

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
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-5579-14T2

IN RE C.F.

Argued October 6, 2016 - Decided March 16, 2017

Before Judges Hoffman and O'Connor.

On appeal from the New Jersey Department of
Children and Families, Docket No. 15734627.

Kathleen P. Stockton argued the cause for
appellant C.F. (Archer & Greiner, P.C.,
attorneys; Ms. Stockton and Tara L. Fircak,
on the briefs).

Christina Duclos, Deputy Attorney General,
argued the cause for respondent New Jersey
Department of Children and Families
(Christopher S. Porrino, Attorney General,
attorney; Andrea M. Silkowitz, Assistant
Attorney General, of counsel; Ms. Duclos, on
the brief).

PER CURIAM

Appellant C.F. appeals from the Division of Child Protection
and Permanency's (Division) administrative finding that abuse or
neglect was "established" against him due to an incident involving
his son. Appellant raises a due process argument, challenging the

Division's regulations allowing it to find abuse or neglect was "established" without an administrative hearing. Appellant also challenges the substantive basis for the Division's "established" finding. Following our recent decision in New Jersey Division of Child Protection and Permanency v. V.E., A-0586-15 (App. Div. Feb. 1, 2017),¹ we vacate the Division's finding and remand for further proceedings.

We briefly recite the facts. Appellant married S.F. on August 30, 2011. They have a young son, J.F., born in 2012. Appellant filed for divorce in April 2015.

On May 23, 2015, Cherry Hill police responded to reports of a woman² screaming for help from the window of a Nissan SUV. Police located the vehicle in a car dealership parking lot and spoke with the parties at the scene.

According to the police report of the incident:

[Appellant] filed for divorce last week and also filed a motion . . . [seeking to restrict S.F.] from the following:

- removing J.F. from the State of NJ
- obtaining a passport for J.F. pending further order or agreement
- leaving J.F. alone unsupervised with

¹ This case has been approved for publication, but it was not in the official reporter at the time we filed the opinion in the instant matter.

² Later identified as S.F.

[S.F.]'s mother

. . . .

[S.F.] said [appellant] woke up this morning and asked what they were doing today. [S.F.] stated she was going to visit her mother in New York and planned on spending the night before returning on Sunday. According to [S.F.], [appellant] objected and said, "You're not allowed to go." At that point, [appellant] went outside with their son and entered the Nissan. The Nissan is the only working vehicle the family owns. [S.F.] realized her son was not in the house and ran outside to confront [appellant]. She observed [appellant] in the driver's seat holding J.F. [S.F.] quickly entered the vehicle as it pulled away from the home.

Once inside the car, [S.F.] said she was yelling out the rear passenger[-]side window for someone to call 911 or help stop the car. She reported J.F. was not in his car seat and . . . his father [held him] while he drove. [S.F.]'s screams prompted the calls to police radio and some cars attempted to box in the Nissan with no success. Two vehicles did follow the Nissan through store parking lots before the car came to rest on the [dealership] lot.

Appellant disputed S.F.'s account of these events. Two witnesses told police they observed appellant driving while holding a child on his lap.

Police arrested appellant and charged him with fourth-degree child cruelty and neglect, N.J.S.A. 9:6-3. The police also contacted the Division. Special response unit (SPRU) workers from the Division travelled to the police station and interviewed police

and S.F. Based upon the incident, S.F. obtained a temporary restraining order (TRO) against appellant. S.F. agreed to follow a Division safety plan, which included not allowing appellant "contact with herself or [J.F.]"

SPRU workers also attempted to speak with three-year-old J.F., but found him uncooperative; the workers noted he appeared healthy and well nourished. Appellant declined to speak to SPRU workers without his attorney present.

On May 28, 2015, appellant obtained a TRO against S.F. Following a request from appellant's attorney, the Family Part entered an order for appellant to have supervised visitation with J.F., and instructed the Division to assess the paternal grandparents as potential visitation supervisors.

A Division caseworker spoke with the paternal grandmother (PGM) on June 3, 2015. The parties agreed to schedule a home visit for the next day with appellant present. However, on June 4, the caseworker received a letter from appellant's criminal attorney, informing her appellant would not appear for the visit and would not make a statement until the resolution of his criminal matter. The caseworker then called PGM and appellant answered the phone. The caseworker informed him she would not visit or assess his parents until he was available. Appellant said he wanted to tell his side of the story but "was advised against it."

On June 30, 2015, S.F. contacted the Division and reported the dismissal of both restraining orders at a hearing on June 19, 2015. In addition, the court entered an order granting appellant supervised visits every weekend and designating PGM as the visitation supervisor.

On July 15, 2015, the Division sent appellant a letter informing him its investigation of the May 23, 2015 incident "determined that neglect was [e]stablished." The letter stated, "[The Division] has determined that the child is an abused or a neglected child, but, in taking into account the aggravating and mitigating factors associated with the incident, the abuse/neglect does not warrant a finding of Substantiated." It also notified appellant that an "[e]stablished" finding "is not disclosed to entities outside the Department of Children and Families [(Department)] upon a Child Abuse Record Information inquiry, but a record of the incident is maintained in [Division] files. Current law provides that this information may not be disclosed except as permitted by N.J.S.A. 9:6-8.10a." The letter stated an "[e]stablished" finding is not subject to administrative appeal.

This appeal followed. Appellant argues he should have access to the same type of evidentiary hearing available to persons facing a "substantiated" finding of abuse or neglect. Appellant asserts due process considerations mandate such a hearing, contending that

"established" findings carry similar penalties and harm the same constitutionally protected interests. Conversely, the Department maintains appellant's right to due process does not require an evidentiary hearing to challenge an "established" finding.

On February 1, 2017, we decided V.E., supra. We noted the Department adopted a new regulatory framework, effective April 1, 2013, to categorize administrative findings of abuse or neglect. Id. slip op. at 14. Under N.J.A.C. 3A:10-7.3(c), the Division may determine abuse or neglect is "substantiated," "established," "not established," or "unfounded." V.E., supra, slip op. at 14. Only individuals "substantiated" for abuse or neglect are entitled to administrative hearings. See N.J.A.C. 3A:5-4.3(a)(2); V.E., supra, slip op. at 27.

A finding of "substantiated" "applies to the most severe cases" such as "death or near death," sexual activity with a child, or serious injuries. V.E., supra, slip op. at 16 (citing N.J.A.C. 3A:10-7.4). "Although an 'established' finding . . . appears to apply to less egregious conduct, regulations make clear '[a] finding of either established or substantiated shall constitute a determination by the Department that a child is an abused or neglected child pursuant to N.J.S.A. 9:6-8.21.'" V.E., supra, slip op. at 16-17 (emphasis in original) (quoting N.J.A.C. 3A:10-7.3(d)). The Division maintains the names of "established"

individuals in its database, but it only includes in its "central abuse registry" those individuals who have been "substantiated" for abuse or neglect. Id. slip op. at 18.

However, despite the exclusion of "established" findings from the registry, we determined that N.J.S.A. 9:6-8.10a(b) and other statutes authorize disclosure of this information. V.E., supra, slip op. at 27. We found "the result of an established finding is 'significant' and is accompanied by 'longstanding adverse consequences,' which, in part, match the effects attached to a substantiated finding." Ibid. (quoting N.J. Div. of Child Prot. & Permanency v. Y.N., 220 N.J. 165, 179 (2014)). We concluded, "[W]hen the Division finds parental conduct establishes abuse or neglect of a child, subjecting the individual to the ramifications of disclosure set forth in various identified statutes, a party who seeks to challenge that finding shall be entitled to an administrative hearing." Id. slip op. at 37.

Therefore, the Division's "established" finding entitles appellant to an administrative hearing to challenge the finding. We remand this matter to the Office of Administrative Law for proceedings consistent with this opinion. In light of our determination that appellant is entitled to an administrative hearing, we decline to address his challenge to the substantive basis for the Division's "established" finding.

Reversed and remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION