

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2973-20

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

A.H.,

Defendant-Appellant,

and

M.L. and J.N.,

Defendants.

IN THE MATTER OF J.L.L.,
A.P.H., and Z.N., minors.

Argued May 2, 2022 – Decided May 24, 2022

Before Judges Enright and Marczyk.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Hudson County,
Docket No. FN-09-0216-20.

David A. Gies, Designated Counsel, argued the cause
for appellant (Joseph E. Krakora, Public Defender,
attorney; David A. Gies, on the briefs).

Meaghan Goulding, Deputy Attorney General, argued
the cause for respondent (Matthew J. Platkin, Acting
Attorney General, attorney; Melissa H. Raksa,
Assistant Attorney General, of counsel; Meaghan
Goulding, on the brief).

Linda Vele Alexander, Designated Counsel, argued the
cause for minors (Joseph E. Krakora, Public Defender,
Law Guardian, attorney; Meredith Alexis Pollock,
Deputy Public Defender, of counsel; Linda Vele
Alexander, on the brief).

PER CURIAM

In this Title Nine case, defendant A.H. (Ashley)¹ appeals from a
September 14, 2020 order finding she abused or neglected her children within
the meaning of N.J.S.A. 9:6-8.21(c)(4)(b). We affirm.

I.

Ashley is the mother of three children: J.L.L. (Jacob), A.P.H. (Adam),
and Z.N. (Zoey), ages nine, seven, and five, respectively. Defendant M.L.

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

(Mario) is the biological father of Jacob and Adam, and defendant J.N. (John) is Zoey's biological father. Neither father is involved in this appeal.

Ashley's history with the Division is longstanding. In fact, she was placed in the Division's custody as a minor. Before Ashley reached majority in 2013, she gave birth to Jacob. Just a few days after Jacob was born, the Division executed an emergency Dodd² removal of the infant based on Ashley assaulting a staff member at a "Mommy and Me" program. Following Adam's birth in June 2014, the Division effectuated a second Dodd removal. Ashley was reunified with her sons in January 2017, and Zoey was born five months later.

In 2018, the Division removed Jacob and Adam again, and was awarded care and supervision of Zoey after Ashley threatened to commit suicide and punched a police officer. Ashley was substantiated for neglect, but later was reunified with the boys and granted joint custody of Zoey with John. The Division closed its case against Ashley in early February 2020.

² "A 'Dodd removal' refers to the emergency removal of a child from the home without a court order, pursuant to the Dodd Act, which, as amended, is found at N.J.S.A. 9:6-8.21 to -8.82. The Act was authored by former Senate President Frank J. 'Pat' Dodd in 1974." N.J. Div. of Youth & Fam. Servs. v. N.S., 412 N.J. Super. 593, 609 n.2 (App. Div. 2010).

II.

At approximately 4:00 a.m. on February 22, 2020, Ashley called John, screaming that "the Lord's blood was all over her and . . . the devil was trying to . . . take her and [Zoey] and kill her." Fearing for Zoey's safety, John rushed to Ashley's apartment. Ashley refused to let John into her apartment when he arrived and repeated her comments about "the Lord's blood" and the devil. John heard Zoey crying and screaming "Mommy, Mommy" from outside the door. He called the police for assistance at approximately 5:00 a.m.

When officers arrived, Ashley barricaded herself inside the apartment and refused them entry. Once she opened the door slightly, officers were able to force their way into her apartment. Jacob and Adam were sleeping but woke up when they heard the police inside the apartment.

Ashley retreated into the bathroom with two-year-old Zoey in her arms. John could hear his daughter still "crying and screaming." Ashley continued yelling and when officers approached her, she bit one of them. The police managed to pull Zoey from Ashley's arms, and John retrieved his daughter inside the apartment. Zoey "was still . . . crying and scared[,] was "barely dressed," and her pants were soiled. Ashley was transported to a local hospital for treatment.

A few days after the incident, the Division was granted custody of Jacob and Adam; it also was granted care and supervision of Zoey, but Zoey remained in John's physical custody.

The Division was unable to interview Ashley while she was hospitalized. Because Ashley was subsequently incarcerated, a Division intake worker, Shaneah Thompson, attempted to speak to her at the jail, but Ashley refused. In April 2020, Ashley finally agreed to speak with Thompson. Ashley told Thompson she had been hallucinating on February 22 and could not recall who called the police or why they came to her apartment that morning. She related that a week prior to incident, she had trouble sleeping, so her mother offered her drugs identified as Seroquel. Ashley later believed she was actually given Ecstasy pills.

Further, Ashley reported that after she ingested the unprescribed pills, she and her boyfriend were "fighting a lot" in the week leading up to the incident; she "felt like she was poisoned[,] and "losing her mind." Ashley also admitted barricading herself from the police when they arrived at her apartment. Despite the police informing the Division Ashley's children were home during the incident, Ashley told Thompson "the children were not at her home" but "were with her mother . . . when the police responded." She later stated the children

were in the apartment when the police arrived. Based on its investigation, the Division substantiated Ashley "for the allegation of Substance Abuse of Caregiver Threatens Child."

Judge Bernadette N. DeCastro scheduled the fact-finding trial for September 14, 2020 and directed it proceed virtually due to the ongoing pandemic. Shortly before the hearing, Ashley's attorney moved to have the trial conducted in person. Judge DeCastro denied this request on September 10, during a Zoom hearing. She ordered the trial to proceed virtually, citing the New Jersey Supreme Court's July 24, 2020 Seventh Omnibus Order.³ The judge found the matter was not complex, and did not qualify as the type of case to proceed in person. Further, the judge concluded there was "no reason" Ashley could not participate in the hearing at her attorney's office if she chose not to use video resources offered through the Division.

³ On July 22, 2020, our Supreme Court authorized incremental resumption of only certain criminal and civil trials. See Notice to the Bar COVID-19—Criminal and Civil Jury Trials to Resume Incrementally Using a Hybrid Process with Virtual (Video) Jury Selection and Socially Distanced In-Person Trials (July 22, 2020). In its Seventh Omnibus Order, the Court authorized "trials to be conducted in person with social distancing, consistent with the Court's July 22, 2020 Order[.]" See Notice to the Bar COVID-19—Seventh Omnibus Order on Court Operations and Legal Practice—Concluding Certain General Extensions; Continuing Individualized Adjustments (July 24, 2020).

Ashley's counsel immediately requested a stay of the ruling; the judge denied the stay. Ashley was present for the September 10 Zoom hearing, and once she learned the judge denied the stay, she interjected that her "children were not even at the house when the officers arrived. They were with [her] mom." She qualified her response, stating "[m]y boys were with my mom, my daughter was with me and her father." Further, Ashley stated she did not "know what the pill . . . did to [her]," and she was "getting sick of the lies and the biases in this whole entire case." Addressing the court, she added, "you might as well put those kids up for adoption. I'm not going to keep fighting for them in this case." She also told her attorney, "I'm dead serious Put the kids up for adoption and fuck the whole entire Division in this case." At that point, the judge concluded the hearing.

Four days later, Judge DeCastro commenced the fact-finding trial. Ashley was not present when the hearing began, but her attorney represented Ashley was "on her way" to counsel's office and asked the judge to recess pending her client's arrival. After a break of approximately forty minutes, Ashley's attorney informed the court Ashley had arrived, could not "connect with the video," but had joined the proceedings by phone and was "in close proximity" to counsel.

The Division called John as its first witness. He described the February 22 incident and confirmed Ashley called him early that morning, screaming "the Lord's blood was over her and that the devil was trying to basically take her and our daughter and kill her . . . and that she needed help." He also testified Ashley did not allow the police into her home but they "finally gained entry[,] " restrained Ashley and he was "able to . . . grab" Zoey. John stated Zoey was "frightened[,] " "scared[,] " "soiled[,] " and "barely dressed" when he retrieved her. He also testified Jacob and Adam were present during the incident, and that when he went inside the apartment, it was in disarray, with "clothes everywhere, broken fragments of objects and dog feces on the floor."

Shortly after John's testimony began, Ashley's attorney requested a recess to confer with her client. When the trial resumed a few minutes later, Ashley's attorney notified the judge Ashley was "no longer on the phone," adding, "[s]o Your Honor, if you'd like to continue, knowing that my client is not present." John's direct examination resumed, and Ashley's attorney, as well as the law guardian, cross-examined him.

Thompson also testified for the Division. She confirmed interviewing Ashley in April 2020 and that when the two spoke, Ashley admitted her mother gave her unprescribed pills. Thompson stated Ashley ingested the pills for

"about a week" before the incident and "that she had been feeling [symptoms] throughout the week." According to Thompson, Ashley "suspect[ed the pills] . . . were not" Seroquel, and she felt "poisoned" and as if "she was losing her mind." Further, Thompson testified Ashley knew "at some point during the police responding that she did assault one of the officers" and "pretty much was resisting them coming into the home due to her hallucinations."

Judge DeCastro rendered a decision from the bench at the conclusion of the trial. She credited the testimony of the Division's witnesses and found Ashley "failed to exercise [a] minimum degree of care" with her children when she was their sole caretaker on February 22. The judge determined Ashley took a "drug she believed was [E]cstasy[,] causing her to hallucinate." Additionally, the judge concluded Ashley ingested medication for roughly a week which "caused her to not feel right[and] . . . caused her conflicts with her boyfriend."

Further, the judge credited John's testimony regarding the phone call he received from Ashley on the morning of February 22, when she said "she was covered with the Lord's blood, that the devil was going to take her and her child." Moreover, the judge found Ashley refused John or the police access to her apartment, and "the apartment was not in a condition where young children would be safe." Accordingly, the judge concluded the Division "met its burden

of proof by a preponderance of the evidence" that Ashley abused or neglected the children as defined under N.J.S.A. 9:6-8.21(c).

Before the hearing ended, the law guardian noted Ashley "initially was participating and her attorney indicated that she's no longer present" but "[n]o explanation has been given." The judge stated Ashley "left. She was in the office and then she was no longer there. So it wasn't a technical problem. . . . Nobody mentioned that it was technical." The following exchange occurred between the court and defense counsel:

[DEFENSE COUNSEL]: I appreciate Your Honor allowing my client time to get to my office. When she was here, I wasn't able to set it up so that she would be able to see the video So she then appeared by phone. So that was the technical issue. I don't know if that can be noted as well.

THE COURT: Right. And then she . . . hung up. Then she was not participating.

[DEFENSE COUNSEL]: That part is true. But up to that point –

THE COURT: Yes, we had a problem. Okay.

III.

On appeal, Ashley argues the following three points: (1) the Division failed to establish she was "grossly negligent"; (2) the Division failed to demonstrate "the children . . . at the time of her hallucinations were in

substantial risk of harm [as] illustrated by the Family Part Judge's absence of any particularized findings of fact"; and (3) her "due process protections were not safeguarded adequately" during the virtual trial. We disagree.

Our scope of review of the challenged order is limited. We must defer to the factual findings of the Family Part if they are sustained by "adequate, substantial, and credible evidence" in the record. N.J. Div. of Child Prot. & Permanency v. N.B., 452 N.J. Super. 513, 521 (App. Div. 2017) (citation omitted). That deference is justified because of the Family Part's "special jurisdiction and expertise in family matters." N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 343 (2010) (citation omitted). The reviewing court grants particular deference to the trial court's credibility determinations, and only overturns its determinations regarding the underlying facts and their implications when the "findings went 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). But we review de novo a trial court's interpretation of the law. D.W. v. R.W., 212 N.J. 232, 245-46 (2012).

Preliminarily, we observe that an "abused or neglected child" is

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

[N.J.S.A. 9:6-8.21(c)(4)(b).]

The Division bears the burden of establishing abuse or neglect by a preponderance of the evidence. N.J.S.A. 9:6-8.46(b); N.J. Div. of Youth & Fam. Servs. v. J.Y., 352 N.J. Super. 245, 262 (App. Div. 2002).

"[T]he phrase 'minimum degree of care' refers to conduct that is grossly or wantonly negligent, but not necessarily intentional." G.S. v. Dep't of Hum. Servs., 157 N.J. 161, 181-82 (1999). Thus, a parent "fails to exercise a minimum degree of care when [the parent] is aware of the dangers inherent in a situation[,]" but "fails adequately to supervise the child or recklessly creates a risk of serious injury to that child." Id. at 181. Actual harm need not be shown to establish a Title Nine violation. G.S., 157 N.J. at 177; see also N.J. Div. of Child Prot. & Permanency v. R.W., 438 N.J. Super. 462, 471 (App. Div. 2014) (citation omitted) ("Courts need not wait until harm occurs before interceding to protect children."). Rather, a caregiver may be found to have abused or neglected a child where there is "imminent danger" or a "substantial risk" of harm. N.J. Div. of Youth & Fam. Servs. v. A.L., 213 N.J. 1, 8 (2013). Title

Nine cases are fact-sensitive, and a trial court should "base its findings on the totality of circumstances[.]" N.J. Div. of Youth & Fam. Servs. v. V.T., 423 N.J. Super. 320, 329 (App. Div. 2011).

Regarding Ashley's first two arguments, we perceive no basis to disturb Judge DeCastro's finding the Division met its burden in demonstrating Ashley abused or neglected her children. Indeed, there is ample credible evidence in the record to support the judge's determination that Ashley failed to exercise a minimum degree of care on February 22 and placed her children at risk of harm.

By virtue of her arguments, Ashley concedes she was hallucinating on February 22. Although she contends "the record is silent as to the drug [she] actually ingested," the name of the unprescribed drug she took for approximately a week leading up to the incident is of no moment. As the judge noted, at a time when Ashley was the children's sole caretaker, she ingested a drug she later believed to be Ecstasy, causing her to hallucinate. The judge also found Ashley admitted to Thompson that "she did not feel like herself for the whole week[,] yet she continued to take" the pills her mother gave her, and called John on February 22, screaming "she was covered with the Lord's blood, that the devil was going to take her child." Additionally, the judge concluded Ashley refused to let the police or John enter her home, her apartment was not in a safe

condition, and Ashley could not remember what happened during the incident. These findings are well supported on this record and entitled to our deference.

Lastly, Ashley contends she was deprived of a meaningful opportunity to be heard because of the virtual format of the fact-finding hearing. Again, we disagree.

"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)). Further, while "there are obvious, understandable challenges facing judges who seek to administer effective trials using videoconferencing technology, court directives and due process must nevertheless be maintained." D.M.R. v. M.K.G., 467 N.J. Super. 308, 320 (App. Div. 2021). "Due process is not a fixed concept, however, but a flexible one that depends on the particular circumstances." Doe v. Poritz, 142 N.J. 1, 106 (1995).

Here, Judge DeCastro confirmed before trial the Division offered Ashley a tablet so she could participate in the trial via video. The Division also notified the court on September 10 that it was only presenting testimony and any

documents it would rely on were "already . . . provided to everybody." After considering Ashley's preference for an in-person hearing, the judge found there was "no reason" Ashley could not participate in the hearing by going to her attorney's office if she chose not to "take advantage of the Division's" offer for video access at trial. Further, the judge noted "breakout rooms" would be available for conferencing, and the matter was "not that complex that [it] require[d] . . . an in[-]person hearing." Accordingly, the judge cited the Supreme Court's July 24, 2020 Omnibus Order and found the hearing should be held remotely.

Our review of the record satisfies us the virtual format of the proceedings did not deprive Ashley of her ability to participate in the trial or communicate with her attorney. Indeed, Judge DeCastro delayed the trial to afford Ashley the right to join the hearing at her attorney's office. The judge also afforded Ashley a brief recess with counsel during John's testimony before Ashley hung up the phone and left her attorney's office. Based on the totality of circumstances, we are convinced Ashley's due process rights were safeguarded.

To the extent we have not addressed any of Ashley'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