SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5510-15T3

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

K.D.,

Defendant-Appellant,

and

W.D.,

Defendant.

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

Minors.

Argued November 27, 2017 – Decided December 11, 2017

Before Judges Sabatino and Whipple.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FN-07-0520-15.

Ryan T. Clark, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Ryan T. Clark, on the briefs).

Michelle Mikelberg, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Andrea M. Silkowitz, Assistant Attorney General, of counsel; Michelle Mikelberg, on the brief).

Linda Vele Alexander, Designated Counsel, argued the cause for minors (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Linda Vele Alexander, on the brief).

PER CURIAM

After a fact-finding hearing at which several witnesses testified, the Family Part judge found that appellant had committed child neglect in violation of N.J.S.A. 9:6-8.21(c) by leaving her toddler and her infant son unattended in their apartment for several hours while she left to take a nursing assistant examination. Applying our limited scope of review and due deference to the trial judge's emphatic credibility findings, we affirm.

The record shows that appellant K.D. is the mother of a young daughter, S.D., who was born in December 2012, and her infant son A.D., who was born in July 2014. The children lived with appellant in an upstairs apartment in a multi-level building in Irvington. The children's father, W.D., did not reside with them. This appeal solely concerns litigation against K.D. by the Division of Child Protection and Permanency ("the Division").

On June 19, 2015, at approximately 2:58 p.m., the Irvington Police Department were alerted to a potential child neglect situation. A repairman working in the apartment building had heard children in appellant's apartment crying. He alerted the police when it did not seem like anyone was attempting to help. The repairman did not notice any caretakers present. Two Irvington police officers responded to the call. They heard crying and screaming coming from the apartment. The officers noticed the door was unlocked. They entered to check on the welfare of the children. Once inside, the officers found two children that were later identified as S.D. and A.D. At the time, S.D. was two-and-a-half years old and A.D. was eleven months old.

One of the officers testified at the hearing that everything in the apartment was "all over the place" and food and pencils were on the floor. The officers confirmed that the children were alone in the apartment. The officers observed A.D. crawling on the floor, wearing a dirty diaper with food in his hair. S.D. was found alone on the couch. Fortunately, the children were not physically injured.

Because the officers were unsuccessful in reaching appellant, they removed the children and took them to the police station. Multiple voice messages were left on appellant's phone, but she

did not respond until later that afternoon because she had been taking an examination to become a certified nurse's assistant.

After receiving the notifications, appellant went down to the police station, where she was interviewed. The police did not charge her with any criminal violations. However, the Division was notified, and placed the children with their father. The Division then filed a complaint in the Family Part asserting that she had committed child neglect in violation of Title 9.

In her interviews with police and the Division and in her testimony at the fact-finding hearing, appellant contended that she had made arrangements with a downstairs neighbor to watch the children that afternoon while she took the exam. Appellant claimed that she had shouted out down the stairwell to the neighbor, who had baby-sat for the children in the past, before appellant left the apartment at or around 1:00 or 1:15 p.m.

The neighbor, an elderly woman in her eighties who is hard of hearing, testified for the Division and refuted appellant's account. The neighbor acknowledged that she had watched the children in the past, but denied that she had been asked by appellant or had agreed to do so for this particular occasion. Notably, the neighbor also testified that prior to the fact-finding hearing, appellant had contacted her. According to the neighbor, appellant urged her to support appellant's version of the sequence

of events, and to tell the court that she had forgotten to watch the children.

Upon carefully considering the proofs, Presiding Judge David Katz issued a detailed bench opinion on October 16, 2015, along with companion written findings. The judge concluded that the Division had proven, by the required preponderance of the evidence, that appellant had abused or neglected her children, as that term is defined in the law. Among other things, Judge Katz found that both the police officer and the Division caseworker who testified were credible. The judge further found that appellant's neighbor in particular was "very credible," noting in his oral decision that the neighbor, herself a "concerned grandmother," presented to the court as "a loving, caring person," who "does not forget things." The judge found it was not credible that the neighbor would have "turn[ed] her back" on appellant's children on the day in question.

By stark contrast, the judge found appellant's own testimony was not credible. As the judge noted, "[h]er account of what happened that day did not make sense." The judge found appellant's answers to questions "very convenient and expedient." He specifically disbelieved her claim that she had made arrangements for her neighbor, who is indisputably very hard of hearing, by shouting to her down a stairwell.

Given these definitive credibility findings, the judge concluded that appellant had engaged in "wanton and willful conduct" by leaving her very young children alone for several hours with the apartment door partially open. The judge readily found that appellant's neglectful conduct "clearly create[d] a substantial risk of imminent harm."

On appeal, K.D. contends that the trial judge's findings were erroneous, that the Division failed to prove inadequate supervision of the children, and that the court's finding of abuse or neglect is contrary to the aims of the Title 9 statute. The Law Guardian joins with the Division in opposing the appeal.

We accord substantial deference and defer to the factual findings of the Family Part when they are sustained by "adequate, substantial, and credible evidence" in the record. N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014) (citation omitted). Deference must be accorded to "the trial judge's findings unless it is determined that they 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) (citations omitted); see also N.J. Div. of Youth and Family Servs. v. N.S., 412 N.J. Super. 593, 617 (App. Div. 2010).

Applying this deferential standard of review, we affirm the trial court's decision, substantially for the sound reasons set

forth in Judge Katz's decision. The neglectful and irresponsible conduct of appellant was well supported by ample evidence in the record. Her conduct undoubtedly placed these unsupervised very young children at substantial risk of harm.

We reject appellant's claim that the situation is comparable to other cases involving unattended minors in which the parent's conduct did not rise to the level of abuse or neglect. In particular, N.J. Div. of Youth & Family Servs. v. T.B., 207 N.J. 294, 309-10 (2011), is factually distinguishable because the child in that case left alone at home was four years old, and the mother had a reasonable basis to believe that her own mother was home in bed at the residence while the child was there. Similarly, N.J. Div. of Youth & Family Servs. v. J.L., 410 N.J. Super. 159, 161-62 (App. Div. 2009), is distinguishable because the mother in that case, who had let her five-year-old and three-year-old children walk briefly out of their condo's residential area to change their clothes and use the bathroom inside the condo unit, had a view of the children as they walked home. The facts here are simply not comparable. Appellant's behavior was inexplicable and clearly irresponsible.

Affirmed.