

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4890-14T2

DEPARTMENT OF CHILDREN
AND FAMILIES, DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Petitioner-Respondent,

v.

G.G.,

Respondent-Appellant.

Submitted November 17, 2016 – Decided March 22, 2017

Before Judges Lihotz and O'Connor.

On appeal from New Jersey Department of
Children and Families, Division of Child
Protection and Permanency, Docket No. AHU
13-1155.

Cobos Law Firm, attorneys for appellant
(Franz Cobos, on the brief).

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

PER CURIAM

Appellant G.G. appeals from the May 12, 2015 final decision of the assistant commissioner of the Department of Children and Families, Division of Child Protection and Permanency (Division), finding he sexually abused K.B. (Katy) within the definition of N.J.S.A. 9:6-8.21(c)(3).¹ We affirm.

I

We discern the following facts from the record. In November 2012, appellant lived in an apartment just above the apartment in which then thirteen year old Katy, her mother, and sister resided. Katy's mother was in a romantic relationship with appellant and pregnant with his child. It is unclear when, but Katy's mother and appellant married at some point.

In May 2013, Katy was in her father's home for parenting time when Katy's aunt overheard Katy tell her cousin about an incident that occurred the previous November. Katy stated appellant was babysitting her while her mother and sister were at a laundromat. Katy was sitting at her computer desk when appellant grabbed her by the arm, pulled her over, and placed her on his lap. When he touched her leg and the side of her body, Katy pulled away and returned to her desk. Appellant

¹ We use pseudonyms to protect the privacy of K.B. and her family members.

pulled her over to him again, put his hand inside of her shirt, and attempted to touch her breasts. Katy pulled away, but appellant touched her lips with his hands, kissed her, and tried to put his tongue inside of her mouth. Katy ran outside, where she saw her mother and sister on the sidewalk, who were returning home.

Katy told her mother what had happened. Katy's mother said she would handle the situation and went inside to speak to appellant. When she returned, Katy's mother commented appellant "must have been drunk" and told Katy to not mention the incident to anyone.

Katy's aunt reported to Katy's father what she had overheard, and the two took Katy to the police station that day, where Katy repeated to the police what she had told her cousin. The police contacted the Division, which immediately commenced an investigation. Katy told a Division caseworker what she had reported to her cousin and the police. Katy was later examined by licensed social worker Rani Steinberg, who specializes in the treatment of children who have been abused. Steinberg found Katy suffered from post traumatic stress disorder (PTSD) as a result of appellant's conduct.

At the conclusion of its investigation, the Division determined Katy's allegation of sexual abuse was substantiated.

Appellant appealed this determination and requested a hearing. The matter was transferred to the Office of Administrative Law as a contested case, see N.J.S.A. 52:14B-1 to -15, and a hearing held before Administrative Law Judge (ALJ) Barry E. Moscovitz. At the hearing, Steinberg's expert's report was admitted, and a representative from the Division and Steinberg testified. Appellant did not testify or call any witnesses.

In her report, Steinberg noted Katy complained of experiencing trauma symptoms daily; specifically, she had repetitive thoughts about the incident. She was both afraid to be alone or be "alone with anyone." She was fearful of walking home alone and, when she saw a man, would "freak out." On the day of her examination, Katy saw a man wearing the same kind of clothing appellant wore and she "freaked out and couldn't breathe." Even when she realized it was not appellant, she still felt fear.

Steinberg found Katy presented as a traumatized and somewhat sad adolescent, who was dissociative when talking about the abuse. Steinberg concluded Katy had PTSD. The symptoms of this disorder were manifested in the form of flashbacks, dissociation, anxiety, and fear. Steinberg commented Katy was in need of immediate individual therapy to address her symptomatology.

Steinberg's testimony was consistent with her report. On cross-examination, defense counsel questioned her whether Katy's performance in school, relationship with her peers, and "general functioning . . . [and] history" were factors Steinberg should have explored before making a diagnosis of PTSD. Steinberg replied in the negative, commenting such information was not relevant, as a diagnosis of PTSD "is made from talking to the patient."

Following the hearing, Judge Moscovitz issued a comprehensive written opinion, in which he ultimately found:

In this case, [Katy] consistently repeated that [appellant] touched her inappropriately. In addition, [Katy] reported emotional impacts, namely flashbacks, dissociation, anxiety, and fear. Moreover, Steinberg applied her expertise to credit [Katy's] account of what happened to her – as well as [Katy's] report of its emotional impact on her – to diagnose [Katy] with Post Traumatic Stress Disorder, sexual abuse of a child, and neglect of a child. To be clear, such clinical expertise is corroborative of [Katy's] statement of sexual abuse. Therefore, I **CONCLUDE** that [appellant] sexually abused [Katy] in violation of N.J.S.A. 9:6-8.21(c)(4); ^[2] [and] that the allegation of sexual abuse is substantiated under N.J.A.C. 10:129-1.3
. . . .

² Our review of the record indicates the "(4)" in the citation to N.J.S.A. 9:6-8.21(c)(4) is a typographical error, and that the judge actually intended to cite N.J.S.A. 9:6-8.21(c)(3) and not N.J.S.A. 9:6-8.21(c)(4).

The assistant commissioner of the Division adopted Judge Moskowitz's initial decision, noting the Division proved by a preponderance of the evidence appellant committed an act of sexual abuse against Katy in violation of N.J.S.A. 9:6-8.21(c)(3), and that appellant's name shall be substantiated in the child abuse registry, pursuant to N.J.S.A. 9:6-8.11.

II

On appeal, appellant primarily contends there was no corroboration of Katy's statement he sexually abused her. He also maintains Steinberg's diagnosis of PTSD did not provide the requisite corroboration because the diagnosis itself was flawed. Specifically, he argues Steinberg was required to review Katy's school records to assess her academic functioning, and to interview her teachers, various relatives, and friends to assess how well she was functioning socially, before making this diagnosis. Appellant further contends Steinberg was required to administer objective tests to Katy. Finally, he argues Katy's reports of the incident were inconsistent. We reject these arguments and affirm.

Appellate review of an administrative agency's final decision is limited. We are bound to uphold an agency's decision "unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in

the record." In re Herrmann, 192 N.J. 19, 27-28 (2007). Our role is limited to determining:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995).]

In applying this standard, we find no basis to disturb the assistant commissioner's decision affirming the ALJ's initial decision.

N.J.S.A. 9:6-8.21(c)(3) provides "'[a]bused or neglected child' means a child less than 18 years of age whose parent or guardian, as herein defined, . . . (3) commits or allows to be committed an act of sexual abuse against the child[.]" After the Division investigates a claim of child abuse, a "[d]epartment representative shall evaluate the available information and, for each allegation, determine whether abuse or neglect has occurred," while also making "every reasonable

effort to identify the perpetrator[.]" N.J.A.C. 3A:10-7.3(a).³

For each allegation raised, the representative shall make a finding as to whether the allegation is "'substantiated,' 'established,' 'not established,' or 'unfounded.'" N.J.A.C. 3A:10-7.3(c).

An allegation is considered "substantiated" when a preponderance of the evidence "indicates [] a child is an 'abused or neglected child' as defined in N.J.S.A. 9:6-8.21" and the investigation indicates the existence of any one of the factors in N.J.A.C. 3A:10-7.4. N.J.A.C. 3A:10-7.3(c)(1). One of the factors in N.J.A.C. 3A:10-7.4 is "[s]ubjecting a child to sexual activity" N.J.A.C. 3A:10-7.4(a)(2).

N.J.S.A. 9:6-8.46(a) provides "previous statements made by

³ The Department of Children and Families has recodified certain regulations relevant to abuse and neglect investigations. See 49 N.J.R. 98(a) (January 3, 2017) ("The Department of Children and Families requested, and the Office of Administrative Law agreed to permit, the administrative recodification of the Department's rules from Title 10, Human Services, to the newly created Title 3A, Children and Families, of the New Jersey Administrative Code."). The Notice of Administrative Changes noted the recodified chapters and technical changes were effective January 3, 2017, but it was "anticipated that approximately two to four chapters will be recodified with each Code Update produced." Ibid. Where applicable we cite the recodified regulations. The Notice included a table, which set forth "the Title 10 chapters being recodified along with their chapter headings and new Title 3A codification." Ibid. For example, N.J.A.C. 3A:10-1.4 was formerly N.J.A.C. 10:129-7.7(a).

the child relating to any allegations of abuse or neglect shall be admissible in evidence; provided, however, that no such statement, if uncorroborated, shall be sufficient to make a fact finding of abuse or neglect." N.J.S.A. 9:6-8.46(a)(4).

Corroborative evidence may be circumstantial, and "need not relate directly to the alleged abuser[;] it need only provide support for the out-of-court statements." N.J. Div. of Youth & Family Servs. v. Z.P.R., 351 N.J. Super. 427, 436 (App. Div. 2002). Corroboration may also be established by evidence of the emotional impact the sexual act had upon the child, as evidenced by psychological conditions. Ibid. "[P]sychological opinion evidence" by an expert is admissible to "corroborate [a] child's allegation of abuse, subject . . . to whatever weight the judge deems appropriate to accord the testimony." N.J. Div. of Child Prot. & Permanency v. I.B., 441 N.J. Super. 585, 587-88 (2015).

Here, Katy frequently ruminated about the incident and experienced flashbacks, dissociation, anxiety, and fear. Steinberg has diagnosed these emotional experiences and sensations as PTSD, which was caused by the abuse. This diagnosis is competent corroborative evidence of the child's statement. See *ibid.*; Z.P.R., supra, 351 N.J. Super. at 436. In addition, while Katy's consistent repetition of her statement is not in itself corroboration of that statement, it is an

indication the statement is trustworthy. Cf. State v. D.G., 157 N.J. 112, 126 (1999) (stating consistent repetition is an indication of trustworthiness in analyzing the admissibility of abuse allegations under N.J.R.E. 803(c)(27)).

Appellant argues Steinberg was obligated to review school records and speak to third parties to assess Katy's ability to function academically and socially in order to make a diagnosis of PTSD. However, appellant offered no evidence from an expert to support this premise. How a diagnosis of PTSD is to be made clearly is a subject too esoteric for a fact-finder and requires the aid of expert testimony. See generally Morlino v. Med. Ctr., 152 N.J. 563, 579 (1998). Moreover, Steinberg flatly spurned this proposition on cross-examination. Appellant also failed to provide competent evidence from an expert establishing Steinberg was required to administer objective tests to Katy. Accordingly, we reject appellant's contention Steinberg's diagnosis was deficient because she failed to take certain information into consideration.

We have considered appellant's remaining arguments and conclude they are bereft of sufficient merit to warrant discussion in a written opinion. 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