RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0895-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

J.P., J.D., and D.D.,

Defendants,

and

T.D.,

Defendant-Appellant.

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IN THE MATTER OF
B.D., a minor.

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Argued January 23, 2023 – Decided January 27, 2023

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Cumberland County, Docket No. FN-06-0098-20.

Eric R. Foley argued the cause for appellant (Law Office of Louis G. Guzzo, attorneys; Eric R. Foley, of counsel and on the briefs).

John J. Lafferty, IV, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Donna Arons, Assistant Attorney General, of counsel; John J. Lafferty, IV, 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; Noel C. Devlin, of counsel and on the brief).

PER CURIAM

Defendant T.D.[1] appeals from the Family Part's September 18, 2020 order,[2] following a fact-finding hearing, determining that defendant abused or neglected his grandchild, B.D. (Beth) by "inappropriately touch[ing] [Beth] in her genital area [and] placing the child at significant risk of emotional harm." Defendant alleges that the Division of Child Protection and Permanency

[1] We refer to defendant and other family members by initials or fictitious names to protect their privacy. R. 1:38-3(d)(12).

[2] This order became appealable as of right after the trial court entered an order terminating the litigation on March 15, 2021.

(Division) did not provide sufficient evidence corroborating Beth's account of the abuse, and that the Division's expert's testimony at the hearing constituted a "net opinion" that the trial court should have rejected. The Law Guardian supports the court's finding that the 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.

Beth was six years old at the time of the events involved in this appeal. She lived with defendant and his paramour, D.D.[3]

In late December 2019, the Division received a referral that Beth may have been exposed to a domestic violence and substance abuse issues in the home.

The next day, Division caseworker Hakima Lake went to defendant's home to investigate. When she arrived, Lake learned that Beth was at the neighbor's house next door and she went there to speak to the child. As to the domestic violence incident, Beth reported that D.D. had pushed a chair at defendant "and tried to run from him and fell and busted her lip."

Lake then asked Beth standard questions about whether she had been the victim of abuse. During the discussion, Beth revealed that defendant had

[3] Beth's biological parents are J.P. and J.D.

touched her "genie." When Lake asked the child what her "genie" was, Beth pointed to her vagina. The child told Lake that the touching occurred while she and defendant were in his Corvette and that defendant touched her over her clothes. Lake saw there was a Corvette parked outside the home. Lake referred Beth to the New Jersey Child Abuse Research and Education Service Institute (CARES) for a medical evaluation.

Dr. Maria McColgan conducted the evaluation three weeks later.[4] During her conversation with Beth, the child "happened to notice [a] model of the female reproductive tract" in the room and asked McColgan what it was. McColgan "brought that out" and answered the child's questions about it. Beth referred to her vagina as her "genie." McColgan asked Beth, "Was there a time when someone was doing something to your genie?" Beth told McColgan that defendant "touched her on her private parts [and] said it occurred in the Corvette [and] that it was on top of her clothes." The child also stated that the Corvette was not moving at the time.

Beth stated defendant "touched her in a rubbing kind of motion . . . and that it made her feel . . . sad and angry . . . ." Beth demonstrated what defendant

[4] The trial court accepted McColgan, a child abuse pediatrician, as an expert in pediatric medicine and child abuse.

did by "grabb[ing] and massag[ing] her upper thigh . . . and [McColgan] asked her 'What was he doing that to?' And [Beth] said[,] 'To my private parts.' [McColgan] said[,] 'Which private parts?' Beth said[,] 'The front one.'"

McColgan's "diagnosis was sexual abuse." In explaining the reasons for her opinion, McColgan stated that Beth was able to "disclose[] contextual details, including how she was feeling at the time." McColgan also stated that "the knowledge that [Beth] had of people touching people in the genital area, it's not something that typically occurs to most children . . . ."

Defendant testified on his own behalf. He denied having "any type of inappropriate contact with" Beth. Defendant did not call any other witnesses.

On September 18, 2020, the trial judge rendered a thorough oral opinion. The judge found that the Division had demonstrated by a preponderance of the evidence that defendant sexually abused Beth by touching the six-year-old child's vagina. In determining that the Division adequately corroborated Beth's statements about the abuse, the judge pointed to McColgan's testimony that Beth "at age [six] years old had knowledge of inappropriate touching and that that made her feel angry and that is not typical of a six-year-old." This appeal followed.

On appeal, defendant argues that "the trial court misapplied the prevailing legal standards where it incorrectly determined that sufficient corroboration existed to rely upon a child's hearsay statements to make a finding of abuse and neglect pursuant to N.J.S.A. 9:6-8.21." Defendant also asserts that McColgan's "opinion constituted a net opinion and should have been disregarded." We disagree with defendant's contentions.

A trial judge's fact-findings will be upheld on appeal if they are "supported by adequate, substantial, and credible evidence." N.J. Div. of Child Prot. & Permanency v. B.H., 460 N.J. Super. 212, 218 (App. Div. 2019) (quoting N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 552 (2014)). "We 'accord deference to fact[-]findings of the family court because it has the superior ability to gauge the credibility of the witnesses who testify before it and because it possesses special expertise in matters related to the family.'" Ibid. (quoting N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448 (2012); see also N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008) (the trial judge "has a 'feel of the case' that can never be realized by a review of the cold record")).

However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special

deference." R.G., 217 N.J. at 552-53 (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). If the trial court's rulings "'essentially involved the application of legal principles and did not turn upon contested issues of witness credibility,' we review the court's corroboration determination de novo." N.J. Div. of Child Prot. & Permanency v. A.D., 455 N.J. Super. 144, 156 (App. Div. 2018).

Under N.J.S.A. 9:6-8.21(c), an abused or neglected child is a child whose parent or guardian:

> (3) commits or allows to be committed an act of sexual abuse against the child; (4) 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 . . . (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof . . . .
>
> [Ibid.]

To establish 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. 9:6-8.44; N.J.S.A. 9:6-8.46(b). "Such evidence 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 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) (quoting N.J.S.A. 9:6-8.46(a)(3)) (citing N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 346-47 (2010)).

At the hearing, the Division submitted Beth's out-of-court statements as recorded by Lake and McColgan in their respective reports and testimony. N.J.S.A. 9:6-8.46(a)(4) provides in pertinent part that "previous statements made by the child relating to any allegations of abuse or neglect shall be admissible in evidence; provided, however, that no such statement, if uncorroborated, shall be sufficient to make a fact finding of abuse or neglect."

"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 (quoting N.J. Div. of Child Prot. & Permanency v. N.B., 452 N.J. Super. 513, 522 (App. Div. 2017)). "[C]orroboration of child sexual abuse does not have to be 'offender-specific,' because '[i]t would be a rare case where evidence could be produced that would directly corroborate the specific allegation of abuse between the child and the perpetrator . . . .'" Ibid. (quoting

N.J. Div. of Youth & Fam. Servs. v. Z.P.R., 351 N.J. Super. 427, 435 (App. Div. 2002)).

"The most effective types of corroborative evidence may be eyewitness testimony, a confession, an admission or medical or scientific evidence." Ibid. (quoting N.J. Div. of Youth & Fam. Servs. v. L.A., 357 N.J. Super. 155, 166 (App. Div. 2003)). Such indirect evidence has included "a child victim's precocious knowledge of sexual activity, a semen stain on a child's blanket, a child's nightmares and psychological evidence." N.J. Div. of Child Prot. & Permanency v. I.B., 441 N.J. Super. 585, 591 (App. Div. 2015) (quoting Z.P.R., 351 N.J. Super. at 436). Evidence of "age-inappropriate sexual behavior" can also provide the necessary corroboration required under N.J.S.A. 9:6-8.46(a)(4). Z.P.R., 351 N.J. Super. at 436.

According to McColgan's uncontradicted expert testimony, Beth demonstrated knowledge of sexual activity that was not common among other six-year-old children. The child also expressed that defendant's improper touching caused her to feel sad and angry. Thus, contrary to defendant's contention, Beth's statements concerning defendant's abuse were amply corroborated by McColgan's expert testimony and evaluation of the child. Z.P.R., 351 N.J. Super. at 436.

Defendant next argues that McColgan's corroboration of the sexual assault was an impermissible net opinion. This argument lacks merit.

"We rely on the trial [judge's] acceptance of the credibility of the expert's testimony and the court's fact-findings based thereon, noting that the trial court is better positioned to evaluate the witness' credibility, qualifications, and the weight to be accorded [his] testimony." In re Guardianship of D.M.H., 161 N.J. 365, 382 (1999). Therefore, we exercise limited review of a trial judge's decision to admit or exclude expert testimony. See Townsend v. Pierre, 221 N.J. 36, 52-53 (2015) ("The admission or exclusion of expert testimony is committed to the sound discretion of the trial court."); Hisenaj v. Kuehner, 194 N.J. 6, 12 (2008) (stating that trial court's evidentiary decision to admit expert testimony is reviewed for an abuse of discretion).

The Court in Townsend reviewed the law on net opinions. Expert opinions must be grounded in "facts or data derived from (1) the expert's personal observations, or (2) evidence admitted at the trial, or (3) data relied upon by the expert which is not necessarily admissible in evidence but which is the type of data normally relied upon by experts." Townsend, 221 N.J. at 53 (quoting Polzo v. Cnty. of Essex, 196 N.J. 569, 583 (2008)). The net opinion rule is a "corollary of [N.J.R.E. 703] . . . which forbids the admission into

evidence of an expert's conclusions that are not supported by factual evidence or other data." Id. at 53-54 (quoting Polzo, 196 N.J. at 183).

Therefore, an expert is required to "'give the why and wherefore' that supports the opinion, 'rather than a mere conclusion.'" Id. at 54 (quoting Borough of Saddle River v. 66 E. Allendale, LLC, 216 N.J. 115, 144 (2013)). The net opinion rule directs that experts "be able to identify the factual bases for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are reliable." Id. at 55 (quoting Landrigan v. Celotex Corp., 127 N.J. 404, 417 (1992)).

On the other hand, "[t]he net opinion rule is not a standard of perfection." Id. at 54. An expert may ground an opinion in his or her personal experience and training. See Rosenberg v. Tavorath, 352 N.J. Super. 385, 403 (App. Div. 2002) ("Evidential support for an expert opinion is not limited to treatises or any type of documentary support, but may include what the witness has learned from personal experience."). The failure to rely on sources the opponent deems important, or to organize one's opinion in a way the adversary considers appropriate, does not warrant exclusion as a net opinion. Townsend, 221 N.J. at 54. These matters are left for cross-examination. Id. at 54-55.

Applying these principles, we discern no basis for defendant's complaint that McColgan rendered a net opinion. McColgan fully explained the grounds for her conclusions and was subject to cross-examination concerning them. McColgan was well qualified, her testimony and written report address all the relevant issues, and her conclusions were firmly supported by the facts in the record.[5]

Affirmed.

[5] In so ruling, we conclude that defendant's contention that McColgan conducted her evaluation in a manner that ran afoul of the principles set forth in State v. Michaels, 136 N.J. 299, 317 (1994) is without sufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(1)(E).