

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2545-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

L.C.F.,

Defendant-Appellant,

and

A.D.M., and the biological
father of N.B. whomsoever
he may be,

Defendants.

IN THE MATTER OF N.B.
and N.M., minors.

Submitted March 15, 2023 – Decided April 14, 2023

Before Judges Currier and Bishop-Thompson.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Essex County,
Docket No. FN-07-0142-21.

Joseph E. Krakora, Public Defender, attorney for
appellant (Matthew Van Natten, Designated Counsel,
on the brief).

Matthew J. Platkin, Attorney General, attorney for
respondent (Donna Arons, Assistant Attorney General,
of counsel; Lisa J. Rusciano, Deputy Attorney
General, on the brief).

Joseph E. Krakora, Public Defender, attorney for
minors (Meredith Alexis Pollock, Deputy Public
Defender, of counsel; Noel C. Devlin, Assistant
Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant L.C.F. (Lucy)¹ appeals from the July 6, 2021, order finding that she abused or neglected her two young children, N.B. (Nick) and N.M. (Nancy), by leaving them home unsupervised. Having considered defendant's arguments in light of the record and applicable legal standards, we affirm.

I.

Following an investigation regarding possible abuse or neglect of Nick and Nancy DCPD filed a verified complaint for custody, care, and supervision

¹ We use pseudonyms to protect the privacy of the individuals. R. 1:38-3(d)(12).

of the children. The subsequent fact-finding hearing revealed the following relevant facts.

The Division presented testimony from its sole witness, investigator Tiffany Horn. She testified the family was known to DCPD since 2012 based on six prior referrals, with one of which was substantiated for physical abuse against Lucy. Horn also described DCPD's investigation and findings.

Lucy is the biological mother of Nick and Nancy, fourteen-years-old and seven-years-old, respectively, at the time of the incident. Nick's biological father was unknown. Nancy's father, A.M., was incarcerated. The children resided with Lucy.

On March 1, 2021, Lucy left Nick and Nancy alone in their apartment from 9:00 p.m. until 2:00 a.m. on March 2. Lucy left the apartment again at 5:00 a.m. that morning.

At approximately 9:00 p.m. on March 2, bystanders flagged down a Newark Police Department squad car and reported they found Nancy walking alone and crying at the intersection of Avon and Treacy Avenues. Nancy told Officers Espinoza and Castro that Nick had been watching her but had left the house to play basketball with his friends. When Nancy became hungry, she left the house in search of "something to eat." She became frightened,

returned home, and discovered she had locked herself out of the apartment. The officers drove Nancy to her apartment, but no one was there.

Upon arrival at the apartment, the officers met Sergeant DaSilva and they spoke to the landlord, who provided Lucy's phone number. The officers called Lucy, but the call went directly to voicemail. The landlord then called Lucy, who answered the phone and stated she would return to the apartment. When Lucy did not return, DaSilva transported Nancy to the police station.

After arriving at the police station, officers made numerous unsuccessful attempts to contact Lucy. The officers contacted the landlord and was informed Lucy's "cousin" was on her way to the station to pick up Nancy. The cousin, however, never arrived at the police station. Nancy was transported to Newark Beth Israel Hospital for assessment.

When the officers' efforts to reach Lucy were unsuccessful, DCPD's Special Response Unit (SRU) was notified at approximately 10:36 p.m. The SRU caseworker's numerous calls to Lucy were likewise unsuccessful and went directly to her voicemail, which was full. The SRU caseworker was informed Nick had returned home. A Newark police officer went to the apartment as requested by the SRU caseworker and transported Nick to Beth Israel.

At approximately 11:45 p.m., the SRU caseworkers went to the apartment and found it dark and empty, but with the television on. Another unsuccessful attempt was made to reach Lucy, and the call again went to voicemail. The SRU caseworkers left the apartment and proceeded to Beth Israel.

An SRU worker interviewed the children at the hospital in the early morning hours of March 3. Nick stated Lucy left the home to go to her cousin's house at about 9:00 p.m. on March 1, but he did not know the cousin's name or address. He explained that he left the apartment at about 4:00 p.m. on March 2 to play basketball with his friends and had left Nancy home alone. He returned home at about 9:30 p.m. and could not get into the apartment because Nancy did not answer the door. Nick did not have a key since Lucy had taken the key with her on Monday night. Nick informed the SRU worker his cell phone was broken, and he used a Bluetooth speaker to make calls.

Nick informed the SRU worker this was not the first time Lucy had left the children alone. In the past, she had left them overnight for two to three days. Nick did not have any additional information about his mother or phone numbers for other family members, although he knew his maternal great-aunt's address.

Nancy stated she left the apartment looking for her brother because she was hungry. When asked if there was food in the apartment, she replied she "usually cooks noodles because she likes to eat [them]." But she "did not want to eat noodles [that night]." She confirmed that Lucy had left them in the home overnight on a prior occasion.

The children were discharged from the hospital. DCPD effected a Dodd removal,² which the Family part later approved. The children were placed with their maternal great-aunt.

Horn testified she interviewed Lucy in the afternoon of March 3 at the maternal great-aunt's home. Horn reviewed the allegations with Lucy, who "appeared bewildered" and "just nodded her head but did not verbalize what she did or didn't understand." Lucy claimed she left home at 3:50 p.m. on March 2 to get information about obtaining identification for employment. Horn testified Lucy did not initially respond to the question about what time she returned home and she appeared "puzzled."

² A Dodd removal refers to the emergency removal of a child from the home without a court order pursuant to the Dodd Act. The Act, as amended, is found at N.J.S.A. 9:6-8.21 to -8.82. See N.J. Div. of Youth & Fam. Servs. v. P.W.R., 205 N.J. 17, 26 n.11 (2011).

Horn advised Lucy that DCPD knew Lucy left the apartment the evening of March 1. Lucy then admitted leaving the apartment on March 1 at 9:00 p.m., but claimed she returned on March 2 at 2:00 a.m., leaving again at 5:00 a.m. to be the first in line at the Department of Motor Vehicles (DMV). Lucy said she was at a cousin's house in Secaucus to go to the DMV in that area. She did not say where she went when she finished at the DMV, indicating only that she was "out." Horn testified Lucy did not like to bring Nancy out because of the pandemic. Lucy stated she was aware Nancy was at the police station Monday night, but instead of picking Nancy up, she went to look for Nick.

Horn also spoke with Nick and Nancy, who provided the same description of events they had provided to SRU caseworkers. Both children corroborated Lucy had left them alone overnight before March 2. Nancy also indicated it was not the first time Nick had left her home alone. When asked what she would do in an emergency, she stated she would go to the landlord's apartment on the second floor. Additionally, Nancy reported she had an emergency one time when she put cookies in the microwave with foil on them and the microwave "almost blew up."

At the conclusion of the one-day fact-finding hearing, the court issued an oral opinion on July 6, 2021, and entered an order finding DCPD had demonstrated by a preponderance of the evidence that Lucy abused or neglected Nick and Nancy in accordance with N.J.S.A. 9:6-8.21(c)(4)(b).

In its oral opinion, the court noted that Horn's testimony was credible based on her "firsthand knowledge regarding her interviews with [Lucy] and the children." Additionally, the court noted Horn's testimony was "consistent with the documentary evidence."

The court found Lucy guilty of abuse or neglect because "[b]oth children independently confirmed details about when their mother left and that she was not home the evening of Tuesday, March 2, 2021." Additionally, "[b]oth children also confirmed that [Lucy] had left them home alone overnight before. Their statements corroborated each other."

The court reasoned:

Here, [Lucy] admitted to leaving the children home alone from 9 p.m. on Monday to 2 a.m. Tuesday night, and again from 5 a.m. Tuesday until she was advised that the police had [Nancy]. [Nancy] was found outside, alone on the street, around 9 p.m. Tuesday, March 2nd. [Nick] had left her home alone to play basketball. [Lucy] ... was unable to state where she was on Tuesday after she was at motor vehicle[]. [Lucy] was aware that the

police had [Nancy], and instead went looking for [Nick]. Both children stated that [Lucy] has left them alone overnight before.

Relying on N.J. Div. of Youth & Fam. Servs. v. A.R., 419 N.J. Super. 538, 544 (App. Div. 2011), the judge concluded

It [is] clear that an ordinary reasonable person would understand that this particular situation poses dangerous risks. See A.R., 419 [N.J.] Super. 21 at 544. The gross negligence standard under A.R. requires . . . an ordinary reasonable person to act without disregard for the potentially serious consequences. Ibid. Here, [Lucy] did not appreciate the dangers -- the dangerous risks of the situation. [Nancy] was left alone by her older brother long enough to leave the house and be found alone by the police at 9 p.m. at night. Thus, considering the totality of the circumstances, the [c]ourt finds that [DCPP] has established by a preponderance of the evidence that [Nancy] and [Nick] are abused or neglected pursuant to Title 9.

The protective services litigation was dismissed on March 10, 2022.

Lucy appealed the court's ruling, contending the court's finding that the children were placed in imminent danger of becoming impaired was legally insufficient to sustain its finding of abuse or neglect because a finding of some substantial risk of harm was required. Lucy relies on N.J. Div. of Youth & Fam. Servs. v. A.L., 213 N.J. 1, 23 (2013) to support her argument that the children were not in imminent danger; thus, there was no substantial risk of

harm. Additionally, Lucy relies on N.J. Div. of Youth & Fam. Servs. v. T.B., 207 N.J. 294, 309 (2011) in arguing her actions constituted mere negligence, rather than the gross or wanton negligence required to trigger the proscriptions of N.J.S.A. 9:6-8.21(c)(4). We reject these contentions because the record amply supports the Title 9 abuse and neglect order.

The Law Guardian requests this court affirm the trial court's decision.

II.

Our scope of review on appeal is narrow. "[F]indings by the trial judge are considered binding on appeal when supported by adequate, substantial and credible evidence" in the record. See N.J. Div. of Youth & Fam. Servs. v. L.L., 201 N.J. 210, 226 (2010); N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 279 (2007). However, "we will accord deference unless the trial court's findings 'went so wide of the mark that a mistake must have been made.'" M.M., 189 N.J. at 279 (quoting C.B. Snyder Realty, Inc. v. BMW of N. Am., Inc., 233 N.J. Super. 65, 69 (App. Div. 1989)). The court's interpretation of the law or its legal conclusions are reviewed de novo. See State ex rel. A.B., 219 N.J. 542, 554-55 (2014).

We accord particular deference to the Family Part judge's fact-findings "[b]ecause of the Family Part's special jurisdiction and expertise in family

matters" N.J. Div. of Youth & Fam. Servs. v. T.M., 399 N.J. Super. 453, 463 (App. Div. 2008) (citing Cesare v. Cesare, 154 N.J. 394, 413 (1998)). We recognize that the judge had "the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand; [and had] a feel of the case that can never be realized by a review of the cold record.'" N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 342-43 (2010) (quoting N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008)).

Abuse and neglect cases "are fact-sensitive." Div. of Child Prot. & Permanency v. E.D.-O., 223 N.J. 166, 180 (2015) (quoting T.B., 207 N.J. at 309. Whether a parent has committed abuse or neglect "must be 'analyzed in light of the dangers and risks associated with the situation.'" N.J. Div. of Youth & Fam. Servs. v. S.I., 437 N.J. Super. 142, 153 (App. Div. 2014) (quoting N.J. Dep't of Children & Fams. v. R.R., 436 N.J. Super. 53, 58 (App. Div. 2014))). "The 'paramount concern' of Title 9 is to ensure the 'safety of the children,' so that 'the lives of innocent children are immediately safeguarded from further injury and possible death.'" N.J. Div. of Child Prot. & Permanency v. A.B., 231 N.J. 354, 368 (2017) (quoting N.J.S.A. 9:6-8.8).

To prevail in a Title 9 proceeding, DCPD must show by a preponderance of the competent, material, and relevant evidence that the parent or guardian

abused or neglected the affected child. N.J.S.A. 9:6-8.46(b). There must be "proof of actual harm or, in the absence of actual harm," through "competent evidence adequate to establish [the children were] presently in imminent danger of being impaired physically, mentally or emotionally." S.I., 437 N.J. Super. at 158 (citation omitted).

In this case, under its theory of abuse and neglect, DCPD was required to prove that the children's

physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of [her] parent or guardian . . . to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so[.]

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

The term "'minimum degree of care' refers to conduct that is grossly or wantonly negligent, but not necessarily intentional." G.S. v. Dep't of Human Servs., 157 N.J. 161, 178 (1999) (citing Miller v. Newsweek, 660 F. Supp. 852, 858-59 (D. Del. 1987)). A parent "fails to exercise a minimum degree of care when he or she is aware of the dangers inherent in a situation and fails adequately to supervise the child or recklessly creates a risk of serious injury

to that child." Id. at 181. When determining whether a child is abused or neglected, the focus is on the harm to the child, and whether that harm should have been prevented had the guardian performed some act to remedy the situation or remove the danger. Id. at 182. "Whether the parent has exercised the requisite degree of care is to be analyzed in light of the dangers and risks associated with the particular situation at issue." N.J. Dep't of Youth & Fam. Servs. v. J.L., 410 N.J. Super. 159, 168 (App. Div. 2009) (citing G.S., 157 N.J. at 181-82). "[W]here a parent is merely negligent there is no warrant to infer that the child will be at future risk." T.B., 207 N.J. at 307.

In this case, under the totality of the circumstances, we affirm the court's finding of abuse and neglect because it is supported by adequate, substantial, and credible evidence in the record. The judge found that Lucy abused or neglected her children by failing to provide proper supervision. In so doing, the judge found sufficient evidence to establish both actual harm and substantial risk of harm. In finding that Lucy's conduct amounted to abuse and neglect, the judge noted that Lucy "failed to appreciate the dangers – dangerous risks [of being left alone]," as evidenced by the children's statements regarding the lack of food in the apartment and being left alone on a prior occasion. Moreover, seven-year-old Nancy was left alone by her

fourteen-year-old brother Nick "long enough to leave the house and be found alone by the police at 9 p.m. at night." Additionally, Nick had left Nancy alone on a prior occasion when he was supposed to have been "watching" her. The children's statements that they had been left unsupervised coupled with the absence of a working phone in the apartment in the event of an emergency supported the judge's conclusion that Lucy's conduct posed a substantial risk of imminent harm.

We are unpersuaded by Lucy's arguments that the court should not have found she abused and neglected the children because she had complied with the DCPD's recommendations and services, and she was reunified with the children.

Our Supreme Court recently considered such an argument in E.D.-O. In E.D.-O., the Court explicitly rejected the notion that courts should consider the substantial risk of harm that children face at the time of an abuse or neglect proceeding; rather, the Court held that trial courts should focus on the substantial risk of harm that children faced at the time of the incident giving rise to the Title 9 proceeding. 223 N.J. at 187-90. As stated, the trial court followed the E.D.-O. directive.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION