RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0420-16T2

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

A.C.,

Defendant-Appellant,

and

J.C., Jr., and D.L.,

Defendants.

IN THE MATTER OF K.P. and AI.C.,

Minors.

Argued April 24, 2018 – Decided May 1, 2018

Before Judges Yannotti, Mawla, and DeAlmeida.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FN-12-0118-16.

T. Gary Mitchell argued the cause for appellant (Joseph E. Krakora, Public Defender,

attorney; Kylie A. Cohen, Assistant Deputy Public Defender, on the briefs).

Michael A. Thompson, Deputy Attorney General, argued the cause for respondent (Gurbir S. Grewal, Attorney General, attorney; Jason W. Rockwell, Assistant Attorney General, of counsel; Michael A. Thompson, Deputy Attorney General, on the brief).

Melissa R. Vance, Assistant Deputy Public Defender, argued the cause for minor K.P. (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Melissa R. Vance, on the brief).

PER CURIAM

A.C. appeals from a May 19, 2016 order following a fact-finding hearing in which the trial judge determined A.C. used excessive corporal punishment against her son, K.P. We affirm.

The following facts are taken from the record. At the time of the underlying incident K.P. was nearly fourteen years old. K.P. had recently moved from Jamaica to the United States to live with A.C., and his stepfather, J.C. K.P. had previously resided for eight years with his grandmother after A.C. immigrated to the United States.

The Division of Child Protection and Permanency (Division) first received a referral in June 2015, after K.P. ran away, and claimed J.C. grabbed and punched him. K.P. did not have any visible injuries. A.C. admitted she had hit him in the past, but denied J.C. hit him. K.P. later stated J.C. had grabbed him to

stop him from running away. The Division referred the family for therapeutic services and closed the case.

The Division received another referral in July 2015, from Princeton House. K.P. reported a physical altercation between himself and A.C. during therapy. In addition, A.C. reported inappropriate sexual conduct between K.P. and his half-brother. However, both children denied any sexual contact occurred. A.C. admitted she hit K.P. after he cursed at her. A.C. also claimed K.P. had punched her. The Division confirmed K.P. had been receiving services at Princeton House and closed the case.

On October 10, 2015, the Division received a referral from the Plainsboro Police Department. A.C. called the police after an altercation ensued between K.P. and A.C. Shortly before the incident, K.P. had been suspended from school for assaulting a student. K.P. was also arrested because he stole a golf cart and hit a parked car. K.P. was charged with trespassing, reckless driving, and leaving the scene of an accident. Due to his behavior, and at the recommendation of his therapist, K.P. was not permitted to watch television or use electronic devices.

On the day of the incident, A.C. and J.C. discovered K.P. had been using the family tablet to watch pornography. A.C. told the Division caseworker that when she confronted K.P. "he began to say he will do 'whatever the fuck' he wants to do and she punched him

on his arm and he called her a 'bitch' and the[n] she slapped him." A.C. claimed K.P. then pushed a table over, grabbed a broken chair leg, and went into the kitchen. The altercation continued when A.C. pushed K.P. back into the corner and K.P. picked up a knife. K.P. then put the knife down and attempted to leave the home.

K.P. told the caseworker J.C. then punched him on the left cheek causing his nose to bleed. However, K.P. also claimed A.C. caused his nose to bleed. A.C. denied J.C. hit or punched K.P., and stated she placed K.P. in a "bear hug," and K.P. picked up a pencil and poked her with it. A.C. stated she then tried to block K.P. from leaving the home while she called the police, but he crawled underneath her, and she went to her bedroom to finish the phone call to police.

When police arrived, they noted K.P. had a bloody nose, and lacerations and bruises on his face. K.P. was treated by emergency medical services. A.C. requested K.P. be removed from the home because she was fearful for her family's safety, including her two younger sons. J.C. also stated that he was fearful for his family and the other children, and "believe[d] if [K.P.] could pull a knife out tonight no one knows what he is capable of doing." K.P. was placed in the Middlesex County Youth Shelter.

Officer Brandon Ulum testified when he responded to the home he observed the kitchen area in disarray, the kitchen table and chairs overturned, and blood on the kitchen floor. Ulum testified K.P. told him an altercation had occurred after his mother discovered him looking at pornography on the family tablet. K.P. told Ulum A.C. pushed him into a corner, and when he tried to leave she forced him back. Ulum stated K.P. admitted to grabbing a knife for self-defense, but stated he was never going to stab A.C. Ulum testified K.P. had a bloody nose, an abrasion on his forehead, and a lump on the side of his head, which he identified in a series of photographs. Ulum also testified A.C. did not deny the altercation between her and K.P.

After speaking with the family, Ulum concluded the accounts of the incidents were similar, the blood likely belonged to K.P., and so A.C. was charged with simple assault.

Detective Daniel Kanaley testified he conducted separate interviews of A.C., J.C., and K.P. as part of the criminal investigation. Kanaley stated A.C. admitted she slapped K.P. in the face and punched him several times. Kanaley testified K.P. corroborated A.C.'s description of the altercation, and he observed K.P.'s injuries. Kanaley stated A.C. was charged with simple assault as a result of K.P.'s description of the events, as well as his visible injuries, and A.C.'s admissions.

The Division conducted an investigation of the incident. Division caseworker Estrevinia Rivera testified she interviewed A.C. and K.P. Rivera's investigation established A.C. began the altercation by slapping and punching K.P., then following K.P. and continuing to hit him, at which time K.P. picked up the kitchen knife to defend himself. Rivera testified A.C. continued to try to block K.P. from leaving, and K.P. poked her with a pencil and managed to crawl between A.C.'s legs to escape. Rivera stated that K.P. and A.C.'s versions of the altercation were nearly identical. Rivera testified the Division's findings were that A.C. was "established" for committing abuse or neglect.

On October 14, 2015, the Division filed a complaint and order to show cause for temporary custody of K.P., as well as care and supervision of A.C.'s two younger sons pursuant, to Title Nine and Title Thirty. The Division was granted custody of K.P.[1] A.C. was ordered to comply with Care Management Organization services for K.P., and was granted supervised visitation with K.P. The court continued custody with the Division from October 29, 2015, to March 11, 2016.

[1] We do not recite the relief accorded relating to the younger children because it has no bearing on this appeal.

In January 2016, the court granted A.C. unsupervised visitation with K.P. The court ordered A.C. to attend family counseling with K.P., and complete a parenting risk assessment.

A fact-finding hearing was held on two dates in April 2016. Before the hearing began, K.P., with his law guardian present, had an in camera interview with the trial judge. The purpose of the interview was to determine where K.P. wanted to live. K.P. informed the trial judge he wanted to return to live with A.C. and J.C.; K.P. stated he missed them and wanted to live a normal life. After the interview, the trial judge informed the parties what K.P. said. Then, Officer Ulum, Detective Kanaley, and Rivera testified. A.C. and the law guardian did not call witnesses.

On May 19, 2016, the trial judge issued an oral decision. The judge found A.C. had abused K.P. by using excessive corporal punishment pursuant to Title Nine, and signed an order accordingly. The judge found the facts surrounding the altercation were largely undisputed. The judge found A.C. continued to hit K.P., K.P. picked up a chair leg and knife in order to protect himself, and that he made every attempt to remove himself from the situation. The judge stated:

> As to [A.C.], the question is whether or not taking all the facts as she presented them, and as this court heard, whether or not her behavior was unreasonable and excessive. This court finds that her actions were excessive

and unreasonable under the circumstances, and therefore finds that [t]he Division satisfied its burden.

[A.C.] initiated the physical confrontation and continued it despite [K.P.]'s efforts to stop her, get away from her. As a result, [K.P.] suffered observable injuries about the face and head, which were intentionally and repeatedly caused by his mother.

[A.C.] does not assert and has never asserted that she hit him in response to being hit, or out of fear of being hit. In fact, neither defendant ever testified or provided any statement that [K.P.] ever put a hand on them, and accordingly neither claims or could claim that they ever suffered any injuries.

In effect, [K.P.] was beaten by his mother because of his disobedience and disrespect, neither of which can justify the beating and injuries she repeatedly inflicted on him.

. . . .

Additionally, [t]he [c]ourt notes that the Plainsboro Police Department who did an investigation, who were first on the scene, who took the statements, charged [A.C.] with the assault. Although this court is not bound by those findings or legal conclusions, [t]he [c]ourt does take them into account when determining whether or not there is a preponderance of the evidence to sustain [t]he [s]tate's charges.

More specifically, the police department found there was probable cause to arrest [A.C.] at the scene, based on their observations, her statements, as well as the statements of others.

Taking into account those same statements, that same evidence, this court finds that on

> a much lower standard, preponderance of the evidence, [t]he [s]tate proved it's case.

Following the trial judge's decision, physical custody of K.P. was returned to A.C. and J.C. The litigation terminated in August 2016. This appeal followed.

I.

We begin by reciting our standard of review. "[W]e generally defer to the factual findings of the trial court because it has the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand; it has a 'feel of the case' that can never be realized by a review of the cold record." N.J. Div. of Youth & Family Servs. v. R.D., 207 N.J. 88, 112 (2011) (quoting N.J. Div. of Youth & Family Servs. v. G.M., 198 N.J. 382, 396 (2009)). "Because of the Family Part's special jurisdiction and expertise in family matters, we accord particular deference to a Family Part judge's fact-finding." N.J. Div. of Youth & Family Servs. v. T.M., 399 N.J. Super. 453, 463 (App. Div. 2008) (citing Cesare v. Cesare, 154 N.J. 394, 413 (1998)).

We must examine "whether there was sufficient credible evidence to support the trial court's findings." N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 342 (2010). "We will not overturn a family court's factfindings unless they are so '"wide of the mark"' that our intervention is necessary to

correct an injustice." N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012) (quoting N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008)).

A.C. argues the trial judge's findings bear no analysis of the discrepancies in the facts relating to the underlying incident, specifically as to who was the aggressor, and whether K.P. was injured by A.C. A.C. argues the trial judge deprived her of due process because K.P. allegedly admitted he was the aggressor during the in camera interview. A.C. asserts she was unaware of this information because the trial judge's summary of the interview omitted K.P.'s admission. A.C. argues if she had known of the admission she would have presented a different case at trial, and would have adduced testimony from K.P. about his admission.

A.C. also argues the trial judge was biased because he tried the matter knowing of K.P.'s admission, and withheld the information because he refused to release the transcript of the in camera interview. A.C. argues her counsel was ineffective for failing to obtain this evidence and use it to assert a defense. We address these arguments in turn.

II.

A.C. argues the trial judge improperly relied on K.P.'s version of the altercation between himself and A.C., which contained numerous inconsistencies. A.C. claims K.P.'s

inconsistent statements regarding the incident demonstrate there was not competent evidence to support a finding of abuse or neglect by the trial judge.

The law guardian for K.P. argues in support of reversal as well. The law guardian asserts a finding of abuse or neglect was not warranted because the underlying incident was isolated, K.P. did not require further medical treatment, and the family was already engaged in therapeutic services. The law guardian asserts K.P. was at fault because he did not follow his therapist's recommendation to refrain from viewing pornography. The law guardian argues a Title Thirty finding pursuant to N.J.S.A. 30:4C-12 would have been more appropriate than a Title Nine finding of abuse or neglect.

"Abuse and neglect actions are controlled by the standards set forth in Title Nine of the New Jersey Statutes." N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 31 (2011). "In respect of the quantum of proof required in a fact-finding hearing brought under Title Nine, it is well established that [the Division] must prove that the child is 'abused or neglected' by a preponderance of the evidence, and only through the admission of 'competent, material and relevant evidence.'" Id. at 32 (citation omitted) (first citing N.J.S.A. 9:6-8.44; and then quoting N.J.S.A. 9:6-8.46(b)). "[T]he burden of presenting sufficient

credible evidence of abuse and neglect is on the Division[.]" N.J. Div. of Child Prot. & Permanency v. Y.N., 222 N.J. 308, 309 (2015).

The trial judge found the Division met its burden under N.J.S.A. 9:6-8.21(c)(4)(b), which defines an "[a]bused or neglected child" as

> a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian . . . to exercise a minimum degree of care . . . in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court.

While "the court 'need not wait to act until a child is actually irreparably impaired by parental inattention or neglect,' . . . the State must still demonstrate by a preponderance of the competent, material and relevant evidence the probability of present or future harm." N.J. Div. of Youth & Family Servs. v. S.S., 372 N.J. Super. 13, 24 (App. Div. 2004) (citation omitted) (first quoting In re Guardianship of DMH, 161 N.J. 365, 383 (1999); and then citing N.J.S.A. 9:6-8.46(b)). Indeed, "a single incident of violence against a child may be sufficient to constitute excessive corporal punishment." N.J. Dep't of Children & Families v. K.A., 413 N.J. Super. 504, 511 (App. Div. 2010).

Here, the record supports the trial judge's decision was based on adequate credible evidence, and the judge did not give improper weight to inconsistent statements made by K.P. The trial judge credited the witness testimony provided on behalf of the Division as consistent, "professional, credible[,] . . . [and] trustworthy . . . ." The judge found it was undisputed A.C. was the instigator of the incident when she "initially approached [K.P.] and confronted him about viewing pornographic material on the family tablet."

The judge noted A.C. admitted to "initiating the physical contact, by slapping [K.P.] in the face, and punching him in the arm, which caused an[] escalation of the dispute, resulting in the injuries to [K.P.'s] face and head." The judge found A.C.'s admission and K.P.'s statements during the in camera interview demonstrated K.P. was trying to flee the kitchen, and escaped only by crawling under A.C.'s legs. The judge found this was clear evidence K.P. was not violent or aggressive at that point.

Notwithstanding this evidence, A.C. claims the trial judge incorrectly concluded she was the instigator because K.P. stated during the in camera interview "we got into a physical fight, because I . . . got up in my mom's face . . . ." In addition, A.C. claims K.P.'s inconsistent statements regarding who was responsible for his bloody nose also undermined the trial judge's

conclusion she was the aggressor. However, the judge acknowledged these discrepancies. He stated: "[i]t is unclear to [t]he [c]ourt how many times [K.P.] was struck. . . . [A]t one point, he attributed the bloody nose to his mother, and at another point, he attributed the bloody nose to his [step]father."

Nonetheless, the trial judge accorded greater weight to the consistent testimony and written reports of Officers Ulum and Kanaley, and caseworker Rivera, and concluded A.C. abused or neglected K.P. The judge relied on Ulum's testimony that A.C. had admitted to slapping K.P. and physically assaulting him, and the lack of evidence of any physical aggression by K.P., which corroborated Ulum's report. In addition, Rivera testified A.C. admitted to nearly the same sequence of events as described by K.P., and stated she punched K.P. in the arm and slapped him after confronting him about his misuse of the family tablet.

Our review of the record does not support A.C.'s contention either that the trial judge exclusively relied on K.P.'s statements, or that there was a lack of adequate credible evidence to support the finding of abuse or neglect. The overwhelming evidence in the record, including A.C.'s own admissions, supports the conclusion A.C. struck K.P. several times.

III.

A.C. argues her actions did not constitute excessive corporal punishment. A.C. analogizes her case to N.J. Dep't of Children & Families v. K.A., 413 N.J. Super. 504 (App. Div. 2010), and argues she was faced with a child who had poor, unpredictable behavior and did not respond to passive discipline as the mother in K.A. We disagree.

Under Title Nine, a parent may be found to have committed abuse or neglect where the parent inflicted excessive corporal punishment. See N.J.S.A. 9:6-8.21. "[T]he law does not prohibit the use of corporal punishment. The statute prohibits the infliction of excessive corporal punishment. The general proposition is that a parent may inflict moderate correction such as is reasonable under the circumstances of a case." State v. T.C., 347 N.J. Super. 219, 240 (App. Div. 2002) (alteration in original).

There is no bright line definition of excessive corporal punishment. K.A., 413 N.J. Super. at 511. However,

> we will define "excessive corporal punishment" by referring to common usage and understanding. As a starting point, we note that the statute condemns excessive corporal punishment. The term "excessive" means going beyond what is proper or reasonable. . . . [A] single incident of violence against a child may be sufficient to constitute excessive corporal punishment. A situation

> where the child suffers a fracture of a limb, or a serious laceration, or any other event where medical intervention proves to be necessary, may be sufficient to sustain a finding of excessive corporal punishment, provided that the parent or caregiver could have foreseen, under all of the attendant circumstances, that such harm could result from the punishment inflicted.
>
> [Ibid. (citation omitted).]

In K.A., the mother struck her eight-year-old daughter five times with a closed fist on the shoulder after she refused to complete her homework and refused to be disciplined by remaining in her room. Id. at 505-06, 512. Although the child sustained bruises, she did not require medical attention. Id. at 512. We concluded the facts did not support a finding of excessive corporal punishment against K.A. We noted she "was alone, without support from either her spouse/co-parent or from other members of her extended family, such as an experienced mother or aunt." Ibid. Additionally, K.A.'s child was "psychologically disruptive[,]" "unable or unwilling to follow verbal instructions or adhere to passive means of discipline such as a time-out[,]" and diagnosed with pervasive development disorder and attention deficit disorder. Id. at 512, 506. Thus, we reasoned K.A.'s actions were not excessive in light of "(1) the reasons underlying K.A.'s actions; (2) the isolation of the incident; and (3) the trying

circumstances which K.A. was undergoing due to [the child's] psychological disorder." Id. at 512.

A.C. argues her case is similar to K.A. because K.P. had a history of poor behavior, including running away and stealing a golf cart. She asserts she only resorted to corporal punishment after K.P. had been disciplined in passive ways by prohibiting the use of electronics. Therefore, A.C. claims the trial judge erred by not considering the circumstances surrounding this case as the judge had done in K.A.

The facts here are dissimilar to K.A. A.C. was not a single parent without support. Although K.P. had demonstrated behavioral problems, he was receiving therapy and no evidence was presented that he had been diagnosed with any pervasive psychological or behavioral disorders. A.C. resorted to corporal punishment immediately after confronting K.P. about viewing pornography on the family tablet. When K.P. retreated during the altercation, A.C. continued to pursue him. Unlike the child in K.A., K.P. sustained injuries including lacerations and a bloody nose, which required medical treatment. Therefore, K.A. is inapposite and the trial judge's conclusion A.C. inflicted excessive corporal punishment was not erroneous.

IV.

A.C. argues the trial judge erred because he failed to address whether A.C. exercised a minimum degree of care as required by N.J.S.A. 9:6-8.21(c)(4)(b). We are unpersuaded by this argument.

Pursuant to N.J.S.A. 9:6-8.21(c)(4)(b), a child is abused or neglected when his or her "physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian . . . to exercise a minimum degree of care . . . by unreasonably inflicting . . . harm . . . including the infliction of excessive corporal punishment[.]" "[A] guardian fails to exercise a minimum degree of care when he or she is aware of the dangers inherent in a situation and fails adequately to supervise the child or recklessly creates a risk of serious injury to that child." G.S. v. Dep't of Human Servs., 157 N.J. 161, 181 (1999). To determine whether a parent exercised a minimum degree of care, the court "should focus on the harm to the child and whether that harm could have been prevented had the guardian performed some act to remedy the situation or remove the danger." Id. at 182.

The trial judge concluded "[t]he Division has demonstrated [A.C.] failed to exercise a minimum degree of care when she exposed the child to excessive corporal punishment, causing him physical injury." The lack of a minimum degree of care was self-evident

from the record and did not require further explication by the trial judge. Indeed, A.C. inflicted physical harm on K.P. and was charged with simple assault based on her admission she struck K.P.

V.

A.C. argues her due process rights were violated since she was not provided with the opportunity to question K.P. during his in camera interview. She asserts K.P. made an exculpatory statement relevant to the fact-finding trial, which the trial judge failed to disclose, depriving her of the ability to adduce the exculpatory evidence. A.C. asserts the trial judge exhibited bias by failing to disclose K.P.'s statement.

Pursuant to Rule 5:12-4(b) "[t]he testimony of a child may, in the court's discretion, be taken privately in chambers or under such protective orders as the court may provide. A verbatim record shall be made of any in-chambers testimony or interview of a child." When such an interview is conducted in Title Nine proceedings and a defendant claims the interview violated due process, the court "must consider whether [the defendant] was given a sufficient opportunity to confront the Division's evidence in light of the interview procedures followed by the judge." N.J. Div. of Child Prot. & Perm. v. C.W., 435 N.J. Super. 130, 145 (App. Div. 2014). "The analysis is twofold: was [defendant]

prejudiced by the procedure utilized, and did the Division's other evidence satisfy its burden of proof." Ibid.

At the outset, we note the parties agreed K.P. would be interviewed in camera for the express purpose of understanding his preference on reunification with A.C. and J.C. Indeed, in the transcript of the interview, K.P.'s law guardian stated "I would just thank Your Honor for granting [K.P.'s] request today to speak with your Honor regarding his position to be reunified with his parents." The trial judge responded: "I believe all counsel [have] been advised of that request, and through my chambers all parties were permitted to forward any questions that they may have. The [c]ourt did not receive any."

During the interview the following exchange occurred:

> [Judge]: Okay. How long did you live with your mom and your dad?
>
> [K.P.]: Now for three years — two to three years.
>
> [Judge]: Okay, did that go okay?
>
> [K.P.]: Yes.
>
> [Judge]: No problems?
>
> [K.P.]: The only problem is just this like — we got into a physical fight, because I — I got up in my mom's face and —
>
> [Judge]: Okay.

> [Law Guardian]: Uh huh — uh huh. Can you tell the Judge you've [had] unsupervised visits and — [.]

Following this colloquy K.P. indicated his preference to return to his mother and stepfather and to live a "normal healthy life . . . ." Consistent with the parties' agreement, following the interview, the trial judge shared this information with the parties and counsel.

Under the first prong of C.W., 435 N.J. Super. at 145, there is no evidence K.P.'s statement prejudiced A.C. Although A.C. claims she was deprived of the opportunity to question K.P. regarding his statement he "got up in [A.C.'s] face," there is no evidence the judge relied on this information in the abuse or neglect finding. Rather, the colloquy from the interview we have recited demonstrates when K.P. began to make a statement regarding the incident, he was immediately re-directed to the purpose of the interview, namely, to address whether K.P. wished to be reunified with his mother and stepfather. Furthermore, as the trial judge noted before he commenced the interview, the parties were provided an opportunity to submit questions for the interview.

Additionally, pursuant to the second prong of C.W., there was ample evidence in the record for the trial judge to find the Division proved by a preponderance of the evidence A.C. abused or

neglected K.P. For these reasons, A.C. was not deprived of due process.

We reject A.C.'s argument the judge was biased. A.C. likens this matter to N.J. Div. of Youth & Family Servs. v. P.C., 439 N.J. Super. 404 (App. Div. 2015). In P.C., we determined there was bias where the trial judge sua sponte prosecuted a fact-finding hearing the Division had decided to not pursue. Id. at 415. We held the judge abandoned his role as a neutral arbiter and his conduct created an "'appearance of bias [which] may require disqualification' upon a reasonably objective belief that the proceeding was unfair." Ibid. (quoting Panitch v. Panitch, 339 N.J. Super. 63, 67 (App. Div. 2001)).

Here, the trial judge did not disclose the entirety of the conversation with K.P.[2] However, this does not demonstrate bias on the part of the judge because there is no evidence the judge relied upon K.P.'s statement in his decision. Additionally, although A.C. claims K.P.'s statement was an admission he was the aggressor and if she had known about the statement she would have altered her trial strategy, neither assertion has merit. A.C. was never deprived of the opportunity to submit questions to K.P.,

[2] The better practice would have been for the trial judge to either simulcast the interview from chambers into the courtroom for the parties to listen to, or record the interview and have it replayed for the parties before the trial commenced.

call K.P. as a witness, testify herself, or confront the Division's evidence. Furthermore, K.P.'s statement was not an admission he initiated the physical altercation or that he was otherwise the aggressor. Rather, read in context of the testimony and the evidence, K.P.'s statement was consistent with the record, namely, that he made a disrespectful statement in response to his mother confronting him regarding his improper use of the family tablet.

Furthermore, unlike P.C., here the Division sought a finding of abuse against A.C. The record demonstrates the trial judge presided over the fact-finding hearing as an impartial fact-finder, affording all parties the opportunity to present evidence and confront adverse witnesses. Moreover, the trial judge scrupulously adhered to the agreed upon purpose of the in camera interview, which was to ascertain K.P.'s wishes on reunification. The trial judge was not biased and A.C. was not prejudiced by the statement made by K.P. during the interview.[3]

[3] A.C. also claims the trial judge's denial of counsel's request for the transcript of the child interview for purposes of the appeal demonstrates the judge's bias and further effort to conceal K.P.'s statement. Although this required a motion to us for an order to release the transcripts, the trial judge denied the transcript request after he made his determination. Therefore, the refusal to release the transcript has no bearing on A.C.'s claims of bias on appeal and does not warrant further discussion.

VI.

Finally, A.C. argues her trial counsel was ineffective for failing to request a copy of the transcript of the in camera interview. As a result, she asserts she was unaware of K.P.'s admission and therefore deprived of an alternative trial strategy.

> [T]o succeed [on claim of ineffective assistance of counsel] the defendant must demonstrate: "(1) counsel's performance [was] objectively deficient - i.e., it . . . [fell] outside the broad range of professionally acceptable performance; and (2) counsel's deficient performance . . . prejudice[d] the defense - i.e., there [was] 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'"
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> [Div. of Youth & Family Servs. v. M.D., 417 N.J. Super. 583, 609-10 (App Div. 2011) (alteration in original) (quoting N.J. Div. of Youth & Family Servs. v. B.R., 192 N.J. 301, 307 (2007) (quoting Strickland v. Washington, 466 U.S. 668, 694 (1984)).]

The court should exercise "extreme deference in evaluating the performance of counsel, requiring 'a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance . . . .'" State v. Fritz, 105 N.J. 42, 52 (1987) (quoting Strickland, 466 U.S. at 688-89).

Even if A.C.'s trial counsel erred by failing to secure the interview transcript, A.C. has not satisfied the second prong of the Strickland-Fritz test. As we noted, K.P.'s singular comment

during the interview was not an exculpatory admission and would not have overcome the weight of the evidence. Trial counsel's failure to secure the transcript of the in camera interview "does not warrant setting aside the judgment . . . [since] the error had no effect on the judgment." Strickland, 466 U.S. at 691.

Affirmed.