RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1302-22

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

JAN. R.,

Defendant,

and

JAR. R.,

Defendant-Appellant.

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IN THE MATTER OF C.A.R.,
a minor.

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Submitted May 13, 2024 – Decided May 31, 2024

Before Judges Sabatino, Mawla, and Chase.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FN-12-0133-21.

Jennifer Nicole Sellitti, Public Defender, attorney for appellant (Dianne Glenn, Designated Counsel, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Janet Greenberg Cohen, Assistant Attorney General, of counsel; Mary L. Harpster, Deputy Attorney General, on the brief).

Jennifer Nicole Sellitti, Public Defender, Law Guardian, attorney for minor (Meredith Alexis Pollock, Deputy Public Defender, of counsel; Neha Gogate, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant Jar. R.[1] appeals the Family Part's February 7, 2022, determination after a factfinding hearing that he sexually abused a four-year-old female child, C.A.R., in his household, in violation of N.J.S.A. 9:6-8.21(c). We affirm.

I.

[1] Pseudonyms and initials are used to reference the child and other individuals to protect their privacy and preserve the confidentiality of these proceedings. R. 1:38-3(d)(12).

We summarize the following background derived from the record. The Division of Child Protection and Permanency (the "Division") originally removed C.A.R. from her biological mother and placed her in defendant's residence five days after her birth in November 2014. C.A.R. was adopted by defendant's mother and continued to live there along with defendant. As shown by the Division's proofs, defendant, an adult male, acted like the child's father and the child referred to him as "Daddy."

The evidence at the four-day factfinding hearing—at which defendant did not appear—showed that on numerous occasions, defendant showered with C.A.R. and made her engage in various forms of sexual contact with him. The adoptive mother of C.A.R.'s biological sister learned about the sexual abuse and reported it to the Division.

C.A.R., with reticence, confirmed the allegations of abuse to investigators. The allegations were also consistent with physical symptoms and other signs of abuse observed when C.A.R. was evaluated by a clinical psychologist (who noted the child's sexual vocabulary) and treated by a rehabilitation counselor.

The Division removed C.A.R. from the household in May 2021. At the Dodd[2] removal hearing, defendant briefly testified and denied any inappropriate contact.

During the pendency of this litigation, defendant and his mother moved to South Carolina. The Division did not administratively establish neglect by the mother. Hence, the sole focus of culpability was on defendant, her son.[3]

The trial judge issued a nineteen-page written opinion on February 7, 2022, finding the Division met its burden of proving defendant's abuse of C.A.R. by a preponderance of the evidence. Among other things, the judge found that defendant functioned as a guardian of the child within the meaning of Title 9 and therefore was subject to the court's jurisdiction. The judge additionally found the testimony of the Division's witnesses to be credible and that the proofs substantiated defendant's sexual abuse of the child in the shower.

On appeal, defendant argues the trial court: (1) lacked jurisdiction over him because he did not qualify as a guardian under Title 9; (2) improperly

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[2] A "Dodd removal" refers to the emergency removal of a child without a court order, pursuant to the Dodd Act, N.J.S.A. 9:6-8.21 to -8.82. N.J. Div. of Youth & Fam. Servs. v. P.W.R., 205 N.J. 17, 26 n.11 (2011).

[3] Defendant was apparently not criminally prosecuted, although we have not been provided an explanation of any charging decision.

considered hearsay in the form of school documents admitted as business records; (3) improperly admitted testimony from the child's treating therapist as an expert; (4) improperly considered allegedly uncorroborated hearsay statements by the child to the Division's caseworkers and experts; and (5) misjudged the evidence as sufficient to find defendant abused the child.

II.

"Title 9 governs acts of abuse and neglect against a child" by providing "interim relief for children at risk and outlines the standards for abuse and neglect proceedings against parents and guardians." N.J. Div. of Youth & Fam. Servs. v. A.L., 213 N.J. 1, 18 (2013). "Title 30 controls guardianship proceedings in which the Division seeks to terminate parental rights" and "empowers the Division to seek temporary care and custody of a child who is part of a family in need of services." Ibid.

Here, both statutes were involved, as the trial court found defendant abused C.A.R. under Title 9 and transferred the custody of C.A.R. from defendant's mother to the Division under Title 30. Our focus in this appeal, however, is on the trial court's Title 9 finding of defendant's abuse.

"In Title [9] proceedings, the Division has the burden of proving by a preponderance of competent, material, and relevant evidence that a parent

abused or neglected a child." N.J. Div. of Child Prot. & Permanency v. B.P., __ N.J. __, __ (2024) (slip op. at 16). The Division "need only show that it was more likely than not that the defendant abused or neglected the child." N.J. Div. of Child Prot. & Permanency v. B.O., 438 N.J. Super. 373, 380 (App. Div. 2014). Relevant to this appeal, an "abused or neglected child" means a child under the age of eighteen "whose parent or guardian . . . (3) commits or allows to be committed an act of sexual abuse against the child." N.J.S.A. 9:6-8.21(c).

Once, as here, abuse has been substantiated, the offender's conduct must be logged in the child abuse registry as "the repository of all information regarding child abuse or neglect that is accessible to the public pursuant to State and federal law." N.J.S.A. 9:6-8.11. The agency has no discretion under the statute to withhold or remove an offender's name from the registry once the Division has substantiated the allegations of abuse. See, e.g., N.J. Div. of Child Prot. & Permanency v. L.O., 460 N.J. Super. 1, 12 (App. Div. 2019).[4]

[4] The registry serves an important function in assuring that employers, day care centers, adoption agencies, and other organizations that deal with children are apprised of the harmful conduct that led a particular individual to be listed on the registry. N.J. Div. of Youth & Fam. Servs. v. M.R., 314 N.J. Super. 390, 399-402 (App. Div. 1998). "Employers may access the registry while fulfilling their legal obligation to 'consider child abuse or neglect information when conducting a background check or employment-related screening.'" B.P., __ N.J. at __ (slip op. at 17) (quoting A.L., 213 N.J. at 26).

Appellate review of a trial court's finding of abuse or neglect is "limited" and "should be upheld when supported by adequate, substantial, and credible evidence." N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 552 (2014). Such deference is owed because the trial court "has the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand; it has 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. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. Youth & Fam. Servs. v. M.M., 189 N.J. 261, 293 (2007)). "Moreover, by virtue of its specific jurisdiction, the Family Part 'possess[es] special expertise in the field of domestic relations' and thus 'appellate courts should accord deference to [F]amily [Part] factfinding.'" R.G., 217 N.J. at 553 (alterations in original) (quoting Cesare v. Cesare, 154 N.J. 394, 412-13 (1998)). "Therefore, '[w]e will not overturn a family court's factfindings unless they are so "wide of the mark" that our intervention is necessary to correct an injustice.'" B.P., __ N.J. at __ (slip op. at 15) (quoting N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448 (2012)).

We also recognize, however, that "where the focus of the [appeal] is . . . alleged error in the trial judge's evaluation of the underlying facts and the implications to be drawn therefrom, the traditional scope of review is expanded."

R.G., 217 N.J. at 552 (quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188-89 (App. Div. 1993)). No deference is owed to a "trial court's interpretation of the law and the legal consequences that flow from established facts." Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995).

Applying these well-established standards of review, we affirm the trial court's determination of defendant's abuse of C.A.R., substantially for the sound reasons set forth in Judge Barbara C. Stolte's detailed post-hearing written decision. We comment here briefly on defendant's specific arguments, none of which have merit.

A.

Defendant's main argument is that the trial court lacked jurisdiction over him because he did not qualify as a guardian under Title 9. He asserts he merely assisted his mother in caring for C.A.R. as any older sibling would help a single parent. Defendant further claims the trial court erred by considering C.A.R.'s subjective belief that he was her father, a perception which he asserts is irrelevant to a Title 9 inquiry.

Title 9 defines a "parent" as "any person who has assumed the care of a child, or any person with whom a child is living at the time the offense is committed," N.J.S.A. 9:6-2, and a "parent or guardian" as "any natural parent,

adoptive parent . . . or any person, who has assumed responsibility for the care, custody, or control of a child or upon whom there is a legal duty for such care," N.J.S.A. 9:6-8.21(a) (emphasis added). Based on the evidence presented, the trial court reasonably concluded that defendant functioned as a parent or guardian of C.A.R. within the household.

Among other things, the evidence of defendant's functional status as a parent or guardian included the following:

- Defendant resided with C.A.R. from when she was five days old until the Division removed her from the home after the allegations of abuse;
- The Division assessed defendant as C.A.R.'s second caretaker when she was adopted;
- Defendant admitted to Division investigators that he cared for C.A.R.;[5]
- The mother admitted to the Division that both she and defendant cared for C.A.R. and defendant assisted C.A.R. with her homework and bathing;

[5] The Division supervisor testified that defendant "just repeated to us repeatedly that . . . I am her Daddy. He repeated it himself. I am her Dad. I am her Daddy, several times."

- Dr. Seung-McFarland testified, in her unrebutted expert testimony, about defendant's performance of a parental role for C.A.R.;[6] and

- Defendant completed and signed school forms for C.A.R. describing himself as her father and that she lived with "mom & dad."[7]

Defendant argues the trial court should have found his interactions with C.A.R. more akin to that of the defendant in New Jersey Division of Child Protection and Permanency v. B.H., 460 N.J. Super. 212 (App. Div. 2019). There, we declined to extend Title 9 jurisdiction over a boyfriend of a child's mother who had babysat the child twice and who did not live with the family. The comparison to B.H. is inapt. The boyfriend in B.H. did not qualify as a guardian because he provided only temporary, occasional care. Id. at 220-21. By contrast, defendant lived in the same home as C.A.R. for years and shared caretaking responsibilities with the mother. Moreover, there is other abundant evidence that defendant functioned and held himself out as C.A.R.'s father.

We reject defendant's contention that C.A.R.'s references to him as her

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[6] Dr. Seung-McFarland confirmed in her testimony that C.A.R. referred to defendant as "Daddy" throughout their interview. On cross-examination, Dr. Seung-McFarland denied that C.A.R. ever referred to defendant as a cousin or brother.

[7] We will discuss defendant's hearsay objection to the admission of the school records in Part II(B).

"Daddy" are insignificant. That evidence was clearly relevant under N.J.R.E. 401, even if it is not dispositive. In addition, the expert testimony of Dr. Seung-McFarland underscored the significance of the child's perceptions and nomenclature.

The circumstances here bear more similarity to those in New Jersey Division of Child Protection and Permanency v. J.L.G., 450 N.J. Super. 113 (App. Div. 2015). There, we upheld Title 9 jurisdiction over a boyfriend of a child's mother who had lived with the family, supported them, and was called "Dad" by the child.

We are mindful that defendant asserts he did not support C.A.R. financially, as he was unable to work due to disability and was financially dependent on the mother. However, financial support is not required under the statute to qualify as a parent or guardian under Title 9.

We therefore affirm the trial court's classification of defendant as a parent or guardian under Title 9, and its concomitant assertion of jurisdiction.

B.

In a related argument, defendant contends the trial court's admission and consideration of documents from C.A.R.'s school as business records, over his counsel's objection, was improper and violated hearsay principles. The

documents reflect that more than six months before the Division's investigation, defendant personally enrolled C.A.R. in the school and listed himself as her father on a signed questionnaire.

The trial court admitted the school records under N.J.S.A. 9:6-8.46(a)(3), which deems admissible in a Title 9 case

> any writing, record or photograph . . . 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 . . . if the judge finds that it was made in the regular course of the business . . . and that it was in the regular course of such business to make it . . . .

"Although the phrase 'in the regular course of business' is not defined in Title 9, our courts have suggested that the phrase should be interpreted as identical to the meaning of that phrase in the business-records exception to the hearsay rule." N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 346 (2010). Accordingly, the party seeking admission of the record must demonstrate (1) its creation "in the regular course of business," (2) its preparation within a short time of the event described, and (3) "the source of the information and the method and circumstances of the preparation of the writing" must justify its admission. Id. at 347.

The trial court found these predicates to admission of the school records

were met here. Defendant argues the records should have been excluded because the custodian of the records did not testify at trial, depriving him of an opportunity to cross-examine the custodian. Defendant further asserts it was error to allow entry of the records based on testimony by a Division caseworker who he asserts could only testify, at most, about how she obtained the documents.

We review this admissibility ruling under a deferential standard. A trial court's evidentiary decisions are generally not overturned unless they reflect an abuse of discretion. N.J. Div. of Child Prot. & Permanency v. A.B., 231 N.J. 354, 366 (2017). This principle includes hearsay rulings. Ibid. We afford deference to the trial court, particularly in a non-jury setting such as this one, unless the ruling "was so wide of the mark that a manifest denial of justice resulted." N.J. Div. of Child Prot. & Permanency v. N.T., 445 N.J. Super. 478, 492 (App. Div. 2016) (quoting State v. Kuropchak, 221 N.J. 368, 385 (2015)).

The Division contends the trial court properly admitted defendant's statements within the school records as party admissions under N.J.R.E. 803(b)(1) because defendant completed and signed the school records. The Division argues the school records were also properly admitted in their entirety as business records under N.J.R.E. 803(c)(6) and the cognate statutory provision

at N.J.S.A. 9:6-8.46(a)(3). The Law Guardian joins in these evidentiary arguments.

We are satisfied that the school records had an adequate foundation to be admitted as business records. The Division established the admissibility of these records through the testimony of Katelyn Quick, a Division permanency worker, who personally obtained the records directly from C.A.R.'s school. The records were created "in the regular course of business" based on the certification of a school counselor at C.A.R.'s school. That certification further attests the records were prepared contemporaneous to the events described. The records consist of a printout from a school database listing the guardians of C.A.R. and a parent questionnaire signed and completed by defendant. Given the clear foundation for the records' admissibility, it was not essential for the school's custodian to appear in court. Defendant has not advanced a persuasive basis to regard the records as untrustworthy under the business records exception. N.J.R.E. 803(c)(6).

Moreover, as we have discussed above, the most probative content of the records is the parent questionnaire, which defendant signed and acknowledged, and in which he held himself out to the school as C.A.R.'s father. The trial court correctly deemed those signed statements to comprise admissions by a party

opponent under N.J.R.E. 803(b)(1).

C.

Defendant further argues the trial court erred by admitting Bernadette Silva, the child's treating therapist, as an expert in clinical therapy under N.J.R.E. 702 because she had no experience evaluating or counseling a child with uncorroborated allegations of sexual abuse. The Division and the Law Guardian counter that the court properly found Silva was qualified to testify as an expert on the subjects she addressed.

N.J.R.E. 702 states:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

The standards for expert qualification are generally contextual and case-specific, as the Rule contemplates whether the witness's opinions will "assist the trier of fact . . . to determine a fact in issue." Ibid. We review this evidentiary issue under the abuse of discretion standard discussed above. In re Accutane Litigation, 234 N.J. 340, 391 (2018).

The trial court had more than sufficient grounds to qualify Silva as an expert witness in the context of this case. The court admitted Silva as an expert

in clinical therapy because "she provides clinical therapy as a licensed rehab counselor." The court duly reviewed Silva's curriculum vitae and asked clarifying questions to supplement counsel's examination. The court credited Silva's authority under her license to conduct DSM-5 psychiatric diagnoses and her over fifteen years of counseling child victims of trauma in over a hundred cases. There was a sound basis to deem her qualified to testify as an expert here, even though she is not a physician. Nor was it prohibitive that Silva had not testified before in a child welfare case under Title 9. She had testified previously as an expert clinical therapist in other kinds of cases. Moreover, the court prudently qualified its admission of Silva as an expert by remarking that the ruling simply authorized the entry of her testimony, noting that it would consider its weight after her direct and cross-examination.

The content of Silva's expert testimony was manifestly relevant and helpful to the trier of fact. She testified that she provided C.A.R. with weekly "[p]lay therapy, cognitive therapy, [and] trauma therapy," at approximately twenty-nine sessions. Silva confirmed that C.A.R. reported defendant's abuse to her with similar details to reports received by the Division. Silva also produced five letters she had sent to the Division providing updates as she counseled C.A.R.

Silva explained why she diagnosed C.A.R. with post-traumatic stress disorder ("PTSD"), based on the child's "expressed flashbacks, nightmares, anxious behavior, [and] hyperarousal." She opined that C.A.R. "will definitely need treatment for the rest of her life up until her adulthood" to manage her PTSD.

The trial judge had a sound basis to admit and rely upon Silva's expert testimony. The judge did not abuse its discretion in considering it.

D.

Next, defendant argues the trial court erred in considering hearsay statements from C.A.R., who did not testify. The court deemed her statements admissible under N.J.S.A. 9:6-8.46(a)(4), which authorizes the admission in Title 9 cases of "previous statements made by the child relating to any allegations of abuse" provided "no such statement, if uncorroborated, shall be sufficient to make a fact finding of abuse or neglect."

Corroborative evidence under this statutory hearsay exception may be circumstantial because there is often no direct physical or testimonial evidence to support a child's statements. N.J. Div. of Youth & Fam. Servs. v. Z.P.R., 351 N.J. Super. 427, 436 (App. Div. 2002). Further, "[t]he corroborative evidence need not relate directly to the alleged abuser, it need only provide support for

the out-of-court statements." Ibid.

The Division asserts the child's hearsay statements recounting defendant's abuse were corroborated by the testimony of both Dr. Seung-McFarland and Silva. In opposition, defendant argues Dr. Seung-McFarland's testimony was not sufficiently corroborative because she suspected, but would not clinically diagnose C.A.R., with having been sexually abused. Defendant further contends Silva offered inadmissible net opinions that allegedly were based only on C.A.R.'s hearsay statements.

We agree with the Division and the Law Guardian that there was sufficient corroboration to enable the admission of C.A.R.'s out-of-court statements. Although Dr. Seung-McFarland did not conclusively determine, either way, in her evaluation, whether C.A.R. had been sexually abused by defendant, the doctor did opine that C.A.R. "showering with her father at the very least suggests a violation of boundaries, and is similar to grooming behaviors seen in sexual abuse cases." Such expert opinion about the consistency of a person's behavior with known patterns can have probative value in certain contexts, even if the opinion does not extend to a definitive conclusion. See, e.g., State v. Olenowski, 255 N.J. 529, 611 (2023).

Silva, meanwhile, provided extensive corroboration through her first-hand

observations, after more than two dozen therapy sessions with C.A.R. Silva noted the child "pulling her index finger, and wrapping her other hand around her index finger, followed by a pulling and release" referencing defendant's "genitalia by pointing out to something that resembled the shape of a penis" demonstrated C.A.R.'s knowledge "of age-inappropriate behavior." Further, as the trial court noted, "Silva testified that on at least five occasions, she witnessed [C.A.R.] with tremors" and "during play therapy, [C.A.R.] disassociated from the game which was indicative of [C.A.R.] separating herself from what had happened."

Silva's corroborating testimony therefore went well beyond, as defendant characterizes it, the mere regurgitation of a child's allegations of abuse. Silva testified to facts she personally observed independent of C.A.R.'s verbal descriptions of abuse, specifically tremors, change of tone when discussing showering, disassociation from games, and other behavior.

The trial court properly relied on New Jersey Division of Child Protection and Permanency v. I.B., 441 N.J. Super. 585, 598 (App. Div. 2015), to credit that testimony. In I.B., we deemed a child's nightmares, when linked to abuse by the testimony of an expert such as from a psychologist, are sufficient to corroborate allegations of abuse. Id. at 597-98. Here, Silva's testimony as an

expert clinical therapist similarly aided the court by linking C.A.R.'s tremors and other symptoms to defendant's abuse.

We reject defendant's contention that Silva's testimony was inadmissible "net opinion." To the contrary, her detailed testimony amply presented the "whys and wherefores" that supported her conclusions. See Townsend v. Pierre, 221 N.J. 36, 53-55 (2015).

In sum, the trial court had sufficient corroborative grounds to admit and consider the child's hearsay statements.

E.

Lastly, defendant asserts the Division "presented no evidence that any contact or action was for [his] sexual stimulation" as required by N.J.S.A. 9:6-8.21(c)(3). This argument has no merit and deserves little comment. The evidence established that defendant repeatedly showered with C.A.R. and made her wash and touch his genitalia with her fingers. It can be reasonably inferred that defendant caused these repeated interactions for his sexual stimulation, and not for benignly teaching a four-year-old child how to bathe.

To the extent we have not addressed them, all other points raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.