

# RECORD IMPOUNDED

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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-0419-21

NEW JERSEY DIVISION  
OF CHILD PROTECTION  
AND PERMANENCY,

Plaintiff-Respondent,

v.

C.F.,

Defendant-Appellant,

and

J.N.,

Defendant.

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IN THE MATTER OF J.N.,  
a minor.

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Argued December 13, 2022 – Decided February 23, 2023

Before Judges Gilson, Rose, and Gummer.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Warren County,  
Docket No. FN-21-0137-20.

Adrienne Kalosieh, Assistant Deputy Public Defender,  
argued the cause for appellant (Joseph E. Krakora,  
Public Defender, attorney; Adrienne Kalosieh, on the  
briefs).

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

Cory H. Cassar, Designated Counsel, argued the cause  
for minor J.N. (Joseph E. Krakora, Public Defender,  
Law Guardian, attorney; Meredith Alexis Pollock,  
Deputy Public Defender, of counsel; Cory H. Cassar,  
on the brief).

#### PER CURIAM

C.F. (Cara) appeals from an order finding that she placed her infant son,  
J.N. (Jack), at substantial risk of harm by using heroin, cocaine, and other drugs  
while Jack was in her care.<sup>1</sup> Cara argues that Jack never suffered physical harm  
and there was insufficient evidence to show that she had placed Jack in imminent  
risk of substantial harm. She also contends that the family court erred in treating

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<sup>1</sup> We use initials and fictitious names to protect the privacy interests of the  
parties and confidentiality of the record. See R. 1:38-3(d)(12).

the matter under Title 9, N.J.S.A. 9:6-8.21, as opposed to Title 30, N.J.S.A. 30:4C-12. We reject those arguments and affirm.<sup>2</sup>

I.

We discern the facts from the record, primarily relying on the evidence presented at the fact-finding hearing. One witness testified at that hearing: a caseworker for the Division of Child Protection and Permanency (Division). The Division also submitted various documents into evidence. The Law Guardian, representing Jack, supported the Division's position. Cara elected not to testify, and she did not present any witnesses or documents.

Cara and J.N. (Joe) are the biological parents of Jack, who was born in December 2019. The Division did not seek to substantiate Joe for abuse or neglect of Jack. Tragically, Joe, who also suffered from addiction, passed away in November 2021.

When Jack was approximately six months old, the Division received a referral that Cara had failed several drug screens administered by a substance abuse treatment program that Cara had been attending. The reporter expressed

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<sup>2</sup> Cara has also appealed from a judgment terminating her parental rights to Jack. We affirm that judgment in a separate opinion. See N.J. Div. of Child Prot. & Permanency v. C.F., No. A-2088-21.

concern that Cara had not attended the program in a week, and she was the primary caretaker of her infant son Jack.

The same day that the Division received that report, it sent two caseworkers to Cara's home. When they arrived, they met L.W. (Lisa) who is Cara's mother. Lisa explained that Cara was sleeping, and she went to wake up Cara. When the caseworkers met with Cara, they noted that she had needle marks on the creases of her elbows and the tops of her feet. Cara admitted that she relapsed and used heroin the prior month; used unprescribed Adderall the day before; used heroin three days earlier; and used cocaine twice in the past two weeks. Cara also admitted that she had "historically" used roughly six bags of heroin a day, but she said she had stopped using heroin with the assistance of Subutex. Cara denied that she ever used drugs in the home, explaining she would tell her mother she was going out to smoke a cigarette, but used drugs instead.

Cara expressed willingness to seek help and enter an inpatient drug treatment program. Cara also informed the caseworkers that her mother Lisa had mental health issues and would not be a good caretaker for Jack. Her mother is a recovered alcoholic and has a prescription for Adderall. Concerned for

Jack's safety, the Division implemented a safety protection plan. Under that plan, Cara and Joe would be supervised by Joe's sister, M.W. (Mia).

The following day, the Division caseworkers returned to interview the family members. When the caseworkers arrived, they noticed that Cara's pupils were dilated, she spoke with a monotone voice, and her gait appeared to be unsteady. Cara admitted that she had used heroin and methamphetamine the previous night. Mia informed the caseworkers that she was no longer willing to supervise Cara and Joe because they had used drugs in her home the previous night. Other family members Cara suggested as supervisors also declined to assume that role. Consequently, the Division removed Jack from Cara's care and placed him in the care of Mia.

Thereafter, the Division filed a complaint for custody, care, and supervision of Jack under Title 9 and Title 30. The family court found that Jack's removal was appropriate. Subsequently, the court conducted a one-day evidentiary hearing on the issue of whether Cara had abused or neglected Jack.

After considering the evidence presented at the hearing, the family court found that the Division had proven Cara had abused or neglected Jack by using illegal and unprescribed drugs while Jack was in her care. Crediting the testimony of the Division worker, and the Division's un rebutted documents, the

court found that Cara had used unprescribed Adderall, cocaine, and heroin and had "stacked" Subutex while she was in a caretaking role for Jack. Acknowledging Cara's admission that she would leave the house to use drugs, the court found that she had returned while still under the influence of drugs to care for Jack. The court also found that Cara had not left Jack in the care of an adequate adult when she was using drugs because Lisa was not competent to care for Jack on her own. Accordingly, the family court determined that Cara had placed Jack at imminent substantial risk of harm. In making that finding, the court noted that Cara had agreed to the Division's safety protection plan, but that very night, she had used heroin and methamphetamine, thereby placing Jack at risk of harm.

Following the fact-finding hearing, the Division continued to provide services to Cara. After Cara failed to remain compliant with drug treatment for over nine months, the family court terminated the protective-services litigation when the Division filed a complaint for guardianship of Jack. Ultimately, the court entered a judgment terminating Cara's parental rights to Jack and granted guardianship to the Division with the plan that Jack be adopted by his Aunt Mia.

Cara now appeals from the order finding that she abused or neglected Jack. As we previously noted, Cara separately appealed from the judgment terminating her parental rights, and we affirm that appeal in a separate opinion.

## II.

On appeal, Cara argues that there was insufficient evidence to find that she had placed Jack in imminent substantial risk of harm. She contends that Jack did not suffer any actual harm and her admission of the need for help did not prove that she failed to provide a minimum degree of care for Jack. She also asserts that the family court's conclusion of an imminent risk of harm should be rejected because there was no evidence of the magnitude, duration, or impact of Cara's substance use on Jack. In addition, Cara argues that the family court should have found that Cara needed services under Title 30 rather than be "punished" under Title 9. We are not persuaded by these arguments because the family court based its finding of abuse or neglect on substantial credible evidence establishing that Cara had used heroin, cocaine, and other unprescribed drugs while Jack was in her care, thereby placing Jack in imminent risk of substantial harm.

The scope of our review of an appeal from an order finding abuse or neglect is limited. N.J. Div. of Child Prot. & Permanency v. Y.A., 437 N.J.

Super. 541, 546 (App. Div. 2014). We will uphold the family court's factual findings and credibility determinations if they are supported by "adequate, substantial, and credible evidence." N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007). Accordingly, we will only overturn the court's findings if they "went so wide of the mark that the judge was clearly mistaken." Ibid. We do not, however, give "special deference" to the family court's interpretation of the law. D.W. v. R.W., 212 N.J. 232, 245 (2012) (citing N.J. Div. of Youth & Fam. Servs. v. I.S., 202 N.J. 145, 183 (2010)). Consequently, we apply a de novo standard of review to legal issues. Id. at 245-46 (citing Balsamides v. Protameen Chems., Inc., 160 N.J. 352, 372 (1999)).

The adjudication of abuse or neglect is governed by Title 9, which is designed to protect children. N.J.S.A. 9:6-1 to -8.114. A child is abused or neglected if:

[a] parent or guardian . . . creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ . . . or 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 . . . 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).]

The statute does not require the child to suffer actual harm. See N.J.S.A. 9:6-8.21(c)(4). Instead, abuse or neglect is established when a child's "physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired." Ibid. When there is an absence of actual harm, but a substantial risk of harm or imminent danger exists, the court must consider whether the parent exercised a minimum degree of care under the circumstances. See N.J. Div. of Youth & Fam. Servs. v. S.I., 437 N.J. Super. 142, 153-54 (App. Div. 2014).

The failure to exercise a "'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, 178 (1999). "Conduct is considered willful or wanton if done with the knowledge that injury is likely to, or probably will, result." Ibid. (citing McLaughlin v. Rova Farms, Inc., 56 N.J. 288, 305 (1970)). A parent fails to exercise a minimum degree of care if, despite being "aware of the dangers inherent in a situation," the parent "fails adequately to supervise the child or recklessly creates a risk of serious injury to that child." Id. at 181.

The Division must prove by a preponderance of the competent, material, and relevant evidence that a child is abused or neglected. N.J.S.A. 9:6-8.46(b). That burden requires the Division to demonstrate a "'probability of present or future harm' to the minor child." S.I., 437 N.J. Super. at 153-54 (quoting N.J. Div. of Youth & Fam. Servs. v. S.S., 372 N.J. Super. 13, 24 (App. Div. 2004)). Title 9 cases are fact-sensitive, and "the trial court must base its findings 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). "A court 'need not wait to act until a child is actually irreparably impaired by parental inattention or neglect.'" N.J. Dep't of Child. & Fams. v. A.L., 213 N.J. 1, 23 (2013) (quoting In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999)).

The family court determined that the Division had proven that Cara abused or neglected Jack because she used drugs, including heroin, cocaine, and unprescribed Adderall, while she was the primary caretaker of Jack. The court also found that Cara had not placed Jack in the care of a competent adult. Those findings are amply supported by substantial credible evidence presented at the fact-finding hearing. Cara admitted that she had used drugs when only her mother was present to care for Jack. Cara also acknowledged that her mother

was not an adequate caretaker and, therefore, there was substantial credible evidence that Jack was placed at imminent risk of substantial harm.

The cases Cara cites in support of her argument that no risk of harm was established are all distinguishable on their facts. See A.L., 213 N.J. 1; V.T., 423 N.J. Super. 320; N.J. Div. of Child Prot. & Permanency v. R.W., 438 N.J. Super. 462 (App. Div. 2014). The facts as found by the family court demonstrate that Cara's drug use presented a substantial and ongoing imminent risk of harm to Jack. Jack was a six-month-old infant who needed the adequate care of an adult. Cara's drug use prevented her from fulfilling that role, and she failed to have another competent adult available to supervise Jack when she was abusing drugs.

Cara also contends that the family court should have proceeded under Title 30 rather than Title 9. Under Title 9, the Division is obligated to investigate abuse or neglect allegations. See N.J.S.A. 9:6-8.11. If the Division determines that abuse or neglect is substantiated, the Division must file an appropriate complaint under Title 9. N.J.S.A. 9:6-8.33. If abuse or neglect is not substantiated, but intervention for an at-risk child is still appropriate, the Division can file a complaint under Title 30. See N.J.S.A. 30:4C-12.

Here, the family court determined that Cara had abused or neglected Jack. Consequently, it was not appropriate to proceed under Title 30 and we reject Cara's arguments that the court should have proceeded under Title 30, rather than Title 9.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION