno and Bianca stated Bruno had a knife within reach and Bruno stated he intended to use it to defend himself against the police. N.J.R.E. 803(b)(1) provides as an exception to the hearsay exclusionary rule for the admissibility of statements made by a person who is a party to an action if the statement is offered against them in that action. See State v. Kennedy, 135 N.J. Super. 513, 522 (App. Div. 1975). See also, Biunno, Weissbard, & Zegas,

Current N.J. Rules of Evidence, cmt. 1 on N.J.R.E. 803(b)(1) (2022). Further, N.J.R.E. 803(c)(25) excepts party statements against interest from the general hearsay exclusionary rule. This includes statements by the party declarant which, at the time of its making, were contrary to declarant's "pecuniary, proprietary, or social interest, or so far tended to subject declarant to civil or criminal liability . . . that a reasonable person in declarant's position would not have made the statement unless the person believed it to be true." Hill v. N.J. Dept. of Corrs. Comm'r Fauver, 342 N.J. Super. 273, 301 (App. Div. 2001); see also, Biunno, Weissbard, & Zegas, Current N.J. Rules of Evidence, cmt. 1 on N.J.R.E. 803(c)(25) (2022).

In examining the totality of the circumstances, the trial court did not err in relying on the testimony of Officer Pluta that Bruno, while in crisis, held his two-month-old son in one hand, a knife in the other, and refused to cooperate with police in handing his son over to them. Those actions were wantonly negligent and placed Manny at substantial risk of imminent harm.

Finally, there is no question Manny was an infant with an intensive need for continuous supervision. The Supreme Court has recognized determining what constitutes abuse and neglect is a fact-sensitive inquiry where the assessment may vary based on the age of the child. N.J. Div. of Youth & Fam.

Servs. v. P.W.R., 205 N.J. 17, 38 (2011). Bruno's refusal to hand Manny over to the police during what he admitted was a crisis, despite repeated requests and while having access to a knife -- further escalating the volatile situation -- placed Manny at substantial risk of imminent harm he would be physically hurt during an intervention by the police because he could not protect himself at his tender age. Bruno asserts he was unable to act grossly negligent because he was allegedly suffering a mental health crisis, but gross or wanton negligence need not be intentional. T.B., 207 N.J. at 305.

We are satisfied there was competent, credible and admissible evidence in the record to support the trial judge's finding that defendant neglected his children by placing them at substantial risk of harm. The children were in imminent danger when Bruno fired a gun in the home while the children were also home, and by having knives near him in an altercation with police while holding the infant Manny in his arms and refusing to comply with police.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION