RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1110-22
A-1111-22

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

E.A.K.,

Defendant,

and

J.S.,

Defendant-Appellant.

IN THE MATTER OF M.S-K.,
and J.L.S., minors.

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

L.D. and JOS. S.,

Defendants,

and

JOR. S.,

Defendant-Appellant.

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IN THE MATTER OF C.D.
and T.S., minors.

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Submitted February 27, 2024 – Decided May 29, 2024

Before Judges Gooden Brown and Puglisi.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Camden County, Docket Nos. FN-04-0099-22 and FN-04-0135-22.

Jennifer Nicole Sellitti, Public Defender, attorney for appellant J.S. in A-1110-22 (Arthur David Malkin, Designated Counsel, on the briefs).

Jennifer Nicole Sellitti, Public Defender, attorney for appellant Jor.S. in A-1111-22 (Caitlin Aviss McLaughlin, Designated Counsel, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Meaghan M. Goulding, Deputy Attorney General, on the briefs).

Jennifer Nicole Sellitti, Public Defender, Law Guardian, attorney for minors M.S-K. in A-1110-22 and T.S. in A-1111-22 (Meredith Alexis Pollock, Deputy Public Defender, of counsel; Todd S. Wilson, Designated Counsel, on the briefs).

Jennifer Nicole Sellitti, Public Defender, Law Guardian, attorney for minors J.L.S. in A-1110-22 and C.D. in A-1111-22 (Meredith Alexis Pollock, Deputy Public Defender, of counsel; Cory Hadley Cassar, Designated Counsel, on the briefs).

PER CURIAM

In these back-to-back appeals, which we consolidate for purposes of issuing a single opinion, defendant J.S.[1] appeals from the April 29, 2022, and May 6, 2022, Family Part orders entered following fact-finding hearings. The hearings resulted in the trial judge determining that defendant abused or neglected his three sons as well as his live-in girlfriend's son within the meaning of N.J.S.A. 9:6-8.21(c). The orders were perfected for appeal by orders entered on October 26, 2022, terminating the litigation. The children, M.S.-K, J.L.S., T.S., and C.D., were born in 2010, 2013, 2018, and 2012, respectively. Both the Division of Child Protection and Permanency (Division) and the Law Guardians

[1] We use initials to protect the privacy of the family. R. 1:38-3(d)(12). Defendant is referred to by the initials J.S. in A-1110-22 and Jor.S. in A-1111-22 to distinguish him from another parent with similar initials.

urge us to reject defendant's arguments on appeal and affirm the judge's decisions. Based on our thorough review of the record and the governing legal principles, we affirm.

I.

The Division initiated a child abuse investigation against defendant following a police referral. L.D., defendant's live-in girlfriend at the time, provided police with an hour-long home security surveillance video that captured defendant, who was home alone with all four children, punching, kicking, threatening, and yelling at the children while visibly intoxicated. Defendant was also seen exposing his penis to his girlfriend's son, C.D., and telling him to "kiss my [d**k] because your mother sucks my [d**k,]" along with a slew of other obscene, demeaning, and degrading insults and threats. The police filed criminal charges against defendant and the Division filed complaints pursuant to N.J.S.A. 9:6-8.33, seeking adjudication of abuse or neglect allegations against defendant for all four children.

Separate complaints were filed because the children have different biological parents. One complaint was filed for M.S.-K. and J.L.S., who are defendant's biological children from a previous relationship with E.A.K. A separate complaint was filed for T.S. and C.D. Defendant and L.D. are the

biological parents of T.S. C.D. is the biological child of L.D. from a previous relationship with Jos.S. No allegations of abuse or neglect were made against Jos.S., L.D., or E.A.K. and they are not parties to these appeals.

Separate fact-finding hearings were conducted for M.S.-K. and J.L.S. on April 29, 2022, and T.S. and C.D. on May 6, 2022, during which the Division introduced the home surveillance video along with the children's forensic interviews and a pediatric report recommending mental health services for the children. Several witnesses also testified for the Division, including L.D., who authenticated the video and recounted the events leading to the retrieval of the video,[2] the assigned intake Division caseworker who detailed the Division's response to the referral from the Gloucester County Police Department, and the detective who conducted the forensic interviews of the children.

L.D. testified that on September 2, 2021, defendant was at home with eleven-year-old M.S-K, nine-year-old C.D., seven-year-old J.L.S., and three-year-old T.S. while she was at work. When defendant picked L.D. up from work with all four children in the car, L.D. testified that she "made sure" that she drove them back home because defendant could have been drinking. Later that

[2] At the May 6, 2022, hearing, the parties stipulated to L.D.'s testimony and the admission of the surveillance video. As such, identical evidence was presented at each hearing.

night, M.S.-K told L.D. that defendant "tripped him and that he hit his head," and that there was a video of defendant "tripping" or "kicking" T.S. According to L.D., there was a home security camera set up in the living room of their home to monitor the children's activities.

Prompted by an unrelated incident involving defendant, on September 5, 2021, L.D. went to the Gloucester Township Police Department, retrieved the video through an application on her cellphone, and turned the video over to the police. After watching the video, police reported the incident to the Division. Defendant was subsequently arrested and charged with "four counts of aggravated assault, four counts of endangering the welfare of a child, four counts of lewdness and one count of terroristic threats." While in police custody, defendant informed the Division caseworker that he had a prior "physical abuse" incident "the year prior" and had "been on probation."

The home surveillance video depicted defendant hitting, kicking, and berating all four children for approximately fifty-three minutes while appearing "visibly drunk." Defendant cursed at the children throughout the entire video, calling them "stupid," "dumb," and "[fa***t]." He repeatedly told the children to "shut up" and engaged in pejorative and racist name-calling. Defendant also threatened to "punch" and hit the children.

Among a slew of other insults, defendant stated:

> [DEFENDANT]: . . . your mom is the biggest [f*****g] piece of [s**t] . . . . That's why I'm walking around butt [a*s] naked like this because you're a [f*****g] [fa***t].
>
> . . . .
>
> [DEFENDANT]: Your mom is the biggest [f*****g] piece of [s**t]. I will [f*****g] take my clothes off and [s**t] in your [f*****g] lip right now, I'll [s**t] on top of your [f*****g] mother, all right?

As the children cried, defendant continued,

> [DEFENDANT]: Don't you dare test me again. I'll break your [f*****g] mouth.
>
> . . . .
>
> A CHILD: (Screams crying) Why did you hit me? Why did you hit me?
>
> . . . .
>
> [DEFENDANT]: You want my [d**k]? You want my [d**k]?
>
> A CHILD: No (screaming crying).
>
> . . . .
>
> [DEFENDANT]: Then shut up, then shut up unless you want my [d**k].
>
> A CHILD: Daddy (crying)

[DEFENDANT]: You wanna kiss my [d**k]?

Defendant also told the children, "I'm going to [f*****g] hurt you, I'm going to hurt you," and "[y]ou want a head butt? Oh, you don't want a head butt, bro, I'm telling you right now. You're going to feel like you want to die right there."

On September 8, 2021, the Camden County Prosecutor's Office (CCPO) conducted recorded forensic interviews of the four children. In M.S-K's interview, M.S.-K stated that defendant "got locked up" because "he hit me a lot, so I told my mom and . . . she called the cops and then he got locked up." M.S.-K recounted that defendant started hitting him when he was around five years old, and that defendant had hit him "lot[s] of times" since then. Regarding the September 2, 2021, incident, M.S.-K disclosed that defendant hit him and "[a]ll of [his] brothers" "[e]verywhere," using his "hands," "fists," and "legs." M.S.-K stated that he and his brothers were "all in the living room and [defendant] was hitting [them] one by one."

According to M.S.-K., defendant choked him and "hit" him "over and over again [un]til he r[an] out of energy[,] . . . [and t]hen . . . c[ame] back and d[id] it again. . . . [a]ll night until [defendant] got tired and passed out." M.S.-K further stated that defendant "kick[ed] [T.S.] on the ground" and "grabbed [C.D.] by his shirt and slammed him into our closet." Additionally, M.S.-K stated that

defendant "pulled down his pants and . . . point[ed] . . . [defendant's] private . . . part at [C.D.]" while saying "'I'll pee on your mom's grave when she dies.'"

In J.L.S.'s interview, he recounted that defendant "hits" him and his brothers, "[s]ometimes [with] his belt and sometimes [with] his hand." J.L.S. stated that the most recent time was when defendant "dr[ank] alcohol and . . . started hitting [them]" until he "got arrested." J.L.S. said that defendant also "choked [M.S.-K]," "kicked [T.S.]," and told them he was "going to kill [them]."

In C.D.'s interview, C.D. recounted that during the September 2, 2021, incident, defendant "pulled down his pants and his shirt" and "exposed himself" to C.D. while C.D. was sitting on the couch. According to C.D., defendant's "butt and . . . wiener" were visible, and defendant "was talking about [C.D.'s] mother." C.D. said defendant also "tripped [T.S.] near the pool table," causing him to "hit his head." C.D. also stated that defendant "hit[] [him] into the couch," "pulled [him] up by [his] shirt," and "threw [him] down on the kitchen floor." C.D. explained that the incident occurred when defendant was drunk because "when he's drunk, . . . he always gets mad."

Finally, in T.S.'s interview, T.S. was asked whether he was able to talk about defendant. T.S. responded that "daddy is gone," and that "daddy boo-boo and punch, punch," "all of them punched."

On September 21, 2021, all four children were evaluated by Dr. Stephanie Lanese, Assistant Professor of Pediatrics at the CARES Institute of Rowan University, for "diagnosis and treatment of any . . . concern[s]" related to the September 2, 2021, incident. In her respective CARES reports, Dr. Lanese recommended mental health services and assessments for M.S.-K, C.D., and J.L.S., as well as play and family therapy for T.S.

Following the hearings, in an order and oral opinion issued in each case, the judge concluded the Division proved by a preponderance of the evidence abuse and neglect by excessive corporal punishment, sexual abuse, and emotional abuse within the meaning of N.J.S.A. 9:6-8.21(c)(1), (c)(3), and (c)(4)(b).[3] First, the judge credited the testimony of the caseworker and the detective, noting that their respective testimony was "reasonable," and they both answered questions "directly." Additionally, the judge credited L.D.'s testimony, noting that L.D. was "straightforward in her answers," and "nearly inconsolable" when she watched the September 2, 2021, video in full for the first time at the hearing.

[3] The judge incorporated the findings at the April 29, 2022, hearing into the findings at the May 6, 2022, hearing.

Regarding the forensic interviews, the judge noted the detective "did not ask leading questions." Instead, she asked "open-ended questions" and did not "put[] words in the child[ren's] mouths." Next, the judge recounted and evaluated the credibility of the children's statements from each of the forensic interviews, noting that the statements were age appropriate. Finally, the judge described the September 2, 2021, video as "disturbing." The judge found it was "clear that [defendant] was intoxicated" in the video based on his "unbalanced . . . walk" and his "stumbling around." The judge stated further "[t]here [was] no question . . . that all four of these children were physically abused by [defendant]."

According to the judge, defendant "hit," "punched," "kicked," and "cursed" at the children. He "choked" M.S.-K. and "twist[ed his] arm," and he "kicked" T.S. He subjected the children to "humiliating" and "degrading" comments for almost an hour that was "nothing short of torture." Further, the children's forensic interviews "corroborate[d] th[e] video" because "[j]ust about everything they said" and "more was caught on th[e] video."

Additionally, the judge found:

> [Defendant] was exposing himself to the children. He took his pants down in front of [C.D.]. His backside could be seen by the other children. And then later he mentioned his penis . . . . And other things he said, "All

> [of] you . . . are mother [f*****s]. If you love your dad, you won't make me mad. Your dad's going to jail because of you, [b***h]. You [f****t] [a*s] little kids, [n***a]. Your mom is a [f*****g] piece of [f*****g] dog [s**t]."
>
> . . . .
>
> [Defendant] punched the kids. He's hovering over the children, punching them, hurting them. He's like pushing them like mashed potatoes and he said, "You like . . . when I'm not here to torture you. You know I'm going to [f**k] you up, [n***a]." And the children are crying and wailing and he's saying, "Shut up." The baby crawls away, "And I'll hurt you real [f*****g] bad. I'll smoosh into your [f*****g] body. You [f*****g] dumb [a*s]. You [f*****g] idiot. You stupid [a*s] mother [f****r]."
>
> [T]his is what [defendant is] saying throughout these [fifty-three] minutes.

The judge concluded "it [was] clear by any shadow of a doubt that the Division has proven abuse and neglect under [N.J.S.A.] 9:6-8.21(c)(1) with the physical abuse." In addition, according to the judge, defendant's conduct was "clearly excessive corporal punishment" and "r[ose] to the level of sexual abuse." In support, the judge pointed to defendant exposing himself to the children and taunting the children to "'look at'" his penis.

Further, the judge noted that

> [defendant] was clearly intoxicated, let alone the fact that he put the four kids in the car and drove to pick the

> mother up from work. That's not even a part of the Division's case, but I . . . cannot believe he got in the car after watching his behavior for nearly an hour torturing these children and screaming and yelling at them.

After reviewing the CARES reports prepared by Dr. Lanese, the judge also determined "[t]here's no question that this was psychologically damaging" to the children.

In these ensuing appeals, in A-1110-22 pertaining to M.S.-K. and J.L.S., defendant raises the following points for our consideration:

> POINT ONE
>
> THE TRIAL COURT'S JUDGMENT OF ABUSE AND NEGLECT AGAINST [DEFENDANT] WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE, BECAUSE [THE DIVISION] FAILED TO PROVE THE CHILDREN SUFFERED PHYSICAL INJURIES OR ENDURING PSYCHOLOGICAL HARM.
>
> POINT TWO
>
> [DEFENDANT] RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL [(IAC)] BECAUSE HIS COUNSEL'S CROSS-EXAMINATION WAS MINIMAL, DID NOT CHALLENGE THE ADEQUACY OF ANY CORROROBRATION, AND FAILED TO RAISE THE LACK OF [THE DIVISION'S] EVIDENCE IN A SUMMATION. (NOT RAISED BELOW).

In A-1111-22 pertaining to C.D. and T.S., defendant makes the following arguments:

> POINT [ONE]
>
> THE TRIAL COURT'S LEGAL CONCLUSION OF ABUSE OR NEGLECT WAS NOT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE AND THEREFORE [THE DIVISION] FAILED TO MEET THE BURDEN UNDER THE STATUTE, N.J.S.A. 9:6-8.21.
>
> > A. The Trial Court Did Not Base Its Decision Upon Competent, Material And Relevant Evidence As Required By N.J.S.A. 9:6-8.46(B)(2) And Therefore The Decision Must Be Reversed.
> >
> > B. The Trial Court Improperly Relied Upon The CARES Reports To Make A Finding That The Children Had Physical Injuries And Long-Term Psychological Harm, And Therefore The Order Must Be Reversed.
>
> POINT [TWO]
>
> [DEFENDANT] WAS NOT AFFOR[D]ED PROPER DUE PROCESS PROTECTIONS AS HE WAS NOT PROVIDED NOTICE AND THE OPPORTUNITY TO DEFEND THE FINDINGS OF SEXUAL ABUSE AND EXCESSIVE CORPORAL PUNISHMENT BY THE TRIAL COURT.
>
> > A. The Trial Court Violated [Defendant's] Due Process Rights By Making A Finding Of Sexual Abuse Pursuant To N.J.S.A. 9:6-8.21(C)(3) Without Providing Him With Any Notice Of This Allegation.

B. The Trial Court Violated [Defendant's] Due Process Rights By Making A Finding Of Excessive Corporal Punishment Pursuant To N.J.S.A. 9:6-8.21(C)(4) Without Providing Him With Any Notice Of This Allegation.

POINT [THREE]

[DEFENDANT] RECEIVED [IAC] BECAUSE HIS COUNSEL FAILED TO OBJECT TO THE ADMITTANCE OF EVIDENCE AT THE FACT-FINDING TRIAL AND DID NOT ADEQUATELY PRESENT A DEFENSE DURING THE TRIAL. (NOT RAISED BELOW).

II.

We begin with a recitation of the governing principles. "The fact-finding hearing is a critical element of the abuse and neglect process . . . ." N.J. Div. of Youth & Fam. Servs. v. P.C., 439 N.J. Super. 404, 413 (App. Div. 2015). "The prevailing concern in abuse and neglect cases is the best interests of the child." N.J. Div. of Child Prot. & Permanency v. S.G., 448 N.J. Super. 135, 146 (App. Div. 2016). To succeed in a Title Nine fact-finding proceeding, the Division must prove "that the child is 'abused or neglected' by a preponderance of the evidence, and only through the admission of 'competent, material and relevant evidence.'" 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(b)).

An "abused or neglected child" is, in relevant part, a child under eighteen,

> whose parent or guardian . . . (1) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; . . . (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, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court . . . .
>
> [N.J.S.A. 9:6-8.21(c)(1), (3), (4).]

A parent's failure to exercise a minimum degree of care "refers to conduct that is grossly or wantonly negligent, but not necessarily intentional." Dep't of Children & Fams. v. T.B., 207 N.J. 294, 300 (2011) (quoting G.S. v. Dep't of Human Servs., 157 N.J. 161, 178 (1999)). Willful or wanton negligence "implies that a person has acted with reckless disregard for the safety of others." G.S., 157 N.J. at 179. It is "done with the knowledge that injury is likely to, or probably will, result," and "can apply to situations ranging from 'slight inadvertence to malicious purpose to inflict injury.'" Id. at 178 (quoting McLaughlin v. Rova Farms, Inc., 56 N.J. 288, 305 (1970)). "However, if the

act or omission is intentionally done, 'whether the actor actually recognizes the highly dangerous character of [the] conduct is irrelevant,' and '[k]nowledge will be imputed to the actor.'" S.G., 448 N.J. Super. at 144 (second alteration in original) (quoting G.S., 157 N.J. at 178).

"Because the primary focus is the protection of children, 'the culpability of parental conduct' is not relevant." N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 344 (2010) (quoting G.S., 157 N.J. at 177).

> "Whether a parent or guardian has failed to exercise a minimum degree of care is to be analyzed in light of the dangers and risks associated with the situation." G.S., 157 N.J. at 181-82. "When a cautionary act by the guardian would prevent a child from having his or her physical, mental or emotional condition impaired, that guardian has failed to exercise a minimum degree of care as a matter of law." Id. at 182. The mere lack of actual harm to the child is irrelevant, as "[c]ourts need not wait to act until a child is actually irreparably impaired by parental inattention or neglect." In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999) (citation omitted).
>
> [S.G., 448 N.J. Super. at 144-45 (alteration in original).]

When evaluating these appeals, "our standard of review is narrow." Id. at 142.

> We will uphold a trial judge's fact-findings if they are "supported by adequate, substantial, and credible evidence." [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." [N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448 (2012)].
>
> . . . . No deference is given to the court's legal conclusions which are reviewed de novo. N.J. Div. of Child Prot. & Permanency v. K.G., 445 N.J. Super. 324, 342 (App. Div. 2016).
>
> [N.J. Div. of Child Prot. & Permanency v. B.H., 460 N.J. Super. 212, 218 (App. Div. 2019) (second alteration in original).]

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) (quoting N.J. Div. of Child Prot. & Permanency v. N.B., 452 N.J. Super. 513, 521 (App. Div. 2017)). Still, "[o]nly when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' should an appellate court intervene . . . to ensure that there is not a denial of justice." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007)).

Applying these principles, we see no basis to intervene. Contrary to defendant's assertions, the judge's factual findings are supported by substantial credible evidence in the record and the judge's legal conclusions are sound. In making a finding of abuse or neglect, a court considers "the totality of the circumstances, since '[i]n child abuse and neglect cases the elements of proof are synergistically related.'" N.J. Div. of Youth & Fam. Servs. v. V.T., 423 N.J. Super. 320, 329 (App. Div. 2011) (alteration in original) (quoting Dep't of Children & Fams. v. C.H., 414 N.J. Super. 472, 481 (App. Div. 2010)). Here, the record is abundantly clear that defendant inflicted physical, sexual, and emotional abuse upon all four children within the meaning of N.J.S.A. 9:6-8.21(c). The judge recounted in great detail on the record at both hearings defendant's horrific conduct captured on video. The judge also assessed the credibility of the children's statements, noting their demeanor and the way each child articulated what happened to them, and aptly found the children's statements were corroborated by the video depicting defendant's conduct.

Defendant argues there was no proof of physical injury or psychological harm to the children, emphasizing that "Dr. Lanese did not conduct a psychological evaluation" of the children and "only speculated" that there "might be psychological harm from the type of incident the boys described." It

is well established that "[i]n the absence of actual harm, a finding of abuse and neglect can be based on proof of imminent danger and substantial risk of harm." N.J. Dep't of Children & Fams. v. A.L., 213 N.J. 1, 23 (2013); see N.J.S.A. 9:6-8.21(c)(4). Further, our Supreme Court has made it clear that "we do not require expert testimony in abuse and neglect actions. In many cases, an adequate presentation of actual harm or imminent danger can be made without the use of experts." A.L., 213 N.J. at 29.

On this record, that requirement has been met based on defendant's conduct and the children's reactions to the trauma they endured as depicted in the video. Although the CARES reports do not make specific findings or diagnoses of psychological injury, all the children were recommended for further mental health assessments. Indeed, in C.D.'s forensic interview, he stated that the family was "way . . . better without [defendant,]" and that when defendant was abusing him, it made C.D. feel "scared," "sad," and "hurt[]." Similarly, M.S.-K stated in his interview that when defendant was beating them, he "just sat there . . . scared, [and] . . . didn't move."

Equally unavailing is defendant's assertion that the record did not support a finding of sexual abuse. Sexual abuse is defined, in part, as "the . . . coercion of any child to engage in, or assist any other person to engage in, any sexually

explicit conduct or simulation of such conduct[.]" N.J.S.A. 9:6-8.84(a); see N.J. Div. of Youth and Fam. Servs. v. Z.P.R., 351 N.J. Super. 427, 436 (App. Div. 2002) ("[S]ex offenses committed against children tend to be nonviolent offenses such as petting, exhibitionism, fondling and oral copulation." (quoting State v. Swan, 790 P.2d 610, 615 (Wash. 1990))). Here, defendant not only exposed his penis and buttocks to the children but repeatedly taunted them with it.

We also reject defendant's contention that the evidence did not support a finding of excessive corporal punishment. "[A]bsent evidence showing that the inflicted injury constitutes per se excessive corporal punishment, we must examine the circumstances facing [the parent] to determine whether striking [the child] . . . amounted to excessive corporal punishment." Dep't of Children & Fams. v. K.A., 413 N.J. Super. 504, 512 (App. Div. 2010) (emphasis omitted). In making the evaluation, we consider the "reasons underlying" the parent's actions, the "isolation of the incident[,]" and any "trying circumstances" the parent was undergoing. Ibid. Here, there are no circumstances that would mitigate, explain, or justify defendant's actions against four defenseless children. Thus, the judge did not err in determining that defendant's actions constituted excessive corporal punishment.

Defendant further argues that the Division's investigation report and the CARES reports, all of which were authenticated by the Division caseworker, contain inadmissible hearsay evidence and were improperly admitted into evidence. "[W]e afford '[c]onsiderable latitude . . . [to a] trial court in determining whether to admit evidence, and that determination will be reversed only if it constitutes an abuse of discretion.'" N.B., 452 N.J. Super. at 521 (second and third alterations and omission in original) (quoting N.J. Div. of Child Prot. & Permanency v. N.T., 445 N.J. Super. 478, 492 (App. Div. 2016)). Also, where "objectionable hearsay is admitted in a bench trial without objection, we presume that the fact-finder appreciates the potential weakness of such proofs, and takes that into account in weighing the evidence." N.J. Div. of Child Prot. & Permanency v. J.D., 447 N.J. Super. 337, 349 (App. Div. 2016).

Moreover, it has long been established that "the Division may submit into evidence 'reports by [Division] staff personnel . . . prepared from their own first-hand knowledge of the case, at a time reasonably contemporaneous with the facts they relate, and in the usual course of their duties with the [Division].'" N.T., 445 N.J. Super. at 493 (alterations and omission in original) (emphasis omitted) (quoting N.J. Div. of Youth & Fam. Servs. v. A.W., 103 N.J. 591, 595 n.1 (1986)).

Defendant did not object to the admission of the CARES reports. Under Rule 2:10-2, any error not brought to the attention of the trial court "shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result[.]" We are satisfied that the admission of the CARES reports does not rise to the level of plain error. See J.D., 447 N.J. Super. at 348-49 ("[H]earsay subject to a well-founded objection is generally evidential if no objection is made."). Likewise, we find no error in the admission of the Division's investigation report. At defendant's urging, the judge redacted hearsay portions of the investigation report before admitting it into evidence.[4]

Defendant further argues that the judge erred by basing her findings of abuse or neglect on the out-of-court statements of the children because there was inadequate corroborative evidence and no cross-examination. Instead, defendant asserts the children should have been examined in-camera pursuant to Rule 5:12-4(b). In Title Nine proceedings, a child's hearsay statements "relating to any allegations of abuse or neglect shall be admissible in evidence; provided, however, that no such statement, if uncorroborated, shall be sufficient

[4] Although the judge declined to redact police observations of the home video, she noted that the video was admitted into evidence and viewed by the court.

to make a fact finding of abuse or neglect." N.J.S.A. 9:6-8.46(a)(4). The statute "constitutes a statutorily created exception to the hearsay rule but independent evidence of corroboration is required in order to find abuse or neglect." N.B., 452 N.J. Super. at 522.

We review de novo a court's determination that a child's hearsay statements have been sufficiently corroborated under N.J.S.A. 9:6-8.46(a)(4). A.D., 455 N.J. Super. at 156. "The most effective types of corroborative evidence may be eyewitness testimony, a confession, an admission or medical or scientific evidence." Id. at 157 (quoting N.J. Div. of Youth & Fam. Servs. v. L.A., 357 N.J. Super. 155, 166 (App. Div. 2003)). Here, the video provided compelling corroborative evidence.

Defendant also argues that his due process rights were violated because sexual abuse and excessive corporal punishment were not alleged in the Division's complaints. "At a minimum, 'due process requires that a parent charged with abuse or neglect have adequate notice and opportunity to prepare and respond.'" P.C., 439 N.J. Super. at 412 (quoting N.J. Div. of Youth & Fam. Serv. v. T.S., 429 N.J. Super. 202, 213 (App. Div. 2013)). "There can be no adequate preparation [for trial] where the notice does not reasonably apprise the party of the charges, or where the issues litigated at the hearing differ

substantially from those outlined in the notice." N.J. Div. of Youth & Fam. Serv. v. B.M., 413 N.J. Super. 118, 127 (App. Div. 2010) (alteration in original) (quoting H.E.S. v. J.C.S., 175 N.J. 309, 322 (2003)).

However, "[a] complaint . . . is not required to spell out the legal theory upon which it is based." Farese v. McGarry, 237 N.J. Super. 385, 390 (App. Div. 1989). "Its necessary contents are only 'a statement of the facts on which the claim is based, showing that the pleader is entitled to relief, and a demand for judgment for the relief to which he deems himself entitled.'" Ibid. (quoting R. 4:5-2). Here, the Division's verified complaints, filed under "N.J.S.A. 9:6-8.21, et seq.," provided defendant with adequate notice of the allegations by delineating in detail that defendant exposed himself to the children, taunted them to kiss his penis, and engaged in protracted and excessive physical abuse as depicted in the video.

Finally, defendant asserts defense counsel provided IAC by: (1) failing to "object to the admittance of evidence at the fact-finding" hearings; (2) failing to "adequately cross-examine the witnesses"; (3) failing to "provide adequate legal arguments in summation"; and (4) conceding that the September 2, 2021, video could present evidence of psychological harm.

"[A] defendant has a right to [the effective assistance of] counsel when a complaint is filed against him or her charging abuse and neglect and threatening the individual's parental rights." N.J. Div. of Youth & Fam. Servs. v. B.H., 391 N.J. Super. 322, 345 (App. Div. 2007) (citing N.J.S.A. 9:6-8.43(a)). To establish IAC in a Title Nine matter, defendant must meet the two-prong test established in Strickland v. Washington, 466 U.S. 668, 687 (1984), and adopted by our Supreme Court for IAC claims in termination of parental rights matters in New Jersey Division of Youth & Family Services v. B.R., 192 N.J. 301, 308-09 (2007).

To meet the test,

> (1) counsel's performance must be objectively deficient—i.e., it must fall outside the broad range of professionally acceptable performance; and (2) counsel's deficient performance must prejudice the defense—i.e., there must be "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."
>
> [B.R., 192 N.J. at 307 (quoting Strickland, 466 U.S. at 694).]

Unlike criminal cases, IAC claims in Title Nine cases must be raised on direct appeal. See R. 5:12-7 (stating that in such appeals, "[c]laims of ineffective assistance of trial counsel shall be raised exclusively on direct appeal of a final judgment or order"). To that end, the B.R. Court noted:

> In many cases, the issue will be resolvable on the appeal record alone. For example, if the panel accepts as true appellant's representations regarding the lawyer's shortcomings but determines, on the basis of the full record, that the outcome would not have changed, that will be the end of it.
>
> [192 N.J. at 311.]

Such is the case here. We reject each of defendant's IAC claims due to defendant's inability to establish prejudice. Indeed, based on the overwhelming evidence presented by the Division by virtue of the video, which the judge described as the crux of the case, defendant cannot show that absent any of his attorney's purported errors, the outcome would have been different.

To the extent we have not specifically addressed a particular argument, we deem it without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.