

**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**NOT FOR PUBLICATION WITHOUT THE  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-1101-16T1

NEW JERSEY DIVISION OF CHILD  
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

T.S.,

Defendant-Appellant,

and

P.Q.,

Defendant.

---

IN THE MATTER OF G.S.,

Minor.

---

Argued January 23, 2018 – Decided February 2, 2018

Before Judges Fasciale and Moynihan.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Camden County,  
Docket No. FN-04-0154-16.

Deric Wu, Assistant Deputy Public Defender,  
argued the cause for appellant (Joseph E.  
Krakora, Public Defender, attorney; Deric Wu,  
of counsel and on the briefs).

Ashley L. Davidow, Deputy Attorney General, argued the cause for respondent (Gurbir S. Grewal, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Ashley L. Davidow, Deputy Attorney General, on the brief).

Olivia Belfatto Crisp, Assistant Deputy Public Defender, argued the cause for minor (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Olivia Belfatto Crisp, on the brief).

PER CURIAM

T.S. (the mother) appeals from a November 17, 2015 order finding that she abused and neglected her child, G.S. (the child) who was born in December 2014, by placing him in imminent risk of danger. The mother contends that the Division of Child Protection and Permanency (Division) produced insufficient evidence at the fact-finding hearing to support the judge's finding of abuse and neglect. We disagree and affirm.

In July 2015, the Division received a referral from the manager of the shelter in which the mother and the child resided. The manager expressed her concerns of the mother's behavior and care for the child. The manager informed the Division that the mother was currently participating in methadone treatment and at times "nodding" off when caring for the child. The mother explained that she was on many different medications in addition to the methadone treatment and her doctor had adjusted her

medication to resolve the issue. The Division investigated and found that the mother did not appear to be under the influence of any drugs that placed the child in imminent danger.

In August 2015, the Division received another referral from an assistant at the shelter. The shelter assistant found the child crying and wedged between the mother's bed and the wall. The mother was found unresponsive and had to be physically awakened. The child was removed from the mother's custody and assessed at a hospital for a head injury. The mother and Division consented to an order granting the Division care and supervision of the child, who was placed in the custody of his maternal grandmother.

The judge conducted a fact-finding hearing on November 17, 2015. The Division produced testimony from three witnesses: shelter workers, Damesha Adams and Natasha Cesar; and caseworker, Susan McGrath. The mother testified at the hearing. The judge found the Division's witnesses to be credible, rendered a thorough oral opinion, and issued the order under review.

The scope of our review of an order finding abuse or neglect is limited. N.J. Div. of Youth & Family Servs. v. R.D., 207 N.J. 88, 112 (2011). We must uphold "factual findings undergirding the trial court's decision if they are supported by 'adequate, substantial and credible evidence' on the record." N.J. Div. of

Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)). Even where there are alleged errors in the judge's evaluation of underlying facts, "we will accord deference unless the trial court's findings 'went so wide of the mark that a mistake must have been made.'" Ibid. (quoting C.B. Snyder Realty, Inc. v. BMW of N. Am., Inc., 233 N.J. Super. 65, 69 (App. Div. 1989)).

An "abused or neglected child," as defined by N.J.S.A. 9:6-8.21(c)(4), is a child who is less than eighteen years of age and

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 (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof . . . ; or by any other acts of a similarly serious nature requiring the aid of the court.

"'Whether a parent or guardian has failed to exercise a minimum degree of care' in protecting a child is determined on a case-by-case basis and 'analyzed in light of the dangers and risks associated with the situation.'" N.J. Div. of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 614 (App. Div. 2010) (quoting G.S. v. Dep't of Human Servs., 157 N.J. 161, 181-82 (1999)).

"[T]he phrase 'minimum degree of care' refers to conduct that is grossly or wantonly negligent, but not necessarily intentional." G.S., 157 N.J. at 178. "[A] guardian [or parent] 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." Id. at 181. Courts have recognized that a parent's inaction or unintentional conduct may amount to a finding of abuse or neglect, if there is evidence that the child was injured. Id. at 175-77.

Ms. Adams testified that on August 2, 2015, she was alerted by another shelter resident that a child was heard crying for a long period of time. Ms. Adams determined the crying was coming from the mother's room and "banged on the door" multiple times with no response. She then entered the room and searched for the child, finding him "stuck between the bed and . . . the wall." She also testified that the mother was unresponsive, only woke up after she "shook" her, and once awakened, the mother appeared "out of it."

Ms. McGrath testified that she interviewed the mother following the child being found wedged between the bed and the wall. She testified that the mother's room did not contain a crib or other accommodation for the child to sleep alone. Ms. McGrath

testified that another Division caseworker previously discussed with the mother the Division's concerns about the mother and the child co-sleeping, and advised that the child should not sleep in the mother's bed with her. She noted the mother's previous room contained a Pak'n Play, which accommodated the child to sleep independently, and the room at the time of incident did not. Lastly, she testified that the mother was very rough with the child and was unaware of a bump on the child's head at the time of the interview.

The mother testified that the incident at issue did not result in the child being wedged between the bed and the wall. She stated that she was on various medications while participating in methadone treatment. She reasoned that the combination of drugs made it difficult for her to awake and that the child may have been crying for some time, but did not fall from the bed.

The judge found the Division's witnesses credible and that their testimony "corroborated each other." The judge did not find the mother's testimony to be credible and found "several inconsistencies."

The judge found that the mother's actions and inattentiveness fell below the requisite standard for care. Specifically, the judge found the mother's use of strong medications, and her previous notice that she and the child should not be sleeping in

the same bed were significant in finding for the Division. The judge explained that

[a]ll three of the workers testified to the same thing, that they heard a baby crying, some as much as 20 minutes. Ms. Adams knocked on the door at least two times. [The mother w]as completely unresponsive. [Ms. Adams c]ould not find the baby. Whether [the baby] was actually on the floor or wedged in between the bed and the wall near the floor . . . is of no moment. The fact is a baby fell off a bed and was stuck there.

. . . .


[The mother] could have brought the Pak'n Play into the room with her. There was testimony that that was a problem before. She chose to put the child in bed with her.

[The mother] was taking methadone, by her own admission, as well as four strong medications, . . . and based on these things, that the child was placed in an imminent danger and a substantial risk of injury and in imminent risk of harm.

We conclude that there is sufficient credible evidence to support the judge's findings that the mother abused and neglected the child by failing to properly supervise and provide adequate sleeping accommodations to ensure his safety, which ultimately resulted in a head injury.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION