SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0040-16T4

IN THE MATTER OF S.P.

Submitted January 9, 2018 – Decided January 22, 2018

Before Judges Fasciale and Sumners.

On appeal from the Department of Children and Families, Division of Child Protection and Permanency.

Williams Law Group, LLC, attorneys for appellant S.P. (Allison C. Williams, of counsel and on the brief; Elizabeth D. Burke and LaToya N. Whiteside, on the briefs).

Christopher S. Porrino, Attorney General, attorney for respondent Department of Children and Families (Melissa H. Raksa, Assistant Attorney General, of counsel; Christina Duclos, Deputy Attorney General, on the brief).

PER CURIAM

S.P., the mother of a child born in 2009, appeals from a final agency decision by the New Jersey Division of Child Protection and Permanency (Division) determining, pursuant to

N.J.A.C. 10:129-7.3(c)(3),[1] that an allegation of neglect had not been established. Such a determination allows the Division to maintain a record of its investigation should future interventions become necessary. S.P. argues there exists insufficient evidence in the record to support the Division's findings. She also contends that the Division deprived her of the opportunity to "challenge the investigatory finding through the administrative process." We disagree and affirm.

We must "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.'" Dep't of Children & Families, Div. of Youth & Family Servs. v. T.B., 207 N.J. 294, 301-02 (2011) (quoting In re Herrmann, 192 N.J. 19, 27-28 (2007)). We conclude that S.P.'s contentions are without sufficient merit to warrant discussion in a written decision. R. 2:11-3(e)(1)(D), (E). We add the following brief remarks.

The finding against S.P. was "not established." N.J.A.C. 3A:10-7.3(c)(3) explains that "[a]n allegation shall be 'not established' if there is not a preponderance of the evidence that a child is an abused or neglected child as defined in N.J.S.A. 9:6-8.21, but evidence indicates that the child was . . . placed

[1] This statute has been recodified as N.J.A.C. 3A:10-7.3(c)(3).

at risk of harm."

The Division's determination that the allegation was "not established" pursuant to N.J.A.C. 3A:10-7.3(c)(3) is supported by substantial evidence in the record and is neither arbitrary, capricious, nor unreasonable. While the record clearly demonstrates S.P. did not abuse or neglect the child pursuant to N.J.S.A. 9:6-8.21(c), the finding of "not established" was appropriate because the evidence indicated that S.P. placed the child at risk of harm.

The Division received a referral that S.P. had used marijuana and cocaine with others. A Division worker talked to S.P., who denied using cocaine but acknowledged that she had smoked marijuana two weeks prior to the referral. S.P. agreed to take a urine test, which was negative but showed an abnormal specific gravity reflecting urine dilution. The test results did not reveal the nature of the dilution and S.P. was unable to provide any explanation for the abnormality.

At a substance abuse evaluation, S.P. stated that she first used marijuana about twelve years earlier, when she was twenty-six years old. She admitted smoking the substance about two weeks prior to the referral. She smoked marijuana, she explained, to alleviate back pain.

The substance evaluator concluded that S.P. met the criteria

for mild marijuana use disorder and recommended Level I outpatient treatment, which she agreed to attend. S.P. then signed a case plan after changing the document from reporting she had a history of smoking marijuana "very sporadically" to reflecting her marijuana use was an "isolated incident." S.P. completed the treatment.

The Division determined that the evidence showed that S.P. placed the child at a risk of harm. She admitted smoking marijuana two weeks prior to the referral and one year before that, in addition to using marijuana before that timeframe; two urine screens reflected a diluted sample, for which she offered no explanation; and S.P. signed the case plan only after modifying the language to say that the marijuana incident was an "isolated incident." The Division concluded that her recent use of marijuana was not an "isolated incident," and there remained uncertainty as to the frequency and severity of S.P.'s drug use.

A finding of "not established" does not entitle a party to a hearing. Rather it is a final agency decision appealable as of right to us. R. 2:2-3(a)(2). As we recently held in Department of Children & Families v. D.B., 443 N.J. Super. 431, 442 (App. Div. 2015), "N.J.A.C. 10:120A-4.3(a)(2) does not provide a right to an administrative hearing for a finding that abuse or neglect has been . . . 'not established.'"

Affirmed.

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

CLERK OF THE APPELLATE DIVISION