

RECORD IMPOUNDED

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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-0095-16T4

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

C.W.,

Defendant-Appellant,

and

C.B. and J.S.,

Defendants.

IN THE MATTER OF Q.W. and P.W.,

Minors.

Submitted April 10, 2018 – Decided April 19, 2018

Before Judges Fisher and Fasciale.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Somerset
County, Docket No. FN-18-0104-15.

Joseph E. Krakora, Public Defender, attorney for appellant (Cecilia M.E. Lindenfelser, Designated Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Jason W. Rockwell, Assistant Attorney General, of counsel; Julie B. Colonna, Deputy Attorney General, on the brief).

Joseph B. Krakora, Public Defender, Law Guardian, attorney for minors (Karen Ann Lodeserto, Designated Counsel, on the brief).

PER CURIAM

Defendants C.B. (Carol) and C.W. (Carl) are the parents of two children: Q.W. (Quincy), who was born in 2010, and P.W. (Paul), who was born in 2011.¹ The Division of Child Protection and Permanency commenced a Title Nine action in July 2014 against Carol and Carl when informed that the children were found wandering in the street unsupervised and unclothed. The Division's emergent removal of the children was sustained by the trial court, and the Division retained custody as services were provided. The Division also gathered information about Carl's wife, J.S. (Joan); in the meantime, the judge required that any of Joan's involvement with the children be supervised. Carl was permitted unsupervised visits but was ordered to engage in parenting-skills classes and later reunified with the children.

¹ All names used are fictitious.

The Division, however, remained concerned about Carl because, in the Division's view, Carl was not compliant with provided services, which included parenting classes. In February 2015, the judge ordered Carl's compliance and continued his prior order that Joan's contact with the children be supervised.

The following month, the Division filed an amended complaint, alleging Carl and Joan's physical abuse of the youngest child, Paul. In June 2015, the trial judge heard testimony during a two-day fact-finding hearing about the allegations in the amended complaint.

At the hearing, the Division provided documentary evidence and called an expert witness and three caseworkers to testify. The Law Guardian also provided evidence and testimony from the children's daycare staff. And Carl called an expert to testify on his behalf. Neither Carl nor Joan testified. The judge concluded, by way of his July 1, 2015 oral opinion that Carl and Joan had abused or neglected Paul. Carl unsuccessfully moved for reconsideration.

In February 2016, the children were reunited with Carol, and in July 2016, an order was entered that terminated the litigation; that order required that Carl's contact with the children be supervised.

Carl appeals, arguing:

I. THE TRIAL COURT ERRED IN FINDING THAT [CARL] CAUSED INJURY TO PAUL.

II. THE TRIAL COURT ERRED IN FINDING THAT [THE DIVISION] ESTABLISHED A PRIMA FACIE CASE OF ABUSE.

III. THE TRIAL COURT FAILED TO APPLY THE CORRECT DOCTRINE OF RES IPSA LOQUITOR (ARGUMENT NOT RAISED BELOW).

IV. THE TRIAL COURT'S FINDING AGAINST [CARL] MUST BE REVERSED AS HE DID NOT ACT IN A GROSSLY NEGLIGENT MANNER.^[2]

We find insufficient merit in these arguments to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following comments.

The March 2015 referral that was the genesis for the amended complaint against Carl and Joan resulted from the fact that when dropped off at daycare Paul exhibited wounds to his ear and a scratch near his right eye. When a daycare representative attempted to clean the blood away from Paul's wounds, she noticed bruising to the front and back of his ears and that a layer of skin was removed as a result of whatever had recently occurred. When asked what happened, Paul said Joan "did it." When later medically examined, it was determined Paul was also suffering from ringworm.

Because the two separable claims arising from these allegations – excessive corporal punishment and a failure to seek

² We have renumbered these arguments.

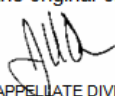
medical treatment – were tried together, as was appropriate, there was a natural potential for confusion about the legal standards to be applied. Indeed, at the outset, the judge referred to the burden-shifting doctrine discussed in N.J. Div. of Youth & Family Servs. v. J.L., 400 N.J. Super. 454, 457 (App. Div. 2008), and In re D.T., 229 N.J. Super. 509, 517 (App. Div. 1988). Notwithstanding, we find no merit in Carl's arguments that the judge applied the wrong standard because we discern from his oral opinion that the judge found persuasive direct evidence to support both claims. That is, the judge found the Division's and Law Guardian's witnesses credible. And he found that their testimony, the child's statements, the corroborating photographs of the child and the observations made by the day-care staff, and the expert testimony, as well, supported a finding that the child was physically punished to an extent that caused considerable bleeding in an area around his ear. The fact that the judge observed that neither Carl nor Joan offered some other explanation for Paul's injury does not suggest that the judge had shifted the burden of persuasion to them. The judge only stated the obvious – that the only version offered for his consideration was the version presented by the Division and Law Guardian. Consequently, the judge was merely required to determine whether the credible evidence tilted the scales in favor of the Division's allegations

of abuse and neglect. The judge answered that question in the affirmative, and we have been presented with no principled reason to second-guess his finding that Paul's injury occurred while he was in the care of Carl and Joan and that the nature of the injury supported a finding that Paul was subjected to excessive corporal punishment within the meaning of N.J.S.A. 9:6-8.21(c)(4).

The judge also found from the credible evidence that Paul's ringworm condition was in "various stages of remission" and, therefore, had persisted for a long enough period of time to support the Division's contention that Carl failed to timely seek medical treatment for the child. This, too, provided a sound basis for a finding of abuse or neglect.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION