

**RECORD IMPOUNDED**

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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-4609-15T2

NEW JERSEY DIVISION OF CHILD  
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

P.B.,

Defendant-Appellant.

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IN THE MATTER OF S.B.,  
a minor.

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Submitted November 8, 2017 – Decided December 13, 2017

Before Judges Reisner, Gilson, and Mayer.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Middlesex  
County, Docket No. FN-12-0233-15.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Fabiola Ruiz Doolan, Designated  
Counsel, on the brief).

Christopher S. Porrino, Attorney General,  
attorney for respondent (Melissa Dutton  
Schaffer, Assistant Attorney General, of  
counsel; James R. Griffin, Jr., Deputy  
Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law  
Guardian, attorney for minor S.B. (Danielle  
Ruiz, Designated Counsel, on the brief).

PER CURIAM

A mother appeals from an October 20, 2015 order finding that she abused or neglected her minor daughter by exposing her to deplorable living conditions and failing to attend to her daughter's health needs. We affirm because the findings of abuse or neglect were supported by substantial credible evidence.

I.

P.B. (Pamela)<sup>1</sup> is the mother of S.B. (Sally), who was born in September 2013. At the time of the alleged abuse or neglect, Sally was eighteen months old, and she and Pamela lived with Pamela's mother, C.S. (Catherine), and Pamela's six-year-old sister, I.S. (Ivy). The abuse or neglect findings in this case focused on Pamela's failure to provide a safe home for her child and medical neglect of her child.

In March 2015, the Division received a referral after Ivy ingested an entire tube of Orajel and was sent to the hospital in critical condition. In connection with that referral, the Division inspected the apartment and found it to be in a deplorable state. It smelled of urine, body odor, and cigarettes. It was cluttered

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<sup>1</sup> To protect privacy interests and for ease of reading, we use initials and fictitious names. See R. 1:38-3(d)(12).

with garbage, dishes were piled in the sink, and there were flies throughout the apartment. There were also hazardous conditions in the apartment. The bathtub was clogged and filled with a few inches of water. A Barbie doll was found floating in the water, indicating that a child had played in the water. Further, there was a prescription bottle filled with Xanax pills kept on the lower shelf of a cabinet that was accessible to the children. The Xanax was kept in the same cabinet as the Orajel that Ivy ingested.

During its investigation, the Division also learned that Sally was suffering from a severe diaper rash. The rash extended from Sally's navel to her ankles and had been left untreated for two weeks because Sally's regular pediatrician was on vacation. After the Division became involved with the family and requested that Pamela take Sally to the hospital for an examination, Pamela obtained a prescription for the rash. She never filled the prescription, however. Her failure to fill the prescription was not the result of financial hardship, as Pamela had insurance to cover the cost of the medicine.

Pamela failed to remediate the conditions of the apartment. Because it remained an unsanitary and hazardous environment for a young child, and Pamela had nowhere else to stay, the Division removed Sally from Pamela's care in March 2015. Thereafter, the court granted the Division's application for custody, care, and

supervision of Sally. The court directed Pamela to undergo a psychological evaluation and attend parenting classes.

A fact-finding hearing was conducted on September 2, 2015, and October 5, 2015. The Division presented testimony from three witnesses and entered into evidence photos of the apartment and Sally's diaper rash. The Family judge also heard testimony from Pamela and Catherine. Following the hearing, the judge issued an order and oral opinion on October 20, 2015, finding that the Division had proven by a preponderance of the evidence that Pamela had abused or neglected Sally.

The judge found the Division's three witnesses to be credible. She also found Pamela credible, but found that Pamela's actions and inactions constituted neglect. The judge found Catherine incredible. Relying on the testimony of the Division workers and the photos submitted into evidence, the judge found that the conditions of the apartment were unsanitary and hazardous and, thus, unsafe living conditions for a young child. The judge also found that Pamela left Sally's diaper rash untreated for two weeks.

Turning to the issue of whether Sally was exposed to a risk of harm, the judge found that the accessibility of a prescription bottle with Xanax pills posed a substantial risk of harm to Sally. Further, she stated that Sally's rash was so severe that she "[couldn't] imagine a day going by, let alone two weeks . . .

where th[e] child wouldn't have been in significant pain and discomfort." In assessing whether Pamela exercised a minimum degree of care, the judge determined that Pamela was not living in poverty, and that she had the financial means to provide satisfactory living conditions for her child and to attend to her medical needs. The judge concluded that Pamela failed to exercise a minimum degree of care that exposed Sally to substantial risks of harm and, thus, entered an order finding abuse or neglect.

Thereafter, the court conducted several compliance reviews. In March 2016, the court entered an order approving the Division's permanency plan of termination of parental rights. Accordingly, the Title 9 action was terminated, and the Division filed a Title 30 action for guardianship and termination of parental rights.

## II.

Pamela now appeals from the October 20, 2015 order finding that she abused or neglected her child. She argues that the trial court's factual findings were erroneous and that its legal conclusions were inconsistent with the evidence presented at trial. Pamela also contends that the court showed a predisposition against her by referencing Catherine's separate, ongoing case with the Division. Having reviewed these arguments in light of the record, we affirm the October 20, 2015 order finding that Pamela abused or neglected her child.

The scope of our review is limited. N.J. Div. of Child Prot. & Permanency v. Y.A., 437 N.J. Super. 541, 546 (App. Div. 2014). We will uphold the trial judge's factual findings and credibility determinations if they are supported by substantial credible evidence. N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007). Accordingly, we will only overturn the judge's findings if they "went so wide of the mark that the judge was clearly mistaken." Ibid. We do not, however, give "special deference" to the trial court's interpretation of the law. D.W. v. R.W., 212 N.J. 232, 245 (2012) (citing N.J. Div. of Youth & Family Servs. v. I.S., 202 N.J. 145, 183 (2010)). Consequently, we apply a de novo standard of review to legal issues. D.W., supra, 212 N.J. at 245-46.

The adjudication of abuse or neglect is governed by Title 9, which is designed to protect children. N.J.S.A. 9:6-8.21 to -8.73; N.J.S.A. 9:6-8.8. Under Title 9, a child is abused or neglected if:

[a] parent or guardian . . . creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ . . . 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 . . . in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof[.]

[N.J.S.A. 9:6-8.21(c)(2) and (c)(4)(b).]

The statute does not require that the child experience actual harm. N.J.S.A. 9:6-8.21(c)(4)(b). A child is abused or neglected if his or her physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired. N.J.S.A. 9:6-8.21(c)(4)(b). In cases where there is an absence of actual harm, but there exists a substantial risk of harm or imminent danger, the court must consider whether the parent exercised a minimum degree of care under the circumstances. G.S. v. Dep't of Human Servs., 157 N.J. 161, 171 (1999).

The failure to exercise a "minimum degree of care" refers to "conduct that is grossly or wantonly negligent, but not necessarily intentional." Id. at 178. "Conduct is considered willful or wanton if done with the knowledge that injury is likely to, or probably will, result." Ibid. A parent fails to exercise a minimum degree of care if, despite being "aware of the dangers inherent in a situation[,]" the parent "fails adequately to supervise the child or recklessly creates a risk of serious injury to that child." Id. at 181.

The Division must prove by a preponderance of competent, material, and relevant evidence that a child is abused or neglected. N.J.S.A. 9:6-8.46(b). This burden of proof requires the Division to demonstrate a probability of present or future harm. N.J. Div. of Youth & Family Servs. v. S.S., 372 N.J. Super. 13, 24 (App. Div. 2004), certif. denied, 182 N.J. 426 (2005). Title 9 cases are fact-sensitive, and the court should base its findings on the totality of the circumstances. N.J. Div. of Youth & Family Servs. v. V.T., 423 N.J. Super. 320, 329 (App. Div. 2011).

Pamela first argues that the trial court erred in its factual findings and reached conclusions that were not supported by evidence at the hearing. Further, she argues that the court showed a predisposition against her and abused its discretion by considering facts relevant to Catherine's case with the Division. We are not persuaded by either of these arguments. We will analyze them in turn.

#### A. The Substantial Evidence

The Division presented evidence that the apartment was unsafe for a minor child. In particular, the trial court found it worrisome that the bathtub was clogged and a Barbie doll was floating in the water, indicating that a child had played in the water, because the partially-filled bathtub presented a risk of injury to a young child. Moreover, the trial court found that a



prescription bottle containing Xanax pills was stored in a cabinet accessible to the child. All of those findings were supported by substantial credible evidence in the record and demonstrate that Sally was exposed to a substantial risk of harm from the unsanitary and hazardous conditions.

The Division also presented evidence to support a finding of medical neglect. The trial judge found that Pamela neglected Sally when she did not take Sally to another doctor for her diaper rash while Sally's regular pediatrician was on vacation. When Sally finally did see a doctor and obtained a prescription, Pamela did not fill that prescription. The trial judge found that Pamela failed to exercise a minimum degree of care because there were other things she could have done to treat the condition prior to the Division's involvement with the family. Again, all of those findings by the judge were supported by substantial credible evidence and support a finding of abuse or neglect.


#### B. Predisposition

Pamela argues that the Family judge showed a predisposition against her that tainted the judge's evaluation of the case and warranted her recusal. In support of this argument, Pamela cites nothing that would demonstrate any predisposition or improper conduct by the trial judge. Instead, Pamela points to statements that the judge made regarding her mother, Catherine. Any reference

to Catherine was tangential and in relation to the apartment where Catherine lived with Pamela and Sally. We are not presented with anything that would suggest that the judge engaged in any conduct warranting recusal. Instead, in making her findings, the judge relied on photos submitted into evidence of the apartment and Sally's diaper rash, testimony from three Division caseworkers, and testimony from Pamela. Thus, the judge considered all of the relevant evidence, and her findings are supported by substantial credible evidence in the record.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION