

**RECORD IMPOUNDED**

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4797-14T2

NEW JERSEY DIVISION OF CHILD  
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

J.L.,

Defendant-Appellant,

and

Ja.L.,

Defendant-Respondent.

---

IN THE MATTER OF Al.L., An.L.,  
As.L and J.L.,

Minors.

---

Submitted December 12, 2016 – Decided December 19, 2016

Before Judges Sabatino and Haas.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Bergen County,  
Docket No. FN-02-157-14.

Joseph E. Krakora, Public Defender, attorney for appellant (John A. Salois, Designated Counsel, on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent New Jersey Division of Child Protection and Permanency (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Jonathan Villa, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, attorney for respondent Ja.L. (Anna F. Patras, Designated Counsel, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Karen Ann Lodeserto, Designated Counsel, on the brief).

PER CURIAM

Defendant J.L.<sup>1</sup> appeals from the Family Part's May 13, 2015 order, following a dispositional hearing, continuing physical custody of the parties' four children with Jacob, while granting defendant supervised parenting time with the children. The order also continued to restrain defendant from returning to Jacob's mother's home, where he had been living with the children during the entire pendency of this matter. With the entry of this order, the Family Part terminated the litigation.

---

<sup>1</sup> Because the father of the children, "Jacob," who was also a defendant in this matter, shares the same initials as J.L., and several of the children also share the same initials with each other, we refer to J.L. as "defendant" and to the other members of the family using fictitious names. In doing so, we intend no disrespect.

Defendant challenges the trial judge's determination that she posed a risk of harm to the four children and that she had failed to make any progress toward addressing the issues which impaired her ability to safely parent the children. The Division of Child Protection and Permanency ("Division"), Jacob, and the Law Guardian on behalf of the four children support the judge's determination. Based upon our review of the record and applicable law, we affirm.

I.

In order to place defendant's contentions on appeal in their proper context, we begin by briefly reviewing the well-established procedures followed in the Family Part when the Division brings an abuse or neglect action against one or both parents under Title 9. Under Title 9, the Division can "become involved against the wishes of a parent when a child is abused or neglected." N.J. Dep't of Children & Families, Div. of Youth & Family Servs. v. I.S., 214 N.J. 8, 14, cert. denied, \_\_ U.S. \_\_, 134 S. Ct. 529, 187 L. Ed. 2d 380 (2013). Prior to a Title 9 fact-finding hearing, "[i]f a child's life or health is in imminent danger, the authorities may temporarily remove the child from the offending parent or guardian." N.J. Div. of Youth & Family Servs. v. G.M., 198 N.J. 382, 397 (2009) (citing N.J.S.A. 9:6-8.27(a), -8.29).

That proceeding is known as "a Dodd removal."<sup>2</sup> Thereafter, the offending parent may apply at any time for return of the child, "which should be granted unless there is 'an imminent risk to the child's life, safety or health.'" Id. at 398 (quoting N.J.S.A. 9:6-8.32).

If the trial court makes a finding of abuse or neglect, it maintains jurisdiction in order to hold a dispositional hearing "to determine the appropriate outcome of the case." Id. at 399 (citing N.J.S.A. 9:6-8.50). At the dispositional hearing, which is often referred to as a "G.M. hearing,"<sup>3</sup> the court must determine whether the children "may safely be released to the custody of [the offending parent], who was responsible for [their] care at the time of the filing of the complaint, or whether, consistent with N.J.S.A. 9:6-8.51, some other disposition is appropriate." Id. at 402. Thus, the purpose of a G.M. hearing is to determine whether the parent has "abated the harm [he or she] previously

---

<sup>2</sup> "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 Frank J. 'Pat' Dodd in 1974." N.J. Div. of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 609 n.2 (App. Div. 2010). Abuse or neglect cases are handled under the trial court's FN docket.

<sup>3</sup> The dispositional hearing began to be called a "G.M. hearing" after the Supreme Court discussed the critical importance of this hearing in Title 9 proceedings in G.M., supra, 198 N.J. at 387-88.

posed" to the children. N.J. Div. of Youth and Family Servs. v. J.D., 417 N.J. Super. 1, 22 (App. Div. 2010).

The trial court may conduct the dispositional hearing as soon as it makes an adjudication of abuse and neglect. N.J.S.A. 9:6-8.47. In the alternative, the court may adjourn the proceedings "to enable it to make inquiry into the surroundings, conditions and capacities of the persons involved in the proceedings." N.J.S.A. 9:6-8.48. The dispositional hearing must be conducted "with scrupulous adherence to procedural safeguards," and the trial court's conclusions must be based on material and relevant evidence. N.J. Div. of Youth & Family Servs. v. A.R.G., 179 N.J. 264, 286 (2004). The trial court must also state the grounds for its disposition. N.J.S.A. 9:6-8.51(b).

Following a dispositional hearing, the trial court may:

[E]nter a suspended judgment, N.J.S.A. 9:6-8.52; release the child to the custody of the parent or guardian responsible for the child's care at the time of the filing of the complaint, N.J.S.A. 9:6-8.53; place the child with "a relative or other suitable person," N.J.S.A. 9:6-8.54(a); make an order of protection, N.J.S.A. 9:6-8.55; place the offending parent or guardian on probation, N.J.S.A. 9:6-8.56; and/or require the offending person to accept therapeutic services. N.J.S.A. 9:6-8.51(a).

[G.M., supra, 198 N.J. at 399-400.]

Transfer of physical custody to a parent with joint legal custody constitutes a "placement" under Title 9. Id. at 404-05.

Thereafter, if the offending parent believes that the custodial arrangement ordered by the trial court following the G.M. hearing is no longer appropriate, he or she may file a motion to change custody alleging sufficient changed circumstances under either a dissolution (FM) docket or a non-dissolution (FD) docket. N.J. Div. of Youth & Family Servs. v. W.F., 434 N.J. Super. 288, 300 (App. Div.) (citing I.S., supra, 214 N.J. at 40; G.M., supra, 198 N.J. at 402; and Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007)), certif. denied, 281 N.J. 275 (2014).

## II.

We now turn to the facts of the present case, which we derive from the record developed before the Family Part. Defendant and Jacob were married for approximately fifteen years prior to the commencement of this litigation. They have four children, Alice, born in 1998, Andrew, born in 2000, Alex, born in 2005, and Joseph, born in 2010.

The family first came to the Division's attention on September 16, 2012. On that date, defendant called the Division and alleged that Jacob and his parents were "trying to brainwash" Alice, who was fourteen years old, and "turn the child against" her. Defendant told the caseworker that she had previously separated

from Jacob. After the separation, defendant was living with her mother. Jacob and the four children continued to live with his parents. Defendant also alleged that Jacob assaulted her on September 3, 2012, after the couple made an unsuccessful attempt to reconcile.

Defendant stated that the parties had joint custody of the children, but she was "allowing [Jacob] to keep the children because she d[id] not want the children to move at the beginning of the school year." A caseworker subsequently interviewed the four children, who confirmed that defendant had left their home several weeks before she contacted the Division. Alice also reported that defendant was "a pill popper," and the three oldest children each stated that defendant was the aggressor in any arguments she had with Jacob in their presence.

Following its investigation, the Division concluded that defendant's allegations were unfounded. However, during the course of the Division's review, defendant revealed she had a history of anxiety and depression and had previously taken prescription medication to address her mental health issues. Defendant also admitted that she had a dependency issue concerning Xanax. The Division offered to assist defendant with substance abuse services. However, defendant moved to Florida prior to the Division's decision to close the case.

On October 29, 2013, the Division received its second referral regarding the family. This referral involved Alice, who had a young child of her own. Alice's boyfriend had an argument with Alice and took the child to his parents' home. Alice called the police, who retrieved the child and returned her to Alice.

During the course of the investigation, a Division caseworker spoke to defendant, who was in Jacob's mother's<sup>4</sup> home when the caseworker arrived. Defendant stated that she returned to New Jersey from Florida in June 2013. Defendant also told the caseworker that she had "came back to [Jacob's] home a couple of days ago." This was not a permanent arrangement because defendant reported "she also reside[d] at" her parents' house and that was the home address she provided to the Division. Defendant stated she "ha[d] been estranged from her family for a number of months[,]" but had returned to New Jersey "to work on relationships with her children." However, Andrew reported that defendant told him she came back because her current paramour "tried to strangle her." Andrew also stated that defendant continued to take pills and use marijuana.

At the conclusion of this investigation, the Division concluded that the allegation of abuse or neglect against Alice

---

<sup>4</sup> Jacob's father had recently passed away.

and her boyfriend was unfounded. Nevertheless, because of defendant's suspected drug use, the Division kept the case open for services.

On November 14, 2013, the police called the Division to report an incident of domestic violence that had allegedly occurred between defendant and Jacob. Defendant alleged that she and Jacob had argued over money he had earlier given her. When Jacob grabbed defendant's handbag to retrieve the money, defendant asserted the strap of the handbag was still around her neck and that she was choked when Jacob pulled on it. Jacob reported that defendant threw money and a cup of coffee at him and had slapped him in the face. Several of the children were in the home when the altercation occurred and they witnessed the incident.

During its investigation, the Division spoke to defendant's paramour, G.H., who accompanied defendant to one of her appointments. He stated he had "been providing her some financial assistance, a place to sleep, and emotional support." Alex subsequently reported that G.H. had "threatened to kill everyone" in his home and had been seen "driving around their neighborhood and he [was] afraid that he w[ould] do something."

On December 3, 2013, the Division filed an Order to Show Cause ("OTSC") and Verified Complaint under Title 9, seeking care and supervision, but not custody, of Jacob and defendant's four

children. On that same date, the trial judge granted the Division's request for care and supervision of the children, and ordered that physical custody of the children remain with Jacob. The judge "restrained [defendant] from the home where the minor children reside[,]" but granted her "liberal supervised visitation" with them. The judge ordered Jacob and defendant to undergo substance abuse and psychological evaluations, and participate in domestic violence counseling. On December 19, 2013, the return date of the OTSC, the judge reaffirmed the provisions of the December 3, 2013 order.

On January 30, 2014, the trial judge conducted a case management conference. By that time, defendant had completed her substance abuse assessment and had been referred to an intensive outpatient program. However, neither defendant nor Jacob were making themselves consistently available for random urine screens. At an April 3, 2014 case management conference, the Division reported that defendant had only attended two of the counseling sessions and had tested positive for marijuana. Defendant also appeared once at Jacob's home with her paramour in violation of the court's orders. The judge reiterated her prior order barring defendant from Jacob's home and again directed her to comply with services.

On June 17, 2014, both defendant and Jacob entered into voluntary stipulations, which were incorporated into an order the trial judge issued on that same date. In the stipulations, both defendant and Jacob admitted that they abused or neglected their children by exposing them to "their conflictual relationship and marital discord, thus causing the children to suffer emotional harm and making [them] abused and neglected as defined by N.J.S.A. 9:6-8.21(c)(4)(b)."

After the finding of abuse or neglect, the judge did not immediately schedule a dispositional hearing as permitted by N.J.S.A. 9:6-8.47. Instead, the judge gave the parties the opportunity to address the concerns raised by the Division during the course of the proceedings. N.J.S.A. 9:6-8.48. Jacob complied with all of the Division's requests. Indeed, at the subsequent dispositional hearing, the Deputy Attorney General ("DAG") representing the Division stipulated that Jacob "has done everything we've asked him to do [and] we don't have any concerns." The DAG further stated that "we think he's a good father. We know the children love him. They enjoy living with him. They tell us positive things about what goes on in the house."

However, the concerns about defendant's ability to safely parent the children continued. At the April 28, 2015 dispositional

hearing,<sup>5</sup> the Division's permanency supervisor testified that between December 3, 2013 and the dispositional hearing, defendant had "not successfully completed any of the programs that she was [c]ourt ordered to do throughout the duration of this litigation." For example, defendant did not complete substance abuse counseling programs provided by New Pathways and Integrative Recovery. Defendant also did not consistently attend two domestic violence programs and was discharged from both of them. The two older children, Alice and Andrew, no longer wanted to visit with defendant.

While defendant's urine screens were negative at first, they did not accurately reflect the prescription medication she was receiving from her psychiatrist with the Division's approval, indicating that defendant was either not taking her medication or was tampering with the urine samples. Defendant began attending substance abuse counseling through the Counseling Center in October 2014, but was eventually discharged from that program as well. At that time, her prognosis was "guarded" and she subsequently failed to undergo five Division-ordered random drug screens in February and March 2015.

---

<sup>5</sup> By the time of the two-day dispositional hearing conducted on April 28, 2015 and May 13, 2015, a different trial judge had been assigned to manage this case.

In December 2013, defendant submitted to a psychological evaluation conducted by the Division's expert clinical psychologist, Dr. Jemour Maddux. However, she missed three appointments in February and March 2015 for a follow-up evaluation to determine what progress, if any, she had made in her ability to parent the children.

At the dispositional hearing, Dr. Maddux opined that based upon his evaluation of her, defendant suffered from an adjustment disorder, as well as "personality disorders." Dr. Maddux stated that individuals who present with "personality disorder features" have narcissistic and borderline qualities that tend to result in behaviors that are "very externalizing, dramatic, and erratic." Dr. Maddux explained how this negatively impacted upon defendant's ability to safely parent her children:

[W]hat I found from the . . . interview [Dr. Maddux had with defendant] and from the interviews with the other family members is that [defendant] was conducting herself in a way that was really erratic. She, for instance, after arguments, she would leave the home for long periods of time. Her children didn't feel they had a sense of consistency in their relationship with her because of her unpredictability in terms on when she would be leaving the home. After being gone for approximately a year with no contact with her children, she returned just to engage in more disputes with her husband and then follow a pattern of unpredictability leaving again, which causes a lot of distress for her children.

Taking into account defendant's failure to take advantage of the services offered to her by the Division, such as substance abuse evaluations and treatment and domestic violence counseling, Dr. Maddux opined "that unsupervised contact" between defendant and the children "was contraindicated, the reason being the domestic violence risk, which hadn't been addressed at that time." Dr. Maddux also concluded that defendant demonstrated a "level of callousness" toward the children, where "she didn't demonstrate a significant degree of sensitivity to the hardships her children experience as a result of her functioning."

Jacob testified at the dispositional hearing. He stated that he planned to continue to live with his mother and the children. He acknowledged that defendant was not permitted to live in his home and that the Division was seeking to continue to require that defendant's visitation with the children be supervised.

Defendant did not testify at the hearing and called no witnesses on her behalf.

Following the parties' submission of written summations and oral argument, the trial judge rendered a thorough oral opinion on May 13, 2015. After reviewing the uncontradicted evidence submitted by the Division, the judge concluded "that given the totality of the circumstances," defendant had "made minimal efforts to comply with the treatment recommendations as were

ordered by the [c]ourt, despite all the services that were offered to her by the Division[.]" Thus, the judge stated that defendant had not "made any progress whatsoever to improve the ability to parent her children and, therefore," the judge found "that [defendant] continue[d] to pose a risk of harm to them."

Accordingly, the judge ruled that the children would remain in the physical custody of Jacob in his mother's home, where he and the children had lived since 2012. Because defendant could not "safely parent the children[.]" the judge further held that her visitation with the children would continue to be supervised either by the Division or by defendant's mother.<sup>6</sup> The judge also continued the portion of the prior orders restraining defendant from attempting to reenter Jacob's home.

Finally, the judge specifically advised defendant that she could "make an application to lift the restraints in the [event] she should successfully complete substance abuse treatment, individual/family therapies, [domestic violence] counseling, and demonstrate her compliance with psychiatric medication monitoring." The judge then dismissed the FN litigation. This appeal followed.

---

<sup>6</sup> The judge directed the Division to assess defendant's mother's ability to provide supervised visitation prior to permitting her to monitor defendant and the children.

### III.

On appeal, defendant argues that "the trial court's determination that [Jacob] be awarded physical custody of the four children, and that [defendant] should be restrained from the family home, was not supported by the evidence presented at the dispositional hearing." She also alleges the trial judge failed to "apply the standard articulated in G.M." and that the "effect of the [o]rder [terminating the litigation] is to make the separation of these children from their mother permanent." Finally, defendant contends that the Division "did not make reasonable efforts to reunify the family." We disagree with all of these contentions and, therefore, we affirm the trial judge's decision in all respects.

Our review of a trial court's fact-finding in a non-jury case is limited. Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence. Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility." Ibid. (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). We "should not disturb the factual findings and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the

competent, relevant and reasonably credible evidence as to offend the interests of justice." Ibid. (internal quotation marks omitted). However, we owe no deference to a trial court's interpretation of the law, and review issues of law de novo. Mountain Hill, L.L.C. v. Twp. Comm. of Middletown, 403 N.J. Super. 146, 193 (App. Div. 2008), certif. denied, 199 N.J. 129 (2009).

We also extend special deference to the Family Part's expertise. N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 342-43 (2010); Cesare, supra, 154 N.J. at 413. Unless the trial judge's factual findings are "so wide of the mark that a mistake must have been made" they should not be disturbed. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (internal quotation marks and citation omitted). "It is not our place to second-guess or substitute our judgment for that of the family court, provided that the record contains substantial and credible evidence to support" the judge's decision. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012).

Applying these standards, we discern no basis for disturbing the trial judge's reasoned determination to continue the children in Jacob's physical custody, thus maintaining the status quo that had existed since September 2012, when defendant moved out of the family home to reside in Florida. After defendant left the family, she thereafter spent only a few weeks, if that, in Jacob's mother's

home with the children before the November 14, 2013 incident which caused her to be restrained from returning to the home.

After that time, defendant failed to complete substance abuse services or domestic violence classes. She did not always report for random urine screens, and the results of the tests to which she did submit indicated she was either not taking her prescribed medication to address her psychiatric issues or was tampering with the samples prior to testing. Dr. Maddux testified without contradiction that defendant's psychiatric condition, guarded substance abuse prognosis, failure to complete any of the court-ordered services, and callous attitude toward the children and their needs made it unsafe for her to have contact with the children without supervision.

Thus, we are satisfied there was competent, credible evidence in the record to support the trial judge's finding that defendant could not return to the home or have unsupervised visitation with the children. Contrary to defendant's contention, the judge scrupulously adhered to the dictates of G.M., supra, in conducting the dispositional hearing.<sup>7</sup> The judge ensured that defendant had legal representation and notice of each court event throughout

---

<sup>7</sup> We note that the trial judge did not specifically cite the G.M. decision in her oral opinion. As discussed herein, however, the judge clearly applied the principles discussed in that case at the dispositional hearing and in her subsequent decision.

this entire proceeding, including the dispositional hearing. As mandated by G.M., the judge focused the hearing on the question of whether defendant had "abated the harm [she] previously posed" to the children and, as stated above, the record fully supports the judge's conclusion that defendant failed to do so. J.D., supra, 417 N.J. Super. at 22.

The judge also properly determined that based on the uncontradicted evidence adduced at the hearing, the children could not safely be placed in defendant's custody. G.M., supra, 198 N.J. at 402. Under these circumstances, the trial judge's decision to maintain the children in the care of Jacob, the parent who had physical custody of them at the time this action began, was in strict accord with N.J.S.A. 9:6-8.53. G.M., supra, 198 N.J. at 399-400.

Defendant's assertion that the trial judge improperly "picked a winner" in this case and "permanently separated" the children from her also lacks merit. The May 13, 2015 order terminating the litigation specifically stated that defendant could "make an application to lift the restraints in the [event] she should successfully complete substance abuse treatment, individual/family therapies, [domestic violence] counseling, and demonstrate her compliance with psychiatric medication monitoring." This provision fully complied with G.M., which permits the non-

custodial parent to file an action under an FM or FD docket to change custody following the termination of the FN litigation if there has been a sufficient change of circumstances to warrant such relief. G.M., supra, 198 N.J. at 402.

Defendant's contention that the Division "did not make reasonable efforts to reunify the family" lacks evidentiary support in the record. Again, the record clearly reflects that the Division afforded defendant the opportunity to engage in a wide variety of services to address her mental health, substance abuse, and domestic violence issues. The evidence also overwhelmingly supports the judge's determination that defendant failed to take advantage of any of these opportunities.

Moreover, defendant's contention on this point fails to acknowledge that the family had not been "unified" since defendant moved to Florida in September 2012. When defendant returned to New Jersey, she lived with her mother, rather than returning to the former marital home with defendant and the children. While defendant and Jacob may have explored the possibility of reuniting a few days prior to the November 14, 2013 incident, defendant's actions on that date, combined with her recalcitrance in complying with services, caused defendant to be barred from the home. Thus, none of the trial court's orders "changed" custody or the family's status quo at the beginning of the FN litigation; the court simply

maintained physical custody with Jacob, the parent who had always cared for the children. In addition, by restraining defendant from returning to the home and requiring that her visits with the children be supervised, the court properly protected the children from the risk of harm posed to them by defendant.

Finally, defendant argues that the trial judge failed to comply with the Child Placement Bill of Rights, N.J.S.A. 9:6B-1 to -6, because the judge dismissed the FN litigation rather than ordering periodic reviews of the children's placement with Jacob as provided for in N.J.S.A. 9:6B-4(1). However, the Child Placement Bill of Rights only applies in a case where the children have been "placed outside [their] home." N.J.S.A. 9:6B-2(a); N.J.S.A. 96B-4. Here, the children lived with Jacob in his mother's home prior to and during the FN litigation. Because the children were never placed outside their home, N.J.S.A. 9:6B-4(1) was not applicable and, therefore, periodic reviews were not required.<sup>8</sup>

Affirmed.

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



CLERK OF THE APPELLATE DIVISION

---

<sup>8</sup> Instead, as previously stated, defendant has the ability to file an appropriate action in the future to address custody or visitation if she can demonstrate a sufficient change of circumstances. G.M., supra, 198 N.J. at 402.