

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1516-22
A-1548-22

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Appellant,

v.

R.M., J.B., M.A. (deceased),
M.R. and F.O.,

Defendants-Respondents.

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

R.M., J.B., M.A. (deceased),
M.R. and F.O.,

Defendants-Respondents.

IN THE MATTER OF
E.B., D.M., A.M., Z.A-M.
and H.R., minors,

Appellants.

Argued June 7, 2023 – Decided September 29, 2023

Before Judges Accurso, Vernoia and Natali.

On appeal from an interlocutory order of the Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FN-20-0049-22.

Dana LaMothe, Deputy Attorney General, argued the cause for appellant New Jersey Division of Child Protection and Permanency in A-1516-22 (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Dana LaMothe, on the briefs).

Andrew J. Nusbaum, Assistant Deputy Public Defender, argued the cause for minor appellants E.B., Z.A-M. and H.R. (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Meredith Alexis Pollock, Deputy Public Defender, of counsel; Andrew J. Nusbaum and Melissa Vance, Assistant Deputy Public Defender, of counsel and on the briefs).

T. Lambert Tamin, Designated Counsel, argued the cause for respondent M.R. (Joseph E. Krakora, Public Defender, attorney; T. Lambert Tamin, on the briefs).

PER CURIAM

The Division of Child Protection and Permanency and the Law Guardian both appeal on our leave in this abuse and neglect case from a finding that defendant M.R. did not place three children under eleven at imminent risk of harm when he choked, hit and dragged their mother by the hair in a violent, drunken encounter, culminating in his firing a gun from inside their apartment out the kitchen window.¹ The judge who found those facts, reasoned that because the children were in a bedroom closet, where the eleven-year-old had taken his little sisters to hide, defendant "[m]aybe . . . could have abused or neglected or killed somebody outside," but the evidence did not support a finding of abuse or neglect of these children because they only "heard the gunshots but they were not present when that occurred."

Because neither the facts, the law nor the judge's findings support that conclusion, we reverse and remand for entry of an order that defendant abused and neglected these three young children by unreasonably placing them in imminent danger of harm under N.J.S.A. 9:6-8.21(c)(4)(b).

¹ M.R. was the only defendant in the fact-finding hearing and the only defendant involved in this appeal. R.M. (Rebecca) is the mother to the three children that are the subject of this appeal, E.B. (Evan), Z.A.-M. (Zoey) and H.R. (Hanna). M.A. and J.B. are the respective fathers of Zoey and Evan. F.O. is the father of Rebecca's two other children, D.M. and A.M., neither of whom are involved here. We refer to defendant and other family members by initials or fictitious names in accordance with Rule 1:38-3(d)(12).

The Division called five witnesses to testify at the abuse and neglect trial: the police officer who was dispatched to the family's home to respond to a domestic dispute, an investigator with the Division's special response unit and his supervisor, and the two experts who evaluated the two older children. Defendant did not testify, enter any documents, or call any witnesses.

The officer testified that when he arrived at the family's home, the door was ajar, and he could hear screaming. He found defendant and Rebecca, defendant's girlfriend and the children's mother, in the kitchen. Both had been drinking, but defendant was clearly drunk. The three children were in the bedroom the family shared. Evan, eleven-years-old, told the officer defendant had hit his mother. The officer observed marks on Rebecca's neck, appearing as if someone had choked her.

While the officer was in the bedroom with Rebecca and the children, she opened a drawer and handed him a box containing glassine folds of heroin, advising that defendant "does drugs." The officer arrested defendant, and transported Rebecca to the police station to swear out a domestic violence complaint. As she completed that paperwork, she advised the officers defendant had a handgun, which he'd fired in the apartment.

The officers returned to the apartment with Rebecca, who consented to a search that uncovered nine-millimeter shell casings under the kitchen window both inside and outside and a bullet hole in the neighboring house, as well as other ammunition and a pellet gun. Rebecca was holding her ten-month-old daughter as the officer spoke to her on their second trip to the apartment. In the course of their conversation, the baby picked up a wet cigarette pack out of the kitchen sink, which contained heroin and fentanyl. Defendant was indicted on charges of second-degree aggravated assault, third-degree terroristic threats, third-degree possession of a controlled dangerous substance, second-degree unlawful possession of a handgun, second-degree possession of a weapon for an unlawful purpose and second-degree endangering the welfare of a child.

The Division worker testified the family, which consisted of defendant, Rebecca and their daughter, ten-month-old Hanna, as well as Rebecca's two other children, Evan and four-year-old Zoey, rented one bedroom in a four-bedroom apartment. Defendant was too drunk to be interviewed that evening. The Division was, however, able to interview the two older children.

Evan reported his stepfather, defendant, "hit his mother and was shooting guns out the window." According to Evan, the two were arguing over

his mother having discovered defendant had "another family in Honduras."

Evan told the worker defendant "pulled his mother by the hair," "dragged her in the bedroom and slapped her." Evan claimed his stepfather drank every weekend, and that he "sells cocaina," which he described as the "stuff that you put up your nose." Evan claimed defendant hid the drugs in an iPhone box on top of the television.

Evan also claimed defendant had "pistolas" and guns and had shot a gun about five times out the kitchen window. Evan reported he'd found "shotgun bullets" and bullets for pistols in the family's home. He also reported that defendant had a "fake" gun. Asked how he knew it was fake, Evan explained "a real gun is heavy and makes loud sounds when you shoot it," whereas a "fake gun" is very light, and the bullets are very small. Evan reported that he was afraid defendant will kill him and his family. He claimed defendant was a "shooter" in El Salvador, and threatened his mother that he would shoot them if they went to the police.

Evan reported his mother and father separated when Evan was two years old, and his father did not visit him. He claimed Zoey's father, Evan's stepfather before defendant, would hit him "with sticks and objects" and hit his mother too. Although advising that Zoey's father died in a car accident the

year before, Evan reported he thinks often of Zoey's father hitting him and still has nightmares about it. According to Evan, his mother has been hit by all her boyfriends. He told the worker that when defendant and his mother started to argue, he would get his sisters and go into the bedroom closet, where he could often hear "his mother crying and screaming for him to stop hitting her." Evan reported defendant did not hit him and Zoey, but their mother did.

The worker also interviewed Zoey. Zoey told the worker that "Daddy has a pistol and shoot it out the kitchen window," that she was "so scared" and started to cry "because the noise was so loud." When asked what else had happened, Zoey said "daddy hit mom very hard today," and "he grabbed her by her hair . . . and pushed her on the floor." The worker reported Zoey performed "a smacking and punching motion with her hands to show how [defendant] hit her mother." Zoey told the worker she "was crying in the curtain because she was scared." Evan took her and the baby, who had been on the floor nearby, into the bedroom and closed the door. She claimed defendant had hit their mother in the past but had never hit her or her siblings. Notwithstanding, Zoey was afraid of him.

In a subsequent interview, Evan claimed defendant kept the gun he shot out the window in the third drawer of the dresser "with the television on it,"

and that Evan was always told not to touch it. He also claimed, contrary to his statements immediately after the incident, that he was not afraid of defendant. Evan also told the interviewer his mother had hit Zoey the day before with a charging cable for hitting the baby, which Zoey confirmed.

The worker confronted Rebecca with the information and that she needed to see Zoey's body. Rebecca called Zoey a liar, and claimed she'd only spanked the child. When the worker pulled up Zoey's shirt, the worker could clearly see the faint outline of a charging cable on the left side of the child's stomach. Rebecca admitted hitting the child with the cable, which the worker advised was a completely unacceptable form of discipline. The worker counseled Rebecca on appropriate methods of disciplining the children, and warned there was a safety plan in place, and the Division could make unannounced visits to her home.

Rebecca, who subsequently dropped the restraining order she'd obtained against defendant, advised the worker that she and defendant had been together two years and there'd never been any domestic violence between them before. She claimed defendant had "rescued" her from a prior abusive relationship, and she believed the children had not been traumatized by what they'd seen on the

night defendant shot a gun through the kitchen window "but rather from her history" of domestic violence with Zoey's father.

As reflected in the Division 's investigation summary in evidence, another worker interviewed defendant about the incident by telephone from the County jail ten days later. Defendant claimed he didn't remember anything because he'd been very drunk. He confirmed he had a handgun and claimed the police had seized it. He didn't remember firing his gun that evening, but he admitted to shooting it through the window previously when he was drunk. Asked why he did it, defendant said "because drunk people do things that they're not supposed to." Defendant told the investigator he keeps the gun "in a drawer in a tall dresser." He admitted it was unregistered, and he bought it on the street.

As for the drugs found in the apartment, defendant admitted they were his. He claimed, however, that he "found the drugs in the street" two months before and "took them home to see what it was." He acknowledged he "saw the little bags," but claimed he didn't know anything about drugs and denied he sold them.

Evan and Zoey were evaluated at the Dorothy B. Hersch Child Protection Center. The court qualified the licensed social worker, Sue Miller,

who evaluated Evan under the supervision of a licensed psychologist as an expert in child abuse and neglect. Miller testified that although Evan did not show significant symptoms of depression or post-traumatic stress, he made statements in the course of the interview that Miller found "highly suggestive of a child who has experienced trauma." She explained that Evan reported he was struggling academically, got into trouble a lot at school and "tends to get aggressive quickly" for no real reason. He reported he consciously walks away from Zoey when she's annoying him, because he doesn't want to get aggressive with her.

Evan also reported what Miller characterized as an "extreme startle response," reporting that even a pen dropped would cause him to jump, even when he was asleep. Miller also reported that although Evan "denied feeling sad," he told her he associated such feelings with "being weak, and that when he felt sad, he would instinctively do push-ups or something to make him feel strong." She claimed Evan said he sees himself as becoming stronger and by fourteen, he'd be able to beat up any man who hit his mother.

Miller concluded Evan was suffering "unspecified trauma and stressor related disorder." She claimed the boy "seemed to be taking on an inappropriate role as his mother's protector," and appeared "hyper-vigilant,

expecting that this might happen again." She testified a general "feeling of it being unsafe" was common in kids who've experienced domestic violence, and that such children "are never really able [to] kind of regulate and be relaxed, and that is part of what interrupts their ability to learn and feel relaxed in school and engaged."

Miller also testified that Evan spoke "a lot about his mother's previous boyfriend," Zoey's father, "who was physically abusive both to Evan and his mother." Evan told Miller, Zoey's father would get drunk and "[t]hings happen that kids aren't supposed to see." He reported having had a nightmare about that man. Evan also reported that defendant "shot the bullets through the window," which Evan described as "not cool." He claimed defendant drank too much and had "gone crazy."

Miller acknowledged on cross-examination her assumption that Evan's diagnosis was based on "all the trauma he suffered" and not just having watched defendant pummel and choke his mother and hearing gunshots in the apartment while hiding with his sisters in the family's bedroom. She explained that Evan "talked about more than one traumatic event in his life, so it could be attributed to either [his relationship with Zoey's father or the recent assault by defendant on his mother], but most likely it's attributed to all of it." Miller

testified when "a child is exposed multiple times throughout their childhood to trauma . . . or . . . especially . . . intimate violence between parents, . . . the more trauma they experience, the more likely they are to exhibit these symptoms, and the more significant those symptoms would be. . . . [I]t would be compounded."

The expert who evaluated Zoey, Tamara Quezada, PsyD, testified the four-year-old reported that defendant hit her mother when he was drunk, saying "he hit her on her cheeks, and I cried." Zoey said she was scared. Asked if she knew what a gun was, Zoey responded "black." Asked if she'd ever seen one, she answered "yes," elaborating "in the sofa that mommy put away and daddy [defendant] took it." Zoey claimed she'd never held a gun and couldn't answer questions about how one is used.

She was more forthcoming about drugs, saying "my dad [defendant] took to work." She also said drugs were something you "smoke," again referencing defendant. Asked what happens after smoking drugs, Zoey said "drink beer." When Quezada asked what happens when defendant drinks or uses drugs, Zoey replied "well they smoke and buy more beer . . . they eat." Asked if anyone joins defendant in drinking and smoking drugs, Zoey replied "mami gives him food. I don't want to see it, and he has another woman because that they go to

the beach." Asked to describe her mother and defendant's relationship, Zoey answered "they eat."

Quezada testified Zoey was engaged, but often became distracted by the environment and had to be redirected. Quezada also reported that Zoey became somewhat avoidant and reported feeling sad when Quezada attempted to focus her on the incident, as indicated by her remark that she didn't want to see, that is, remember it. Zoey reported defendant "fights," and that she "heard [the gun] in the room" and "felt sad." Zoey reported nightmares about eating and a dog sitting on her head. Asked whether she thinks about defendant and the incident, Zoey responded "they used to eat."

Quezada explained that Zoey's limited vocabulary could make it hard for her to process the trauma she's experienced, Quezada noted that although Zoey had no difficulty reporting what she saw that night, her "becoming somewhat avoidant" during the evaluation, reporting she felt "sad" when discussing it and talking about tangential topics when asked to elaborate "may be due to [the] difficulty of processing her memories associated with the incident."

Quezada testified she diagnosed Zoey as suffering from unspecified trauma and stressor related disorder, child affected by parental relationship distress, and because Zoey reported her mother had hit her with a belt on her

back, drawing blood, suspected child physical abuse, initial encounter.

Quezada opined Zoey's responses to questions about guns and drugs constituted "information . . . not known by a four-year-old," and thus were "not developmentally appropriate." She testified that "[u]sually a child would have this information if they were exposed to things."

In Quezada's opinion, Zoey's diagnoses were "consistent with a child who has been exposed to domestic violence." Noting the reports by Rebecca and others of Zoey pulling the baby's hair and Quezada's own observation that Zoey couldn't count to ten, couldn't recite her ABCs and didn't know her colors, Quezada opined Zoey was already showing signs of aggression and that there were concerns for her academic performance.

The judge asked Quezada whether it appeared to her "that maybe some of this information was fed to [Zoey]," specifically, "[t]alking about another woman, and going to the beach with another woman, that the dad goes to the beach with another woman. You didn't find that interesting?" Quezada explained she "saw that more as exposure, because her recollection was so all over the place, and she's so young, that . . . [Quezada] didn't have concerns for coaching, that someone would tell her to say that." The judge followed up by asking, "the fact a four-year-old would have the information about drugs, and

daddy takes drugs and goes to work, that doesn't concern you that that's more fed to her than her actual recollection? She's four-years-old. How would she know unless she's being told? How would she know that? She's four."

Quezada acknowledged Zoey certainly could have been told that, or "she was exposed in the middle of altercations where this information is being brought up." The expert pointed out, however, that one of the tests she used was invalidated and on another the score was zero, both based on underreporting by Rebecca. Quezada testified that showed Rebecca was minimizing the concerns, and in Quezada's "opinion it would be unlikely that she is trying to get Zoey, or trying to convince Zoey, to say something that will harm her relationship with [defendant]."

The judge also asked whether the trauma disorder Quezada diagnosed could have been as a result of her "mother beating her with a belt." Quezada replied that Zoey's trauma could come from different events and agreed with the judge's proposition "that it could be cumulative."

After three days of trial, during which defendant did not put on a case, the judge concluded the Division did not carry its burden by a preponderance of the evidence that defendant abused or neglected the children under N.J.S.A. 9:6-8.21(c)(4)(b). Finding all of the witnesses credible, and the expert

testimony, "professionally and intelligently" delivered and reliable, the judge framed the issue before her as whether defendant "striking [Rebecca] as viewed by the children . . . coupled with the children hearing the gun being shot, substantiates a finding that [defendant] abused and neglected the children pursuant to the statute."

Noting the law is well settled that exposure to domestic violence standing "alone cannot serve as a basis for a finding of abuse and neglect," N.J. Div. of Child Prot. and Permanency v. N.B., 452 N.J. Super. 513, 523 (App. Div. 2017), the judge found no evidence that Zoey was experiencing any distress from having witnessed the incident between her mother and defendant. The judge specifically rejected the connection Quezada made between Zoey's nightmares about eating and the child's description of her mother's relationship with defendant by saying "they eat." The judge found the entry confusing, and stated she could "not make such a leap especially after reading the entirety of the report, which is riddled with discussions about eating." The judge further dismissed as a net opinion Quezada's testimony that it was not surprising that Zoey pulled her sibling's hair, having witnessed defendant choke and pull her mother's hair, in light of Rebecca's report describing "normal sibling conflicts" among the children.

The judge moreover found that without establishing whether Zoey's "biting and hair pulling behavior only started in the twenty-six days since the incident, it is impossible and suspicious to conclude that [Zoey] is behaving based on what she observed" between her mother and defendant on the night of the incident. Further, the judge found Zoey's "clearly expressed . . . fear of her mother," who she reported hit her with a belt, although only "tangentially expressed" by Quezada, required "no need for speculation or assumptions based on [Zoey's] clear and unambiguous claims of physical abuse."

Because the judge found "Quezada did not present any reliable findings of harm to [Zoey] caused by her being present when the domestic violence occurred," she concluded the Division "failed to present sufficient evidence to prove by a preponderance of the evidence that [defendant] abused and/or neglected [Zoey]." The judge added that "[i]f the Division believes [Zoey] is suffering distress or harm, perhaps the Division should investigate the effects of the alleged abuse perpetrated on [Zoey] by [her mother, Rebecca.]"

As to Evan, the judge found "[t]he evidence clearly shows the abuse [he] suffered and witnessed through the years at the hands of [Zoey's father] have had a negative impact and have caused [Evan] trauma and distress." Although acknowledging Evan observed defendant strike his mother and heard "the

gunshots while in the other room," the judge concluded that "there has been no reliable evidence presented that shows those observations caused [Evan] harm."

The judge found the Division presented no evidence "of any change in [Evan's] symptomology since the incident." The judge also found she could not rely on Miller's testimony that defendant caused Evan's trauma because Miller believed that "all the exposure is compounded" and that any "child who's witnessed violence in the home . . . [has experienced] a traumatic event," a conclusion the judge found she was precluded from reaching by New Jersey Division of Youth & Family Services v. D.F., 377 N.J. Super. 59, 69 (App. Div. 2005) (reversing finding of abuse or neglect based on domestic violence in the absence of any demonstrated harm to the child).

Finally, the judge addressed the presence of drugs in the home. Noting that Rebecca was the person who handed over the drugs in the box in a closed drawer in the bedroom and told the investigating officer that defendant hid drugs in cigarette packs after ten-month old Hanna plucked the wet pack from the kitchen sink, the judge questioned how Rebecca "while the police are there all of a sudden finds drugs in the drawer," especially as Evan stated he'd never seen drugs in the home before. The judge found Rebecca's statements about

the drugs "self-serving," and concluded that drugs in the drawer "or in the pack after the disarray of the kitchen" could not "in any way found to be abuse or neglect [of] the children."

After the judge put her opinion on the record, the law guardian asked if the judge intended to address the risk of harm to the children posed by defendant having fired a gun inside the family's apartment with the children present. In addition to finding, as we earlier noted, that defendant "[m]aybe . . . could have abused or neglected or killed somebody outside," the judge concluded "[t]hese children were hiding . . . either in the bedroom or in the closet in the bedroom. They heard the gunshots but they were not present when that occurred." The judge found "[t]hat's what the evidence revealed," and she concluded it did not support a finding of abuse or neglect against defendant.

We disagree.

Our standard of review of a trial court's findings following an abuse or neglect trial is admittedly narrow. N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 342-43 (2010). "The factual findings which undergird a judgment" in a bench trial "should not be disturbed unless 'they are so wholly insupportable as to result in a denial of justice.'" Matter of Guardianship of

J.T., 269 N.J. Super. 172, 188 (App. Div. 1993) (quoting Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974)). There are, however, two exceptions to that rule when the scope of our review is expanded.

"First, where the judge goes so wide of the mark as to be 'clearly mistaken and so plainly unwarranted that the interests of justice demand intervention and correction.'" Ibid. (quoting Formosa v. Equitable Life Assurance Soc'y, 166 N.J. Super. 8, 20 (App. Div. 1979)). And "[s]econd, 'where the focus of the dispute is not credibility but, rather, alleged error in the trial judge's evaluation of the underlying facts and the implications to be drawn therefrom,' the traditional scope of review is expanded." Id. at 188-89 (quoting Snyder Realty, Inc. v. BMW of N. Am., Inc., 233 N.J. Super. 65, 69 (App. Div. 1989)). Both exceptions apply here.

All the Division needed to prove here to establish abuse and neglect under N.J.S.A. 9:6-8.21(c)(4)(b), and only by a preponderance of the evidence, was that defendant failed "to exercise a minimum degree of care" by unreasonably exposing these young children to a substantial risk of "imminent danger" of harm. See N.J. Div. of Child Prot. & Permanency v. J.R.-R., 248

N.J. 353, 376 (2021). The Division easily carried that burden based on the facts the judge found.

Specifically, the trial judge found defendant fired a handgun several times inside the family home when the children were present, albeit hiding in the closet. Although the court made no mention that defendant was drunk when he did so, the fact is not disputed. Defendant told the investigator he was "very drunk" that night. He couldn't remember even wielding the weapon much less aiming it out the kitchen window when he fired it five times.

We find it hard to imagine a more reckless act than a "very" intoxicated parent firing a gun several times inside a home with young children present, notwithstanding the children were not at that moment in the immediate vicinity. First, it's unlikely that defendant in his drunken state scanned the room to make sure the children were not about. But even assuming he did, both Evan and Zoey told the investigator they heard the gunshots from where they were hiding and were scared. They were likely terrified.

Putting aside that "bullets do go through walls," as the law guardian argued to the trial judge, the judge seems not to have contemplated that the children, because "they were not present," didn't know defendant was shooting through the kitchen window and not at their mother. They had just watched as

he choked, punched, and dragged her across the floor by her hair. Either Evan or Zoey could have heard the first shots and run to their mother in fear, with tragic results. See In re Z.L., 440 N.J. Super. 351, 358-59 (App. Div. 2015) (observing "[t]he presence of a firearm" in a home where there is domestic violence "enhances the potential" for violent encounters "to become lethal").

It requires no imagination to comprehend the imminent danger and substantial risk of harm to which defendant exposed these children by his utterly reckless actions of discharging a firearm during a drunken, violent argument in their home. See Dep't of Child. & Fams. v. E.D.-O., 223 N.J. 166, 178 (2016). Any "ordinary reasonable person would understand" the dangerous risks the situation posed. See G.S. v. Dep't of Human Servs., 157 N.J. 161, 179 (1999). Those risks were abundantly clear to eleven-year-old Evan, who hid his sisters to shield them from the danger. They are readily apparent to us as well. The trial judge's conclusion to the contrary is "so wide of the mark as to be 'clearly mistaken and so plainly unwarranted that the interests of justice demand intervention and correction.'" J.T., 269 N.J. Super. at 188 (quoting Formosa, 166 N.J. Super. at 20).

Although that finding is dispositive of this appeal, it is not the only finding application of the law to these facts compels. As we've noted on many

occasions, "[a]buse and neglect cases 'are fact-sensitive,'" V.F., 457 N.J. Super. at 534, 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). "In evaluating the whole picture each part cannot be separately determined," because "[i]n child abuse and neglect cases the elements of proof are synergistically related." N.J. Div. of Youth & Fam. Servs. v. C.M., 181 N.J. Super. 190, 201 (Juv. & Dom. Rel. 1981).

Here, for example, the trial court failed to consider defendant likely put these children at risk of physical injury, as the Law Guardian contended, when he choked their mother and dragged her by her hair into the bedroom, given their physical proximity to the assault. See N.J. Div. of Child Prot. & Permanency v. A.B., 231 N.J. 354, 369 (2017) (holding a parent fails to exercise a minimum degree of care when he recklessly creates a risk of serious injury to a child). Both Evan and Zoey described the beating in detail, with Zoey noting Hanna, the ten-month-old, was on the floor nearby.

The law is also well-settled that leaving heroin and fentanyl where it could be accessed by the children also constitutes abuse and neglect. See State v. Fuqua, 234 N.J. 583, 595-96 (2018) (noting that "[c]hildren are naturally curious and inquisitive," and leaving powerful illegal drugs where they can

access them sets "a potentially lethal trap" that can be "easily sprung at any moment"). Acknowledging the judge found Rebecca's statements to the police about the drugs belonging to defendant self-serving and convenient, defendant admitted the drugs were his, and that he'd brought them home two months before.

Thus, regardless of whether Rebecca's statements were self-serving or one believed defendant's statement that he found the drugs on the street and only "took them home to see what it was," there is no dispute he brought the drugs into the family's home. There is nothing in the record to suggest the drugs were Rebecca's. While the record makes clear it was a police officer who picked the wet cigarette pack with the heroin and fentanyl from the floor where ten-month-old Hanna had dropped it, she'd obviously been attracted to the package, and either she or one of her siblings could have as easily retrieved it. Evan, who told the investigator defendant "sells cocaina," knew it as the "stuff that you put up your nose," which defendant hid in an iPhone box on top of the television.

Given the proofs established the drugs were easily accessed by the children, defendant's drunken state the night that Hanna plucked the wet cigarette pack from the kitchen sink near where defendant was shooting out the

window, and his admission the drugs were his, there is not substantial evidence in the record to support the judge's finding that those facts could not "in any way" establish abuse and neglect, and the Division failed to establish it was more likely than not that defendant left the drugs accessible to the children. See J.R.-R., 248 N.J. at 376 n.11.²

Finally, although we might disagree as to whether the judge was correct to find the Division failed to establish through the testimony of its experts that Evan or Zoey were emotionally or psychologically harmed by witnessing the domestic violence between defendant and their mother, especially the suggestion that parents need not consider a child's past experiences and emotional makeup in their conduct toward that child, we need not analyze the court's findings in that regard. Regardless of whether the children suffered actual emotional or psychological harm as a result of the domestic violence they witnessed defendant commit against their mother, there is no question but

² We need not remind that the Division is the entity the Legislature has entrusted with the responsibility for determining whether a parent or guardian should be charged with abuse or neglect of a child in their care. See N.J.S.A. 30:4C-1; L. 2004, c. 130 § 1. Any concern for whom else the Division might have also charged, or charged instead, cannot, of course, influence the court's consideration of whether the person the Division chose to charge has committed an act of abuse or neglect against a child in accordance with N.J.S.A. 9:6-8.21(c)(4)(b).

that defendant unreasonably exposed them to a substantial risk of "imminent danger" of harm by discharging a handgun several times in the house when they were home.³

Because we are satisfied the record is clear "an ordinary reasonable person" would understand the grave danger in which defendant recklessly placed these children, defendant's acts amounted to willful and wanton misconduct, establishing the Division and Law Guardian's contention the children were abused or neglected within the meaning of N.J.S.A. 9:6-8.21(c)(4)(b). See G.S., 157 N.J. at 179 (1999). We thus reverse the trial court's December 7, 2022 fact-finding order and remand for entry of an order that defendant abused and neglected Evan, Zoey and Hanna and for such further proceedings as are consistent with this opinion.

³ In addition to the evidence in the record that defendant exposed the children to physical harm by his violent attack on their mother while they were close by, firing a weapon inside their home, and the evidence he left heroin and fentanyl where they could easily find and ingest it, we note the Division presented ample evidence that defendant left a loaded handgun and ammunition unsecured where they were easily accessible to the children. Not only did Evan identify precisely where defendant kept the handgun, he knew the difference between a real gun and a fake gun based on its weight, suggesting he might at one point have handled the weapon. The court erred in failing to consider the totality of the circumstances in making its findings in this matter. See V.T., 423 N.J. Super. at 329.

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION