

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1785-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

D.W.,

Defendant,

and

J.D.,

Defendant-Appellant.

IN THE MATTER OF T.W.-D.,
a minor.

Argued March 1, 2023 – Decided March 8, 2023

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Camden County,
Docket No. FN-04-0289-20.

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

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

Jennifer Sullivan, 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; Jennifer
Sullivan, of counsel and on the brief).

PER CURIAM

Defendant J.D.¹ appeals from the Family Part's August 11, 2021 order,²
following a fact-finding hearing, determining that defendant abused or neglected
his daughter, T.W.-D. (Teresa). Defendant alleges that the Division of Child
Protection and Permanency (Division) did not provide sufficient evidence
corroborating Teresa's account of the abuse. The Law Guardian supports the

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 January 4, 2022.

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.

Teresa was seven years old at the time of the events involved in this appeal. She lived with her mother D.W. and other family members in New Jersey. Defendant lived in Pennsylvania, where he had parenting time with Teresa.

In October 2019, Teresa told a school counselor that defendant sexually abused her by holding her down by her neck and "sticking his hand down her pants and touching her privates[.]" The school contacted the Division and caseworker Jennifer Sabatino went to Teresa's home to investigate. Sabatino spoke to Teresa, who stated that defendant "tickles her cookie. [Sabatino] asked well what is your cookie and [Teresa] pointed down to her vagina and [Sabatino] said well, how does he do that and [Teresa] said with his finger." Sabatino asked the child whether defendant touched her "over or under her clothes and [Teresa] said under."

Sabatino referred Teresa to the New Jersey Child Abuse Research and Education Service Institute (CARES) for a medical evaluation. Dr. Maria McColgan, who was qualified as an expert in child abuse pediatrics, conducted

the evaluation. Teresa described two incidents of sexual abuse. In the first, the child stated that defendant "choked her neck, leaving a red mark on her neck, twisted her arm, causing her to have arm and . . . also hand pain." During the first episode, Teresa stated she "passed out because there was smoke," but she did not know "what the smoke was."

In the more recent assault, defendant again choked Teresa. The child stated that "she was wearing a shirt and panties and that her father pushed the panties to her side - - to the side and that she pushed him off of her." Using an anatomic model, Teresa showed McColgan "where she was touched, which was in-between the labia majora and labia minora and toward the entrance [of] the vagina, where the hymen is."

Teresa "described some physiologic reactions of being fearful" as the result of defendant's actions. The child stated she could not breathe, her body was shaking, and her heart was beating fast as defendant was choking her. She also correlated the pain she felt in her arm with defendant twisting it and pushing her down. Teresa also reported that the day after defendant touched her vagina, she had "a feeling of pain with urination"

According to McColgan, Teresa's statements were significant. As McColgan explained:

Children who are either fondled or penetrated or even adults, for that matter, will have pain when they urinate - - women will have pain when they urinate because their urethra is so close to the vaginal opening and there can be irritation of those tissues that indicate microscopic trauma.

And this would not be something you would expect - - most women don't know this, let alone most children know this, and so that was another thing that, to me, spoke to the truth of her experience.

McColgan's "diagnosis for [Teresa] [wa]s that there was child physical abuse and child sexual abuse." McColgan stated:

Based on the child's history, the contextual details she was able to provide that was beyond - - would be beyond knowledge I would expect a child of her age to have. The fact that she was able to explain the physiologic response of the fear that she was feeling at the time that it occurred. The physical symptoms she described, including the mark on her neck, the pain in her arm, the pain when she urinated, which again, would not be something we would expect a child of her age to know as - - in fact, most doctors don't know of the fact that you get dysuria after fondling.

The trial court conducted an in-camera interview of Teresa at the hearing. The child was nine years old at that time.³ The child recounted an incident where defendant choked her. As to the incident where the child told McColgan,

³ The parties provided the court with a series of questions in advance. The Law Guardian also asked the child several questions.

Sabatino, and the school counselor that defendant touched her vagina, Teresa stated, "I can't really - - I know I said something, but I can't really remember it."

Defendant testified on his own behalf. He denied any inappropriate conduct. Defendant did not call any other witnesses.

On August 11, 2021, the trial court rendered a thorough oral opinion. The court found that the Division had demonstrated by a preponderance that defendant sexually abused Teresa by touching the seven-year-old child's vagina. The court further determined that the Division adequately corroborated Teresa's statements about the abuse, primarily through McColgan's uncontradicted expert testimony that Teresa had knowledge of sexual abuse and the physical trauma associated with it that was not typical of a such a young child. This appeal followed.

On appeal, defendant argues the trial court incorrectly determined that Teresa's out-of-court statements were sufficiently corroborated to permit them to be introduced at the hearing. We disagree.

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 Teresa's out-of-court statements as recorded by McColgan and Sabatino 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, Teresa demonstrated knowledge of sexual activity that was not common among other seven-year-old children. The child provided considerable detail about her experiences, including contextual and physiological responses about the pain she was feeling at the time and after. McColgan highlighted the burning pain Teresa described and stated it was consistent with the child's statement that defendant fondled her vagina. McColgan explained that "[u]nless a seven-year-old had experienced that, I wouldn't expect her to be able to describe that."

In addition, Teresa was able to describe the physiologic reactions associated with being fearful: heart racing, body shaking, and physically struggling. Teresa also stated she had trouble breathing as defendant choked her. McColgan stated she would not "expect a child of [Teresa's] age to be aware of" these responses "unless she experienced it."

Thus, contrary to defendant's contention, Teresa's statements concerning defendant's abuse were amply corroborated by McColgan's expert testimony and her evaluation of the child. Z.P.R., 351 N.J. Super. at 456. Under these circumstances, we are satisfied that the trial court properly concluded that the

Division met its burden of demonstrating that defendant abused or neglected his seven-year-old daughter.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION