

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2143-15T4

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

H.R.,

Defendant-Appellant.

IN THE MATTER OF M.H., a minor.

Submitted June 6, 2017 – Decided June 21, 2017

Before Judges Yannotti and Gilson.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FN-02-0318-14.

Joseph E. Krakora, Public Defender, attorney
for appellant (Marina Ginzburg, Designated
Counsel, on the briefs).

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

Joseph E. Krakora, Public Defender, Law
Guardian, attorney for minor (Lisa J. Godfrey,

Assistant Deputy Public Defender, on the brief).

PER CURIAM

Defendant H.R. appeals from an order entered by the Family Part on December 16, 2014, which found that she abused or neglected her son, M.H. We affirm.

This appeal arises from the following facts. On May 13, 2014, members of a multi-jurisdictional Heroin Task Force were conducting surveillance in the City of Paterson and observed H.R. drive her car into the area and park. A male approached and entered the car. H.R. then drove her car a short distance and pulled over. The male then exited the car and walked away.

Based on their training and experience, the officers thought that H.R. had engaged in an illegal narcotics transaction. The officers followed and then stopped H.R.'s vehicle. The officers identified themselves and asked H.R. to exit the car. M.H. was in the back seat of the vehicle. He was two years old at the time. The officers informed H.R. of her Miranda rights.¹

H.R. told the officers that there was heroin in the car. She then handed the officers five glassine folds of suspected heroin. H.R. was arrested. She told the officers that she did not have

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

anyone to pick up her son. The police transported H.R. and the child to the Hawthorne police headquarters. The officers then contacted the Division of Child Protection and Permanency (Division), and one of its workers responded.

Because H.R. did not have anyone to care for M.H., and because there was a final restraining order against G.H., the child's biological father, which precluded him from having any contact with the child, the Division removed the child on an emergency basis and placed him in a non-relative resource home.

On May 15, 2014, the Division filed a complaint in the Family Part, Passaic County, pursuant to N.J.S.A. 9:6-8.21 to -8.73, and N.J.S.A. 30:4C-12 to -24, seeking custody, care, and supervision of the child. The Division alleged that H.R. abused or neglected M.H. by subjecting him to a substantial risk of harm when she made an illegal purchase of drugs in Paterson with the child in the car.

The Family Part judge entered an order that day finding that the removal of the child was required due to the imminent danger to the child's life, safety, and health. The order placed the child in the Division's custody, care, and supervision. Among other provisions, the order required H.R. and G.H. to undergo psychological and substance-abuse evaluations, and to participate

in services. H.R. was allowed weekly, supervised visits with the child.

The order also stated that the action should have been brought in Bergen County and it required the Division to re-file the complaint in that vicinage. The order further required H.R. and G.H. to show cause why the child should not remain under the care and supervision of the Division.

Thereafter, the Division filed its complaint in the Family Part, Bergen County, and on the return date of the order to show cause, the Family Part judge entered an order dated June 26, 2014, continuing the Division's custody, care, and supervision of the child. The judge later conducted case management reviews on August 14, 2014, and September 9, 2014.

M.H. remained in the Division's care, custody and supervision. The judge ordered H.R. and G.H. to participate in substance abuse evaluations, submit to random drug/alcohol screenings, attend counseling and individual therapy, and attend parenting skills training.

The Family Part judge conducted a fact-finding hearing on December 5, 2014. At the hearing, the Division presented testimony from Totowa Police Officer Daniel V. DiBlasio, Division caseworker Kim Puyron-Darling, substance abuse evaluator Stacey Bosso, and Bergen County Sheriff's Detective Tasharah Windley. H.R. did not

appear at the hearing, but she was represented by counsel. The Division did not view G.H. as an offending parent. He appeared at the hearing, without counsel.

Officer DiBlasio testified that in November 2012, he was dispatched to an apartment in Totowa, after the police received a call stating that controlled dangerous substances (CDS) had been found in the apartment. G.H. told DiBlasio that he found several plastic baggies filled with cocaine in the bedroom he shared with H.R. DiBlasio entered the bedroom and observed M.H. sleeping in his crib. M.H. was eight months old at the time. DiBlasio arrested H.R. for possession of cocaine. M.H. remained in G.H.'s care.

Division caseworker Puyron-Darling testified that she became involved with H.R. after she was arrested for cocaine possession. The case remained opened for services from 2012 to 2014 since the Division had concerns about H.R.'s use of illegal drugs and domestic violence. Puyron-Darling stated that H.R. did not comply with the recommended substance abuse treatment, and she only submitted one urine screen.

In March 2014, the Division received another referral that H.R. was abusing marijuana. She denied the allegation and agreed to come to the Division's office and submit to a substance abuse evaluation. H.R. failed to appear for the scheduled evaluation. In April 2014, the Division received another referral about H.R.'s

alleged use of illegal drugs. Puyron-Darling spoke with H.R., and she agreed to come to the Division's office and undergo a substance abuse evaluation. H.R. did not appear for the evaluation.

On May 13, 2014, the Paterson police informed the Division that H.R. had been arrested for heroin possession and her two-year-old son was in the car when H.R. was arrested. The officer reported that the child required placement because H.R. said she had no family or friends who were available to care for the child.

Officer Windley testified about H.R.'s arrest on May 13, 2014. The officer stated that on that day, she was part of the Heroin Task Force in Paterson. Windley said she was conducting surveillance in an area of Paterson known for its high crime rate and drug sales.

At around 10:00 a.m., Windley noticed a woman driving a grey Ford Focus circling the area. The woman pulled over and a young man entered the vehicle. The woman drove a block and stopped. The man exited the car. Windley testified that, based on her training and experience, these actions were consistent with drug transactions in an area known for drug sales.

Windley stopped the car and asked the driver to step out. She identified H.R. as the driver of the car. H.R. admitted that she had just purchased heroin from the man who exited her car. H.R. voluntarily retrieved the drugs from her purse and gave the officer

five bags of heroin. Windley observed M.H. sitting in a car seat in the car. She described the car as "very dirty" and strewn with clothes and trash. The child's hands and face were dirty. M.H. was only wearing pajamas, and he had no shoes on his feet. Urine from the child's diaper had soaked through the child's pajamas onto the car seat.

H.R. could not provide the name of M.H.'s father or any other person who might be able to pick him up. Windley then transported the child to the Hawthorne police station, and the Division was contacted. H.R. was placed under arrest and transported to the Hawthorne police station in another vehicle.

Windley pointed out that M.H. could not walk around the police station because he had no shoes. H.R. did not have a diaper bag, diapers, or a drinking cup for the child. H.R. explained that she did not have time to grab these items because she ran out of the house.

Windley stated that she was concerned for the child because he was in the car with his mother while she purchased drugs from an unknown man in a "high" drug and crime area. The officer said there was a danger that H.R. could be car-jacked, raped, or robbed. The officer noted that about sixty percent of drug dealers carry weapons, such as handguns and knives, while engaging in drug

transactions. Many drug purchasers in the area report that they had been robbed by drug dealers.

The Division offered H.R. services in an attempt to achieve reunification, and Preferred Children's Services (PCS) performed a substance abuse evaluation of H.R. Bosso, the substance abuse evaluator, testified that H.R. had admitted to a long-standing drug addiction, which began when H.R. was an adolescent.

H.R. reported that she had started ingesting oxycodone daily, and that by the age of seventeen, she began to snort about two bundles of heroin each day. Her addiction progressed, and H.R. began injecting up to five bags of heroin at a time, and using eleven-and-a-half bundles of the drug each day. H.R. also admitted to smoking marijuana and snorting cocaine every day, and this led to a daily crack habit. At the height of her addiction, H.R. was spending \$700 a day on CDS.

H.R. said she stopped using drugs at age nineteen, after she was incarcerated. She claimed to have remained sober until November 2013, when she relapsed on heroin. She was then twenty-three years old. H.R. began snorting heroin daily, and she progressed to injecting anywhere from four bags to two bundles a day. Bosso testified that, at the time of the evaluation, H.R. was injecting four bags to two bundles of heroin a day, and she snorted cocaine three days before the evaluation. The Division referred H.R. to a

detoxification program. She attended an intake appointment on August 12, 2014, but left the next day. Bosso said H.R. never returned to the program, and she had no further contact with PCS.

On December 16, 2014, the judge filed a written opinion finding that H.R. had abused or neglected the child as a result of her actions on May 13, 2014. The judge found that the Division's witnesses were credible. She determined that H.R. had acted in a grossly negligent manner, and she placed M.H. at substantial risk of harm by abusing drugs and transporting the child in a car while she engaged in an illegal drug purchase. The judge memorialized her findings in an order dated December 16, 2014.

The judge later conducted hearings in the matter on February 5, 2015; May 7, 2015; August 6, 2015; November 12, 2015; and December 18, 2015. H.R. only appeared at the August hearing. On December 18, 2015, the judge awarded sole legal and physical custody of the child to G.H. and terminated the litigation. This appeal followed.

On appeal, H.R. argues that: (1) the Division failed to prove by a preponderance of the material and relevant evidence that she abused or neglected M.H.; and (2) the Division did not prove that she failed to exercise a minimum degree of care or that M.H. was actually harmed by her actions.

The scope of our review in an appeal from an order finding abuse or neglect is limited. N.J. Div. of Youth & Family Servs. v. R.D., 207 N.J. 88, 112 (2011). We must uphold "factual findings undergirding the trial court's decision if they are supported by 'adequate, substantial and credible evidence' on the record." N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)).

An "abused or neglected child" is defined by N.J.S.A. 9:6-8.21(c)(4) as a child who is less than eighteen years of age and

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 (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof[;] . . . or by any other acts of a similarly serious nature requiring the aid of the court[.]

"Whether a parent or guardian has failed to exercise a minimum degree of care' in protecting a child is determined on a case-by-case basis and 'analyzed in light of the dangers and risks associated with the situation.'" N.J. Div. of Youth & Family Servs.

v. N.S., 412 N.J. Super. 593, 614 (App. Div. 2010) (quoting G.S. v. Dep't of Human Servs., 157 N.J. 161, 181-82 (1999)). "'[M]inimum degree of care' refers to conduct that is grossly or wantonly negligent, but not necessarily intentional." G.S., supra, 157 N.J. at 178.

This standard "implies that a person has acted with reckless disregard for the safety of others." N.J. Div. of Youth & Family Servs. v. S.I., 437 N.J. Super. 142, 153 (App. Div. 2014) (quoting G.S., supra, 157 N.J. at 179). Moreover, a parent may be found to have abused or neglected a child when the parent creates a substantial risk of harm, since a court "need not wait until a child is actually irreparably impaired by parental inattention or neglect." In the Matter of the Guardianship of D.M.H., 161 N.J. 365, 383 (1999).

Here, there is sufficient credible evidence to support the trial court's finding that H.R. abused or neglected M.H. by engaging in an illegal drug transaction with an unknown man, in a high-crime area. There also is sufficient credible evidence in the record to support the judge's determination that H.R. failed to meet the child's basic needs because she was only focused on her need to obtain illegal drugs.

H.R. does not dispute that she went to Paterson to purchase heroin, and she had the child with her in the car. H.R.

acknowledges that she allowed an unidentified man to enter her car and she admits that the police found heroin in her car. She argues, however, that there is nothing to suggest she was under the influence of narcotics at the time. She contends that the "simple act" of having narcotics in her car did not place M.H. at substantial risk of harm. She also contends that the child was not harmed by his filthy clothes, soiled diaper, and lack of shoes.

These arguments are without merit. The evidence shows that H.R. has a long history of substance abuse and a history of arrests related to her possession of CDS. On May 13, 2014, H.R. took the child with her when she went to purchase heroin, and as Officer Windley testified, H.R. exposed herself, as well as her child, to the risk of serious criminal activity.

Windley noted that drug dealers often possess weapons while engaging in drug transactions, and that drug purchasers report they have been robbed by drug dealers. Windley also pointed out that, by allowing an unidentified person to enter her car, H.R. could have been the victim of a sexual assault or a carjacking. As the Family Part judge correctly determined, in doing so, H.R. placed the child at substantial risk of harm.

Moreover, the evidence presented at the fact-finding hearing showed that when H.R. was arrested, the officer noted that M.H.'s face and hands were filthy. He was wearing pajamas and did not

have shoes. His clothing also was soaked in urine, apparently because his diaper had not been changed. H.R. did not have a diaper bag with her. She claimed this was merely an oversight, but the judge properly drew the inference that H.R. was "so focused on getting her drugs that she neglected to care for her child's most basic needs."

Thus, there is sufficient credible evidence in the record to support the judge's finding that H.R.'s actions were grossly negligent and placed the child at substantial risk of harm. The record therefore supports the judge's determination that H.R. failed to exercise the minimum degree of care, and as a result, M.H. was abused or neglected, as defined in N.J.S.A. 9:6-8.21(c)(4).

H.R. argues that the judge erred by admitting what she characterized as inadmissible hearsay and irrelevant evidence and testimony. She contends the judge erred by admitting the Division's investigation report, which included statements from persons who were interviewed. She contends that the judge erred by admitting reports from the Bergen County Sheriff's Office and the Totowa police, which discussed certain previous incidents involving H.R.

H.R. further argues that the judge erred by admitting a July 11, 2014 report of a psychological evaluation prepared by Dr. Margaret DeLong. In addition, H.R. contends the court should not

have admitted a report of a urine screening, which she claims was not properly authenticated.

We find no merit in these arguments. We note that the essential facts supporting the judge's finding that H.R. abused or neglected M.H. were established by testimony presented at the fact-finding hearing, which the judge found credible. The judge admitted the Division's investigative report, but noted that she would not consider any inadmissible hearsay in that report.

Furthermore, Officers Windley and DiBlasio testified as to the key facts set forth in the investigative reports of the Bergen County Sheriff's Office and the Totowa police. In addition, the judge admitted Dr. DeLong's report, but the statements in that report were not essential to the judge's decision, which was based primarily on the events of May 13, 2014.

H.R.'s remaining arguments are without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION