RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2626-20

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

J.L.,

Defendant,

and

J.L.,

Defendant-Appellant.

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IN THE MATTER OF
S.L., a minor.

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Argued December 21, 2022 – Decided January 6, 2023

Before Judges Mayer, Enright and Puglisi.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Hunterdon County, Docket No. FN-10-0102-21.

Laura M. Kalik, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Laura M. Kalik, 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, on the brief).

M. Alexis Pollock, Deputy Public Defender, argued the cause for minor (Joseph E. Krakora, Public Defender, Law Guardian, attorney; M. Alexis Pollock, of counsel; Christina E. Minikus, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

In this Title Nine case, defendant J.L. (Jake),[1] appeals from the April 1, 2021 order finding he and his wife, J.L. (Joy), abused or neglected their biological daughter, S.L. (Sally).[2] Jake also appeals from the January 5, 2021 order denying his request for the fact-finding hearing to be conducted in person. We affirm the challenged orders.

[1] Initials and pseudonyms are used to protect the privacy of the child and defendants. R. 1:38-3(d)(12).

[2] A consent order entered on April 15, 2021 terminated the Title Nine action, allowing this matter to proceed on appeal.

I.

We discern the following facts from the fact-finding trial. Sally, defendants' seventh child, was born in August 2020. One day after her birth at Hunterdon Medical Center (HMC), the Division of Child Protection and Permanency (Division) received a referral for the infant. The reporter stated Joy had a history with the Division, had not received prenatal care and was prescribed Suboxone during her pregnancy. Additionally, the reporter informed the Division that Sally had low blood sugar. Because Sally also exhibited "slightly increased [muscle] tone," and was "jittery," she was admitted to HMC's special care nursery unit for monitoring and treated with intravenous fluids.

On August 16, 2020, Mary Ellen Norton, a Division impact and special response worker, investigated the referral. She responded to HMC, spoke with hospital staff and interviewed defendants. Norton learned Joy's urine screen was negative, as was Sally's, but HMC had not yet received Sally's meconium results. Sally's condition was stable at this point. Joy disclosed she was prescribed Suboxone, due to her prior use of Percocet, and she had a prescription for Lexapro. Further, Jake revealed he was prescribed Suboxone and Paxil. Defendants also advised Norton they were concerned about how HMC treated them after they disclosed Joy's Suboxone use.

On August 17, Dr. Mrunalini Chavarkar, an HMC pediatric and perinatal hospitalist and Sally's treating pediatrician at HMC, examined Sally and determined her Finnegan scores[3] were elevated. The doctor met with defendants to inform them Sally might need morphine to alleviate what appeared to be withdrawal symptoms. Dr. Chavarkar also advised defendants Sally would be continually monitored for the next six to twelve hours. Defendants rejected the idea Sally was experiencing withdrawal symptoms, criticized the doctor for suggesting it, and told her if she "dare[d] to start the baby on morphine at any point, they would call the cops on [her]." The doctor described defendants as "very intimidating" and "very disrespectful."

The same day, Division worker Steve Lopez spoke with Jake and offered him a car seat for Sally, in anticipation of her discharge from HMC. Jake informed Lopez "the nurses were not . . . checking up on the baby and making sure that she was doing well." Further, he told Lopez "he didn't agree with [morphine] treatment" for Sally and wanted her transferred to another hospital. Jake explained he "read some medical journals stating . . . babies do not show

[3] The Finnegan neonatal abstinence scale is a recognized tool for assessing whether a newborn is suffering from neonatal abstinence syndrome, commonly known as withdrawal.

withdrawal symptoms within [twenty-four] or [seventy-two] hours of being born" and HMC did not need to start Sally on morphine treatment because she "was not showing signs of withdrawal." Sally was not discharged that day.

On August 19, Lopez received a second referral from HMC about Sally's condition. The baby was exhibiting withdrawal symptoms, including diarrhea, jitteriness, increased muscle tone, constant crying, and difficulty feeding. Lopez again spoke to Jake, who told him Sally "was not receiving the treatment she needed to receive" and he wanted Sally transferred to Capital Health Hospital in Hopewell. Jake stated he was waiting for confirmation from Capital Health about whether there was a bed available for Sally but he and Joy "wanted to take the baby home because . . . they believed . . . the hospital was not providing the care that the baby needed." Defendants also told Lopez that "if [Sally] was to get worse, medically speaking, they had a doctor's office five minutes away from their home so they [could] . . . access that." Jake reiterated he "was not consenting to [morphine] treatment."

Dr. Chavarkar obtained Sally's Finnegan scores that day and concluded they were elevated. She also noted the baby had diaper rash from frequent loose stools, and "[i]t was very difficult for her to have suck and swallow formation, so feeding was difficult." Additionally, the doctor observed Sally had

"increased muscle tone . . . [and] was tremulous." Dr. Chavarkar determined Sally's condition was "indicative that the baby should be started on medication."

Concerned defendants would not "listen to [her]" if she told them Sally needed to start morphine treatment, and mindful she had no established relationship with defendants, Dr. Chavarkar contacted defendants' primary care provider, Dr. Junie Joseph. Dr. Chavarkar asked Dr. Joseph to speak to defendants about the recommended treatment before Dr. Chavarkar broached the subject again with defendants. Dr. Joseph agreed.

When Dr. Joseph spoke with defendants at HMC and discussed Sally's need for morphine treatment, defendants screamed at Dr. Joseph in Dr. Chavarkar's presence, told Dr. Chavarkar she was not "managing [Sally] in the right manner," and stated they wanted Sally to be transferred to Morristown Memorial Hospital.[4]

Because defendants rejected Sally's recommended treatment, Dr. Chavarkar asked Jake to sign a letter, confirming the various discussions the doctor had with defendants. Jake agreed. Accordingly, on August 19, he signed

[4] Lopez and Joy testified at trial that defendants wanted Sally transferred to the Capital Health facility in Hopewell. However, the letter Jake signed at Dr. Chavarkar's request on August 19 stated "Dad & Mom want [the baby] to be transferred to Morristown Memorial Hospital."

a letter confirming Dr. Chavarkar notified defendants about "starting morphine on [Sally,] as her [Finnegan] scores [were] consistently [elevated] in [the] last 24 hours" and acknowledging she "informed [them] about keeping the baby in isol[ation] in" the special care nursery unit. The letter further provided:

> [h]owever, we do not agree with the above management [plan]. All the risks and consequences have been explained to us and we are taking responsibility of all the consequences that may arise from not keeping [Sally] in [the] nursery . . . and not starting morphine to help [Sally] with withdrawal symptom[s]. We release [Dr. Chavarkar] and nurses of [HMC] from any untoward consequences that may arise from refusing to comply with the [treatment] recommended by the physician.
>
> Dad & Mom want [Sally] to be transferred to Morristown Memorial Hospital. Parents are willing to pay for the transfer. . . .
>
> While [Dr. Chavarkar and other healthcare providers] were leaving [defendants'] room, [D]ad [and] Mom mentioned that <u>they want to take [Sally] home. They think she is fine to go home</u>. (Emphasis added).

Once Jake signed this letter, Lopez notified defendants the Division would be effectuating a Dodd removal.[5] Lopez later testified defendants "were

[5] "A 'Dodd removal' refers to the emergency removal of a child from the home without a court order, pursuant to the Dodd Act, which, as amended, is found at N.J.S.A. 9:6-8.21 to -8.82. The Act was authored by former Senate President

extremely upset" when they heard the Division's plan and Jake threatened to "punch" Lopez. Jake also asked to speak to Lopez's supervisor and "became verbally abusive." Lopez testified:

> [Jake] called me a fuck'n cocksucker, . . . [and said] he was going to have my ass because he was going to sue the Division and the hospital. He told me . . . he was going to have my job. . . . I wasn't doing my job properly. I have multiple text messages of his verbal abuse.

According to Lopez, the Division proceeded with the Dodd removal on August 19 because

> it was reported to [the Division] that . . . [defendants] were given . . . the personal medical opinion of the doctors that were taking care of [Sally], that [Sally] needed the treatment, and they both refused the treatment. . . . [A]fter trying to engage both parents, and explain the situation, they seemed not to . . . agree with the recommendation.

Following the Dodd removal, the Division consented to Sally's morphine treatment; she received her first dose of morphine on the night of August 19. Dr. Chavarkar testified Sally's "symptoms improved, and her scoring numbers

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Frank J. 'Pat' Dodd in 1974." N.J. Div. of Youth & Fam. Servs. v. N.S., 412 N.J. Super. 593, 609 n.2 (App. Div. 2010).

started going down" after she was administered morphine. Sally was cleared for discharge to defendants' care on August 30.

In September 2020, Judge Robert G. Wilson entered an order allowing Sally to continue living with her parents but directed the infant to remain under the Division's care and supervision. Three months later, Judge Wilson conducted a compliance review hearing and tentatively scheduled a virtual fact-finding trial for February 22, 2021.

During the December 2020 hearing, Jake's counsel asked for the trial to be held in person "due to the nature of the proceedings." Noting the ongoing pandemic, the judge asked Jake's attorney why she thought it necessary to conduct the trial in person. Counsel explained that her employer, the Office of Parental Representation, took "the stance" that "any type of trial" should proceed in person, "given the logistical difficulties of evidence[] and witnesses." The judge instructed defendants' attorneys to ask their respective clients what their preferences were, stating, "I think the decision belongs to the parties." Jake interjected and stated he and Joy "just spoke" about whether the trial should be "remote or in court" and they were "fine either way, whatever way gets this done faster, or whichever way is the safest."

The judge informed the parties, "I feel a hundred percent [a virtual trial is] going to be safer, and about [ninety-nine] percent it's going to be faster." Jake's counsel replied there were "other considerations" that go into a trial and "something is lost by not being in person." She asked for additional time to discuss this issue with Jake and the judge granted her request.

On January 5, 2021, Judge Wilson denied Jake's application for an in-person trial, noting the Division recently joined in Jake's request.[6] Judge Wilson explained the case was not "a particularly complex one," that he was trained on how to conduct remote proceedings, and could assess the credibility of witnesses and handle other aspects of the trial virtually. He also took judicial notice of New Jersey's Department of Health's COVID fatality and positivity rates and remarked, "I approach the question of being in the same room with . . . all of you . . . with a tremendous amount of caution."

II.

The trial proceeded as scheduled on February 22, 2021. During the hearing, the Division presented the testimony of four witnesses: Mary Ellen

[6] Although the Division supported Jake's request for an in-person trial, it does not appeal from the January 5 order. The record also reflects that prior to the January 5 ruling, neither Joy nor the Law Guardian formally expressed a position on whether the trial should proceed in person or virtually.

Norton; Steve Lopez; Catherine Maher-Morcos, Lopez's supervisor; and Dr. Chavarkar. Joy also elected to testify; Jake did not.

Norton testified about her limited contact with defendants and HMC staff after receiving the August 16 referral. Lopez provided testimony about his various interactions with defendants before and after the Division decided to effectuate the Dodd removal.

Maher-Morcos testified she worked with the Division for sixteen years and was familiar with defendants because she "was the covering supervisor on August 19, 2020 when" the Division received "a related information report" about defendants' case. Maher-Morcos stated she spoke with Dr. Chavarkar about Sally's condition that day and directed Lopez to follow up with defendants in an attempt to explain the doctor's recommendation to them. Maher-Morcos stated the Division decided in favor of Sally's emergent removal because, despite Lopez's efforts and "the efforts of others involved in [Sally's] care, the conversation was not going anywhere, [and] . . . Sally was not getting treated." Maher-Morcos emphasized the purpose of the removal was "to provide [Sally] with the treatment . . . she needed at that time, and urgently."

Maher-Morcos testified she directed Lopez to consent to Sally's recommended medical treatment once the Division was able to "take emergency

custody." Additionally, she stated the Division "established"[7] defendants for medical neglect because Sally

> required medical treatment at the time she was in the hospital . . . . And . . . neither the treatment with morphine nor the [recommended] isolation was being followed and there were some very concerning symptoms going on with [Sally]. . . . [O]ur decision [was] that this was neglectful, because without our intervention this child was at serious risk of harm.

When Dr. Chavarkar took the witness stand, the Deputy Attorney General (DAG) asked the doctor to be qualified as a pediatrics expert, given her educational background and work experience. Jake's attorney objected, contending there was not "enough foundation . . . to demonstrate . . . [Dr. Chavarkar] is an expert in pediatrics." Because the DAG conceded she did not provide defendants with an expert report from Dr. Chavarkar, Judge Wilson found the doctor should testify only as a fact witness.

Dr. Chavarkar testified she became involved with defendants' family approximately forty-eight hours after Sally's birth, when Sally was in the special

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[7] An abuse or neglect allegation is "'established' if the preponderance of the evidence indicates that a child is an 'abused or neglected child' as defined in N.J.S.A. 9:6-8.21, but the act or acts committed or omitted do not warrant a finding of 'substantiated' as defined" in N.J.A.C. 3A:10-7.3(c)(1). N.J. Div. of Child Prot. & Permanency v. V.E., 448 N.J. Super. 374, 388-89 (App. Div. 2017) (noting a "'substantiated' finding applies to the most severe cases" such as those "involving death or near death . . . or repeated acts of physical abuse").

care nursery unit. She understood Joy "abus[ed] drugs in the past" and was aware Joy "was on Suboxone when she delivered [Sally]."

The doctor also testified that when newborns exhibit withdrawal symptoms at HMC, they are monitored in the unit "for Finnegan scoring" and staff pursues "non-pharmacological interventions." She stated, "we . . . start swaddling them" and the babies are "kept in isolation where there is not much . . . stimulus in the form o[f] sound and light." Dr. Chavarkar testified that when such measures fail and "the scoring keeps going up[,] . . . that's an indication to start pharmacologic therapy." She added that at HMC, "the first line of treatment is morphine."

While testifying about Sally's Finnegan scores, Dr. Chavarkar noted they "were low" in the thirty-six hours following Sally's birth. "But from [thirty-six] to [forty-eight] hours, there were some . . . numbers, which were going in the range where . . . pharmacologic therapy" was considered. Dr. Chavarkar described defendants' reaction when she informed them she was considering morphine treatment for Sally. She recalled defendants

> started shouting. . . . [T]hey . . . just got up and came towards me, I almost felt that they [were] going to physically abuse me, so after that first incident, I never went into that room alone. They call[ed] me an idiot. They said . . . I don't know what I'm doing.

Dr. Chavarkar further testified that she continued to monitor Sally's scores and physical symptoms, including the baby's loose stools, increased muscle tone, "constant[] crying" and difficulty in feeding, before concluding Sally's "collection of . . . symptoms resulted from withdrawal." Additionally, she confirmed she asked Dr. Joseph to speak with defendants about Sally's need for morphine treatment, given Dr. Joseph's relationship with the family.

Additionally, Dr. Chavarkar testified Jake told her he wanted Sally transferred to another hospital, but "before . . . [Dr. Chavarkar] could step out of the room, [defendants] . . . said [Sally] is fine" and they "would like to take her home." Dr. Chavarkar stated she alerted the Division regarding defendants' desire to take Sally home because "it was not safe" for Sally to be discharged from HMC. The doctor opined "the consequences of not treating [Sally] would have been failure to thrive and seizures."

When Joy testified, she noted the first time she heard Sally might need morphine treatment was when Dr. Chavarkar and Lopez discussed this plan with her. She stated, "leading up to that, all they told me was . . . [Sally's] glucose . . . was high . . . or her sugar was low. So, when they hit me with that, I asked tons of questions." Joy testified she "wanted to call Capital Health" because Dr. Chavarkar "really didn't have a good enough answer for me" and "just said . . .

we need to put your baby on morphine." Joy added, "all I wanted was a second opinion . . . . And I wanted to go to Capital Health because they were more intercity, . . . they deal with this more." Further, Joy stated she "[n]ever" felt she should take Sally home with her after Sally's doctors recommended morphine treatment for the baby; she also denied Dr. Joseph provided her with a second opinion, claiming Dr. Joseph told her Sally "looked like a normal healthy baby." But when Judge Wilson asked Joy directly if she understood Sally's healthcare providers wanted to treat Sally's withdrawal symptoms with morphine, Joy answered affirmatively.

III.

On April 1, 2021, Judge Wilson issued an oral opinion, finding the Division established by a preponderance of the evidence that defendants abused or neglected Sally as defined under N.J.S.A. 9:6-8.21(c)(4)(b). Before making this determination, the judge summarized the testimony of each witness and outlined his credibility findings. He found Norton credible and that she displayed "a candid demeanor." Further, the judge credited Lopez's testimony, noting it was "consistent with [defendants'] version of events."

Turning to Maher-Morcos's testimony, Judge Wilson found she was "fully credible" and there was "nothing in her testimony that [he] found to be false."

Nonetheless, he clarified that Maher-Morcos was "not an expert," so when she testified about Sally "requiring medical treatment," he did not consider this testimony "for the truth of this matter," but rather for "why the Division took the steps that it took." The judge found Maher-Morcos "ultimately approved" the Division's plan for removal, believing Sally "was not receiving the recommended treatment." He stated he was "confident . . . the Division did the right thing based on the information that Ms. Maher-Morcos received." Additionally, the judge stated, "I'm not finding . . . there was a risk of seizure or death to [Sally]. I am noting that . . . is how it appeared to [Maher-Morcos], and we can't have a reason much better than that for a need to go to court to protect a child."

Next, Judge Wilson referred to Dr. Chavarkar's testimony, concluding she was "generally credible." He believed "all of her observations," but determined some of her testimony revealed "somewhat of a lack of specificity." The judge clarified that because Dr. Chavarkar was not an expert witness, he could "not find[] as a fact . . . a failure to treat [Sally] with morphine would [have] increase[d Sally's] risk of seizure and . . . lead to a risk that [she] would die." Additionally, he declined to find defendants disregarded instructions from HMC to leave Sally in isolation, because it was "not clear to [him] that people from

[HMC] were telling [defendants to] leave her in . . . isolation." However, the judge credited Dr. Chavarkar's testimony that defendants told her they were contacting Morristown Memorial Hospital and the doctor offered to "do the paperwork to transfer" Sally there before "one or both of [defendants] advised, '[w]e're not going to Morristown Memorial Hospital.'" The judge also found one or both of defendants told the doctor, "'she is fine,' meaning [Sally], 'and we want to take her home.'"

Lastly, the judge credited "most of [Joy's] testimony" because it was "consistent with much of the . . . testimony . . . from the other witnesses." He noted Joy "confirmed . . . Lopez spoke with her regarding the need for morphine." Also, the judge found that contrary to Joy's statement "she never wanted to bring [Sally] home," "both . . . [defendants] said that they were taking [Sally] home." Further, the judge found Joy "did understand . . . the reason . . . the morphine was being recommended . . . was because there was a diagnosis of withdrawal."

In concluding defendants abused or neglected Sally, the judge relied, in part, on the release letter signed by Jake at Dr. Chavarkar's request. The judge stated it was "pretty strong evidence, . . . created contemporaneously with what was going on, and . . . signed at least by one of the defendants." Additionally,

the judge noted the letter reflected that "Dad and Mom mentioned . . . they want to take [Sally] home, that they think she is fine to go home. And it specifically says that morphine is recommended to help the baby with withdrawal symptoms."

Therefore, the judge found "both refused the morphine for [Sally]" and "tried to take her home," notwithstanding "Dr. Chavarkar and other agency staff diagnosed [Sally] as having withdrawal symptoms." He also concluded defendants were told "the diagnosis was that [Sally] was suffering withdrawal" and they "were . . . clearly advised . . . [Sally] was experiencing symptoms because she was withdrawing, and that the recommendation to treat this suffering was warranted." Additionally, the judge found staff at HMC, and defendants' primary family practice doctor, as well as Division workers "attempted to educate [defendants] and encouraged them to consent to treatment for [Sally] to stabilize her condition."

Although Judge Wilson deemed Dr. Chavarkar a fact witness, he stated Sally's "injuries included physical symptoms of withdrawal, [including] jitteriness, irritability, low suck, diarrhea, [and] increased tone" and "[n]one of these ailments is so complex as to require an expert, and are well within the

experience and knowledge of the average fact-finder." Thus, the judge concluded:

> I find by a preponderance of the evidence that [defendants] were advised . . . their child was suffering, and that there was treatment to end that suffering, and they refused that treatment. And . . . they said, "[w]e're taking [Sally] home." That was neglect. There was a suffering baby, treatment available to end that baby's suffering, and parents who were refusing to allow that treatment to occur.
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> . . . .
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> Their newborn was suffering withdrawal symptoms when she could have been provided morphine to treat her condition.
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> [(Emphasis added).]

IV.

On appeal, Jake initially argues "there was insufficient evidence to support a finding of abuse or neglect," contending his "disagreement with medical providers and attempt to seek a second opinion from a different hospital was not medical neglect." Further, he argues expert testimony was needed "to establish actual harm or substantial risk of harm to Sally." Moreover, Jake contends the judge violated his due process rights by failing to hold an in-person hearing and the judge should have dismissed the Title Nine action and instead declared the family in need of services under Title Thirty.

These arguments lack merit. R. 2:11-3(e)(1)(E). Accordingly, we affirm the January 5, and April 2, 2021 orders substantially for the reasons outlined by Judge Wilson in his thoughtful oral opinions. We add the following comments.

Our scope of review of abuse or neglect orders is limited. N.J. Div. of Youth & Fam. Servs. v. Z.P.R., 351 N.J. Super. 427, 435 (App. Div. 2002). We defer to the factual findings of the Family Part if they are sustained by "adequate, substantial, and credible evidence." N.J. Div. of Child Prot. & Permanency v. N.B., 452 N.J. Super. 513, 521 (App. Div. 2017) (quoting N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 552 (2014)). That deference is justified because of the Family Part's "special jurisdiction and expertise in family matters." N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 343 (2010) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). We owe particular deference to the trial court's credibility determinations and only overturn its determinations regarding the underlying facts and their implications when the "findings went so wide of the mark that a mistake must have been made." N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 279 (2007) (internal citations and quotation marks omitted). But we review de novo a trial court's interpretation of the law. D.W. v. R.W., 212 N.J. 232, 245-46 (2012).

Title Nine, N.J.S.A. 9:6-1 to -8.114, governs the adjudication of abuse or neglect. The statute "is designed to protect children who suffer serious injury inflicted other than by accidental means." N.J. Div. of Youth & Fam. Servs. v. S.I., 437 N.J. Super. 142, 152 (App. Div. 2014) (citations omitted). An "abused or neglected child" is defined as:

> a child less than [eighteen] years of age . . . whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of [the child's] parent or guardian . . . to exercise a minimum degree of care . . . in supplying the child with adequate . . . medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or . . . 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)(4).]

The proofs needed to establish abuse or neglect are measured under a preponderance of evidence standard. N.J. Div. of Youth & Fam. Servs. v. P.W.R., 205 N.J. 17, 32 (2011). Under this standard, "something more than ordinary negligence is required to hold the actor liable," such as "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). "The standard 'implies that a person

has acted with reckless disregard for the safety of others.'" S.I., 437 N.J. Super. at 153 (quoting G.S., 157 N.J. at 179).

Proof of harm under the statute can come from any number of competent sources, including "medical and hospital records, health care providers, caregivers, or qualified experts." N.J. Div. of Youth & Fam. Servs. v. A.L., 213 N.J. 1, 23 (2013). However, expert testimony in abuse and neglect matters is not required. Id. at 29. Additionally, actual harm to a child is not necessary for a trial court to find abuse or neglect. Id. at 23.

Guided by these principles, we discern no basis to disturb the judge's finding that defendants abused or neglected Sally, as defined under N.J.S.A. 9:6-8.21(c)(4). In fact, we agree with his conclusions that: (1) Jake signed a letter of release, confirming defendants were apprised of "[a]ll the risks and consequences" that could arise from "not starting morphine to help [Sally] with [her] withdrawal symptoms"; (2) defendants "were advised . . . their child was suffering, and . . . there was treatment to end that suffering, and they refused that treatment"; and (3) although defendants were aware of Sally's symptoms and the treatment recommendations from Drs. Chavarkar and Joseph, they stated, "[w]e're taking [Sally] home." Because Judge Wilson's factual findings

are well supported on the record, his legal conclusion that the Division met its burden in establishing defendants abused or neglected Sally is unassailable.

Next, in addressing Jake's due process argument, we note "[d]ue process requires that a parent charged with abuse or neglect 'have . . . adequate notice and opportunity to prepare and respond.'" N.J. Div. of Youth & Fam. Servs. v. T.S., 429 N.J. Super. 202, 213 (App. Div. 2013) (alteration in original) (quoting N.J. Div. of Youth & Fam. Servs. v. N.D., 417 N.J. Super. 96, 109 (App. Div. 2010)). However, "[d]ue process is not a fixed concept, . . . but a flexible one that depends on the particular circumstances." Doe v. Poritz, 142 N.J. 1, 106 (1995) (citations omitted).

Our Supreme Court recently recognized "technological problems . . . are common to all virtual proceedings" and although "the virtual process may not be perfect," this "does not mean that it is not mostly effective or unconstitutional." State v. Vega-Larregui, 246 N.J. 94, 131, 133 (2021). On the other hand, in D.M.R. v. M.K.G., 467 N.J. Super. 308, 320-22 (App. Div. 2021), we determined the defendant's due process rights were violated during a virtual domestic violence proceeding. But we reached that conclusion only after finding the hearing was tainted with several "irregularities," including "the trial court's questioning of plaintiff's mother at times," which "approached advocacy"

and showed the court's failure "to meet the requisite standard of impartiality." Id. at 321-22.

Here, unlike in D.M.R., all parties were represented by counsel and the record reveals no such irregularities of constitutional import that would lead us to conclude Jake was denied due process. Rather, our review of the record convinces us Judge Wilson maintained the requisite formalities and remained impartial throughout the proceedings. Also, to the extent Jake points to "two instances in the transcript which were marked 'indiscernible,'" and he argues "critical information for the defense . . . likely would have been more intelligible in person," we disagree. While mindful transcription problems are common to virtual and in person proceedings, we note Jake did not provide this court with concrete examples of information omitted from the transcript which would support his due process argument.

Lastly, because there was sufficient evidence to sustain a finding of neglect under Title Nine, we need not discuss Jake's contention the judge should have dismissed the Title Nine action and ordered the Division to provide services to defendants' family under Title Thirty. See N.J. Dep't of Child. v. I.S., 214 N.J. 8, 15 (2013) (stating "the Legislature intended N.J.S.A. 30:4C-12

to authorize the Division to intervene when children need services and a parent cannot provide that help for no fault-based reason").

To the extent we have not addressed Jake's remaining arguments, they are without merit. R. 2:11-3 (e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION