

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**NOT FOR PUBLICATION WITHOUT THE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-1813-15T4

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Petitioner-Respondent,

v.

T.F.,

Respondent-Appellant.

Submitted April 3, 2017 – Decided April 27, 2017

Before Judges Haas and Currier.

On appeal from the Department of Children and
Families, Division of Child Protection and
Permanency.

T.F., appellant pro se.

Christopher S. Porrino, Attorney General,
attorney for respondent (Andrea M. Silkowitz,
Assistant Attorney General, of counsel; Joann
M. Corsetto, Deputy Attorney General, on the
brief).

PER CURIAM

Defendant T.F. appeals from the final agency decision of
petitioner, New Jersey Division of Child Protection and Permanency

(Division), that upheld the substantiated finding of abuse and neglect. We affirm.

The Division received a referral that eight-year-old S.B. (Susan)¹ had told her classmates that her mother, T.F., had struck her with a belt and phone cord. A Division caseworker went to the school, where she spoke with Susan and observed the bruising on her stomach, legs, back, and buttocks. Susan said she had been whipped by her mother after receiving a bad grade on a test. She also said it was not the first time her mother had hit her with an object. When defendant arrived at the school that afternoon, she admitted that she had beaten Susan for her bad behavior at school, and that she had previously inflicted corporal punishment on her daughter. The caseworker noted that defendant was unremorseful and without empathy for her child.

As a result of the conceded beatings and observed bruising on Susan, the Division determined the child was in immediate and/or impending danger of serious harm. Susan's father agreed to care for his daughter, and defendant acquiesced to a safety protection plan, parenting skills training, and a psychological evaluation.

In February 2011, the Division presented a verified complaint for the care, custody, and supervision of Susan. The family part

¹ We use initials and pseudonyms for the purposes of confidentiality.

judge denied the complaint, finding that removal of the child was not necessary to avoid a risk to Susan's health or safety. The judge continued physical custody with Susan's father as she was already living with him. He did not find the circumstances required the removal of the child from her parents. Defendant was granted liberal visitation as agreed to by both parents.

Defendant was subsequently charged with fourth-degree child abuse, in violation of N.J.S.A. 9:6-1, as a result of these events. She successfully completed the required parenting training program and underwent a psychological evaluation.

In March, Susan's father moved out of state and custody of the child was returned to defendant. Susan and defendant participated in individual and family therapy; defendant also attended anger management classes. The Division closed its file in March 2012.

As a result of these events, defendant was substantiated for physical abuse under N.J.S.A. 9:6-8.11. Defendant appealed the findings but was advised that in light of the ongoing family part and criminal litigation concerning this matter, her appeal was not yet ripe. Once the court cases were resolved, defendant could pursue her appeal.

Defendant completed pre-trial intervention and her criminal charge was dismissed and later expunged. In January 2015,

defendant requested an administrative hearing to appeal the substantiated finding of physical abuse. The Division submitted a motion for summary disposition to which defendant responded; she did not contest the underlying facts of the case. On October 7, 2015, the Division issued a final agency decision granting the motion for summary disposition and affirming the substantiated finding of physical abuse.

The standard of review that applies in an appeal from a state agency decision is well established. "Judicial review of an agency's final decision is generally limited to a determination of whether the decision is arbitrary, capricious, or unreasonable or lacks fair support in the record." Caminiti v. Bd. of Trs., Police & Firemen's Ret. Sys., 431 N.J. Super. 1, 14 (App. Div. 2013) (citing Hemsey v. Bd. of Trs., Police & Firemen's Ret. Sys., 198 N.J. 215, 223-24 (2009)). In reviewing an administrative decision, we ordinarily recognize the agency's expertise in its particular field. Ibid. We will not substitute our judgment for the agency's even though we might have reached a different conclusion. In re Stallworth, 208 N.J. 182, 194 (2011); see also In re Taylor, 158 N.J. 644, 656 (1999) (discussing the narrow appellate standard of review for administrative matters).

N.J.S.A. 9:6-8.21(c) provides in pertinent part the definition of an abused or neglected child as follows:

"Abused or neglected child" means a child less than 18 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 his parent or guardian, as herein defined, to exercise a minimum degree of care . . . 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.

Excessive corporal punishment is child abuse. We addressed when such punishment may be deemed excessive in DYFS v. K.A., 413 N.J. Super. 504 (App. Div.), certif. granted, 204 N.J. 40 (2010). We explained that "a single incident of violence against a child may be sufficient to constitute excessive corporal punishment" and advised that the circumstances presented in each case must be examined in a determination of whether excessive corporal punishment was used. Id. at 511-12. We confirmed again in DYFS v. S.H., 439 N.J. Super. 137 (App. Div.), certif. denied, 222 N.J. 16 (2015), that an isolated incident of physical injury is sufficient to establish abuse or neglect.

In her brief, defendant states that after learning that Susan had misbehaved in school, she "[struck] [the child] once with a phone cord then decided to use a belt because it . . . required more force." Susan had numerous bruises on her body as a result of the whipping.

We are satisfied that the decision of the Division substantiating defendant for physical abuse was supported by the credible evidence presented to it. Defendant has never contested the factual underpinnings of the incident; she only disagrees with the substantiated finding. Her actions constituted a failure to exercise a minimum degree of care in violation of N.J.S.A. 8:21-(c)(4)(b), and therefore, we affirm the Division's decision.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION