

RECORD IMPOUNDED

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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-4618-15T1

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

F.S.,

Defendant-Appellant,

and

M.F. and D.B.,

Defendants.

IN THE MATTER OF A.S, D.S., and
D.B.,

Minors.

Submitted September 26, 2017 – Decided October 5, 2017

Before Judges Reisner and Hoffman.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Burlington
County, Docket No. FN-03-0116-16.

Joseph E. Krakora, Public Defender, attorney
for appellant (Sarah M. Dingivan, Designated
Counsel, on the briefs).

Christopher S. Porrino, Attorney General, attorney for respondent, (Melissa H. Raksa, Assistant Attorney General, of counsel; Hannah F. Edman, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor D.S. (Charles Ouslander, Designated Counsel, on the brief).

PER CURIAM

Defendant F.S. appeals from a February 12, 2016 fact finding order determining that she neglected her son D.S. (Daniel)¹ within the meaning of Title 9, N.J.S.A. 9:6-8.21(c)(4)(a), by failing to provide proper dental care.² We affirm.

The Division of Child Protection and Permanency (Division) first became involved with defendant and her children in 2008, upon receipt of an allegation of illegal drug use, followed by four reports of abuse or neglect over the next six years. These allegations were all deemed unfounded. At the time the Division filed its complaint for custody in October 2015, defendant was the mother of five children between the ages of two and ten, including then four-year-old Daniel.

¹ We refer to D.S. by a pseudonym for anonymity and ease of reference.

² The February 12, 2016 order was perfected for appeal when the trial court entered a final order on May 19, 2016 terminating litigation.

The case under review began on October 13, 2015, when the Division received an allegation defendant was abusing her oldest son. After speaking with him at his school, the Division completed an emergency removal of all five children. Upon entering defendant's home, the Division workers found the children dirty, without adequate clothing. The workers also noted the children had rotten teeth, and Daniel's teeth were "really in bad shape." The Division substantiated defendant for neglect of all five children.

At an October 16, 2015 hearing, the court ordered Daniel and one of his siblings returned to defendant's custody,³ with the Division to retain care and supervision. The court further ordered, "All the children shall be seen by a dentist."

At the fact finding hearing, a photograph admitted into evidence showed Daniel's teeth were rotten and his gums black. Defendant testified Daniel's teeth were rotten due to lack of calcium. Defendant further testified Daniel had been to the dentist and the dentist recommended Daniel see a pediatric dentist. However, defendant failed to take Daniel to the recommended dentist because it was "far out of [the] way." Defendant did take Daniel to the dentist after the court ordered her to do so, and Daniel's

³ At the same hearing, defendant consented to the placement of her remaining children with relatives.

front baby teeth were removed. Defendant's oldest son also experienced the same issues and had his front baby teeth removed when he was about the same age as Daniel. Defendant admitted a dentist told her she should brush the children's teeth to prevent rotting.

At the end of the fact finding hearing, the judge rendered an oral opinion, concluding defendant neglected Daniel, "pursuant to the definitions of Title 9," by "grossly neglect[ing] to tend to [Daniel's] dental needs."⁴ The judge found defendant's explanations regarding the state of Daniel's teeth lacking in credibility. He reasoned that defendant was told how to rectify the problem with Daniel's teeth and failed to do so; allowing Daniel's teeth to get to the rotten state they were in constituted neglect.

On this appeal, we are bound to accept the trial judge's factual findings so long as they are supported by sufficient credible evidence. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012). While we review a trial judge's legal conclusions de novo, we owe particular deference to the judge's expertise in family-related issues. Id. at 448; Cesare v. Cesare, 154 N.J. 394, 413 (1998). However, we grant no

⁴ The judge found the Division did not sustain its burden of establishing neglect regarding defendant's four other children.

deference to the Family Part if the judge's findings "went so wide of the mark that the judge was clearly mistaken." N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007). Based on our review of the record, we find no basis to disturb the trial judge's decision.

Defendant argues the record lacks adequate credible evidence to support the trial judge's finding of neglect. Specifically, defendant argues the judge erred in finding defendant failed to meet the "minimum degree of care" required by N.J.S.A. 9:6-8.21(c)(4), asserting the Division needed an expert to prove Daniel suffered harm or was at substantial risk of harm.

The focus in abuse and neglect cases is to protect children who have been abused or are at risk of being harmed. N.J. Div. of Youth & Family Servs. v. A.L., 213 N.J. 1, 18 (2013). Under Title 9, an abused or neglected child is defined as:

[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 . . . 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

[N.J.S.A. 9:6-8.21(c).]

"[T]he phrase 'minimum degree of care' refers to conduct that is grossly or wantonly negligent, but not necessarily intentional." G.S. v. N.J. Div. of Youth & Family Servs., 157 N.J. 161, 178 (1999). Such misconduct occurs when "an ordinary reasonable person would understand that a situation poses dangerous risks and acts without regard for the potentially serious consequences" Id. at 179. "[A] failure to provide for a child's needs, when a parent is capable of doing so, can support actionable neglect where a child's condition has been demonstrated to be impaired or in imminent danger of being impaired." N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 35 (2011).

Defendant argues her conduct did meet the "minimum degree of care" required by N.J.S.A. 9:6-8.21(c)(4). Defendant relies on P.W.R., supra, 205 N.J. at 38, where a step-parent failed to take her sixteen-year-old step-daughter to the pediatrician for two years, but the step-daughter showed no signs of harm. However, the facts here are distinguishable from the facts of P.W.R., where the child sustained no harm; here, we have clear evidence of harm: Daniel's rotten teeth, and their subsequent removal. Further, defendant knew of the consequences of failing to care for Daniel's teeth as her oldest child experienced the same problem, requiring the removal of his teeth when he "was [three] and a half." The record also contains no evidence that defendant lacked the means

or ability to provide Daniel with proper dental care. Clearly, defendant's failure to seek dental care for Daniel's teeth constitutes a failure to provide a minimum degree of care under the neglect statute.

As noted, defendant argues the Division presented insufficient evidence to establish neglect, asserting a medical expert was necessary to prove either actual harm or a substantial risk of harm to Daniel. Defendant relies on A.L., supra, 213 N.J. at 28, which states, "When . . . the evidence presented does not demonstrate actual or imminent harm, . . . [c]ompetent expert testimony, stipulations, or other evidence could shed light on the facts introduced." However, A.L. goes on to state, "In many cases, an adequate presentation of actual harm or imminent danger can be made without the use of experts." Id. at 29. "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue," expert testimony is permissible. N.J.R.E. 702. However, "expert testimony is not necessary when the subject can be understood . . . utilizing common judgment and experience." Campbell v. Hastings, 348 N.J. Super. 264, 270 (App. Div. 2002).

The facts of this case are distinguishable from A.L. in that an average person can surmise the harm from rotten and missing front teeth. In contrast, the child in A.L. had a positive blood

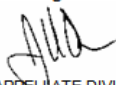
test for a chemical unknown to the average person and no outward physical impairment. A.L., supra, 213 N.J. at 26-27. Daniel is missing his two front teeth because they rotted away and were removed at the age of four. For this type of harm, we discern no need for expert testimony.

Finally, defendant argues the trial court impermissibly shifted the burden of proof to defendant to prove there was not neglect. This argument lacks merit. While the court discussed the credibility of defendant's testimony, the court did not place the burden of proof on defendant. The Division presented extensive testimony of Division workers who observed and spoke with the children. The court also carefully reviewed and described the picture of Daniel's teeth in making its finding of neglect. We are satisfied the trial court relied on evidence presented by the Division and did not shift the burden of proof to defendant.

Any arguments not addressed lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). In summary, we conclude the record contains sufficient credible evidence supporting the trial judge's determination of neglect under N.J.S.A. 9:6-8.21(c).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION