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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1329-16T1

NEW JERSEY DIVISION OF CHILD  
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

D.F.,

Defendant-Appellant,

and

C.W.,

Defendant.

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IN THE MATTER OF B.W. and E.W.,

Minors.

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Submitted January 17, 2018 – Decided February 14, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Gloucester  
County, Docket No. FN-08-0199-14.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Kimmo Z.H. Abbasi, Designated  
Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Renard L. Scott, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Noel C. Devlin, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant D.F. appeals from an October 27, 2016 order of the Family Part terminating Title 30 litigation initiated by the Division of Child Protection and Permanency (Division), awarding sole legal custody of her children, E.W. and B.W., to their father, C.W, and requiring D.F.'s visitation with her children be supervised.<sup>1</sup> We affirm.

Diane and Charles are the parents of twins, Nathan and Evan, born August 30, 2000, and Brian, born October 9, 2001. Nathan, who was autistic and epileptic, died on April 24, 2014. Evan and Brian also suffer from autism and epilepsy. Brian is non-verbal, severely epileptic, violent, self-injurious, and requires more assistance than Evan.

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<sup>1</sup> To protect the privacy interests of the parties, we refer to D.F., as Diane, and C.W., as Charles, the older child, E.W., as Evan, and the younger child, B.W., as Brian. We refer to the deceased child, N.W., as Nathan.

In considering this appeal, we summarize the Division's nearly four years of involvement with this family. This litigation alone spanned two and one-half years.

On October 16, 2012, the Division filed a verified complaint for the care and supervision of Nathan, Evan, and Brian, alleging neglect. The case was closed in September 2013. Thereafter, Diane and Charles divorced. Pursuant to the judgment of divorce, both parents shared legal custody of the children and Diane was granted primary residential custody.

In April 2014, the Division learned of Nathan's death and opened a new investigation. At the time of Nathan's death, Diane was home, but not supervising Nathan while he took a bath. The investigation revealed that Nathan drowned in the bathtub after suffering a seizure. A pediatrician with New Jersey Cares deemed Nathan's death accidental, but noted his death may have been the result of "recklessness or worse."

On May 12, 2014, the Division learned that Diane had been arrested. According to the arrest report, Diane was drinking and got into a motor vehicle accident. Diane was charged with aggravated assault, reckless driving, driving while intoxicated (DWI),<sup>2</sup> leaving the scene of an accident, refusing to provide a

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<sup>2</sup> The incident was Diane's second DWI charge.

breath sample, and having an open alcoholic beverage. During her arrest, Diane made comments expressing thoughts of self-harm and was transported to a psychiatric hospital.

Diane was discharged from the emergency psychiatric facility with a recommendation that she receive follow-up treatment. Diane began a private treatment program at Princeton House, where she was diagnosed with depression and acute trauma. Based upon the criminal charges against Diane, her expression of self-harm, and her failure to comply with the Division's new investigation following Nathan's death, the Division instituted an emergency safety plan requiring full-time monitoring of Diane when she was with the children.

On May 21, 2014, the Division filed a verified complaint for the care and supervision of Evan and Brian under Title 9 and Title 30.<sup>3</sup> A hearing was held and the Division requested that Diane be supervised when she was with the children. The judge granted the Division's application and appointed a Law Guardian for the children. The judge expressed concern with Diane's mental health and stability, especially since Nathan's death. The judge stated

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<sup>3</sup> The Division filed a single complaint, citing both Title 9 and Title 30, as it was unsure whether to pursue neglect proceedings based on an open investigation into Nathan's death. The Division decided to proceed solely under Title 30 after the investigation into Nathan's death was closed.

that "[w]e have relatives describing a hard situation to handle, kind of day-to-day life. Children stay up late. They're little. One child is becoming increasingly violent. We had the [care management organization] involved." The judge held that "until the Division can recommend to the [c]ourt . . . that [Diane]'s stable, and that any alcohol issue, or grief issue, that's being treated, . . . any medical advice with alcohol, is dealt with, then the supervision will need to remain in place."

At the next hearing, on June 18, 2014, Division caseworker Anthony Simone testified that he referred the family to Epic Health Services (Epic), an organization that works with autistic children and their families. Epic provided overnight care of the children and was an approved supervisor for Diane.

At this hearing, Diane asked the judge to vacate the supervision requirement due to the financial burden associated with paying the court-authorized supervisors. Because the Division had not received treatment records for Diane, the judge declined to rescind the supervision order. The judge signed an order compelling the release of Diane's treatment records, and requiring both parents undergo psychological evaluations.

On August 15, 2014, a different judge met with counsel to review the status of the litigation. The Law Guardian reported the children were doing well under Diane's supervised care, and

noted that Brian would likely need residential placement in a facility for individuals with severe autism. The judge continued supervision for Diane and the children.

In September 2014, Diane told a Division caseworker that she was overwhelmed, lost her job, and was having financial difficulty caring for the children. Further complicating the situation at that time was Brian's suspension from school for behavioral issues.

On October 24, 2014, the judge conducted a Title 30 fact-finding hearing. Vicky Burbage, a Division caseworker, told the judge that the Division was providing mentoring services to Evan, and that both children were receiving services through PerformCare. Epic continued to provide overnight care and supervision. The Law Guardian reported that the children were doing "as fine as can be expected."

Burbage then offered testimony regarding Diane. Burbage stated that Diane was "fully compliant" with her private therapist's recommendations. Therefore, the Division was willing to lift Diane's supervision requirement. However, Burbage believed that Diane "may not be seeing the . . . therapist that she was seeing prior. [Diane] felt that there was a breach of trust between the Division and her therapist, when [Burbage] called to confirm that she was seeing the therapist." Burbage also testified that while Diane had been referred to Services to

Overcome Drug Abuse Among Teenagers, Inc. (SODAT) for an eighty-hour alcohol urine test, she did not comply.

At the conclusion of this hearing, the judge found that "this is a family in need of services that are being provided" and the court retained jurisdiction in the best interests of the children. The judge ordered Diane to comply with random eighty-hour alcohol screens scheduled by the Division and continue mental health counseling.

On November 20, 2014, Tshaye Bradley, an Epic home care nurse, went to Diane's home. Bradley discovered that Evan and Brian were alone on the first floor, and Diane was upstairs. Bradley discovered Diane passed out on her bed and found pills "all over the bed and the floor." Bradley collected the pills and put them in a locked cabinet. Around 12:30 a.m., Diane woke up and came downstairs. According to Bradley, Diane was disheveled and smelled of alcohol. Bradley reported the incident to her supervisor, who reported it to the Division.

A few days later, on November 25, 2014, a Division caseworker took Diane for an eighty-hour alcohol screen. Diane tested positive for alcohol and it was recommended that she continue outpatient substance abuse treatment.

On December 17, 2014, Burbage went to Diane's home to check on the children. Diane refused to allow Burbage to enter the home or see the children.

On January 23, 2015, the Division filed an amended verified complaint seeking custody, care, and supervision of the children. The judge signed a consent order continuing supervision of Diane while with the children, and requiring Diane to allow access to the children for Division safety checks. The order also required Diane to complete a substance abuse re-evaluation, submit to random urine tests, complete a psychological examination, attend therapy, and continue services for the children with Epic and PerformCare.

On the morning of January 27, 2015, Diane called a Division hotline and claimed that her children were being abused because the Division caseworkers coming to her home caused the children to believe that the Division was going to abduct them. Based on this concern, Diane said she took the children and refused to provide her location.

A caseworker went to Diane's home on January 28, 2015, to check on the children. The caseworker rang the doorbell and knocked on the front door, but initially no one answered. Eventually, Diane came to the front door, but refused to let the caseworker inside. The caseworker contacted the police. While the caseworker was waiting for the police to arrive, she saw Diane



get into her car with Evan and Brian but without a supervisor. The caseworker called 911 and advised that Diane took the children in violation of a court order. The police stopped Diane at a nearby drug store. As a result, the Division conducted an emergency removal of the children.

Later that day, the caseworker returned to Diane's home with a police officer to check on Diane. Diane began yelling from a second-story window, telling the police officer to "shut up" and leave because she was not going to talk to them. The caseworker and officer observed red wine stains on Diane's shirt.

As a result of these events, on January 30, 2015, the Division filed a second amended verified complaint for care, custody, and supervision of the children. A hearing on the second amended complaint was held. The Division witnesses included the caseworker who went to Diane's home on January 28, 2015, and the Epic nurse who found Diane passed out in November 2014. The Division witnesses provided testimony as to the events that had taken place since the court proceeding in October 2014. Also testifying were Diane, Diane's boyfriend, and Charles.

Diane admitted that she refused to give the Division access to her home and children, and that she left the house on January 28, 2015, without a court-ordered supervisor. Diane claimed she left the house with the children because she assumed that the

caseworker had come to take the children, and Diane wanted to get medication refills for the children to ensure they had their medication when they were removed. When asked why she believed the Division would take the children prior to a hearing on the new custody complaint, Diane explained, "this is how they operate. They've been aggressive for three years and harassed us. They've tortured me."

Diane denied she was drunk on Tuesday, January 27, or Wednesday, January 28, 2015. She claimed that the stains on her shirt on January 28, 2015, were just a "really ugly" floral print. Diane testified that her recent treatment was for post-traumatic stress disorder and depression, not substance abuse. However, Diane failed to provide any medical evidence or testimony to support her claims, and declined to identify her treating psychiatrist. Diane stated that it was in the children's best interests to remain in her custody due to the complex nature of their disabilities. She insisted that she was her children's only advocate and uniquely understood their needs.

Diane's boyfriend provided testimony during the hearing. Diane's boyfriend acknowledged that Diane drank in his presence. He also told the judge that Diane "has an intense distrust of the Division; and, she sees the Division as attacking her. And, she responds in kind."

At the hearing, Charles testified as follows:

[Diane] needs to . . . come to the conclusion that she is unable to parent these children on her own. . . . It's just too much. And, the drinking's been going on for a long time; and was going on during our marriage. And, under a combination of her medications and drinking, and being unable to supervise the kids, it's not safe and healthy for them . . . . We've already lost one son . . . . It's - it's quite apparent that she has a drinking problem. And, . . . the boys need help, and staying in that house is just doing them more harm than good.

Considering the testimony and evidence presented during this hearing, the judge granted the Division's application. The judge deemed the testimony provided by the Epic nurse, who found Diane passed out from alcohol and surrounded by pills, particularly credible. The judge expressed sympathy for Diane, but found that she was not supervising her children. Based upon Diane's hostility toward the Division and other care providers, coupled with her alcohol consumption, depression, and failure to supervise her children, the judge found that it was in the children's best interests to be removed from the home so that Diane could "focus[] on [her] own needs" and receive "a respite, some care for herself," and "a better perspective."

As to Brian, whose cognitive issues were particularly severe, the judge ruled that "it would be an unacceptable risk to his safety, health, and perhaps, life, if he remained solely in

[Diane]'s care." Consequently, the judge ordered Brian removed from Diane's care and placed in Bancroft, a residential facility for autistic individuals.

As to Evan, whose impairments are less severe, the judge found that Evan was "still exposed to danger" by remaining in the home, and that "[i]t is time that [he] also be protected; and . . . that his remaining in the home would be contrary to his welfare . . . . [I]n order to protect his safety, health, and life, he should be removed." The judge ordered the Division to investigate the children's maternal grandparents as a temporary placement option.

At the hearing, the judge spoke directly to Diane:

Putting the case into perspective, you need to return to the strength you once had, by focusing on your own needs. With the aid of care givers, at least temporarily . . . . [W]hen [Evan] is ready, he'll be returned to you; and, I think that you'll have to be ready for him. So, this is a time when you should be focusing on getting better yourself, strengthening your own abilities to care for [Evan] . . . .

The judge ordered Diane to undergo a psychological evaluation, comply with all recommendations, undergo a substance-abuse evaluation, submit to random urine screens, and continue to be supervised during visits with the children.

On February 24, 2015, the parties returned to court. The Division told the judge that Evan and Brian were doing well in a therapeutic foster home. The Division reported that Diane was not doing as well. During a supervised visit, Diane told the children that it was the Division's fault they were not at home and that the Division lied to take them away. Diane also interrogated the children regarding their foster family. The Division believed that Diane's behavior agitated the children and caused Brian to lash out at the caseworkers.

The judge ordered Diane to stop agitating the children and fostering animosity between the children and the Division. The judge instructed Diane to comply with her mental health treatment and urine testing. The judge found a continuing danger to the children if placed in Diane's care, and continued custody of the children with the Division.

On April 23, 2015, the judge held a Title 30 hearing. Brian Jacobowski, a Division permanency worker, advised that Diane was attending an intensive outpatient program for substance abuse at Solstice Counseling. He reported that Diane "does not believe that she has a substance abuse problem and therefore is resistant to treatment," and that her program counselor believed "she sometimes seems to go through the motions during treatment."

According to Jacobowski, Diane claimed she was attending private therapy, but refused to disclose her therapist's information.

The judge found that there was a continuing need for the Division to retain custody, care, and supervision of the children based on their intense needs, the significant services provided, and the need for family therapy. He ordered Diane to attend individual therapy, domestic violence counseling, and substance abuse treatment, and submit to random eighty-hour alcohol screens. The judge also ordered Diane to release her private treatment information to the Division. Diane's visits with the children remained supervised.

On July 27, 2015, the judge held a compliance hearing. Jacobowski testified that while Diane's new therapist reported she was "progressing in her treatment," Diane was discharged from Solstice Counseling due to an incident with another resident and a possible DWI. Jacobowski stated that Diane checked herself into a hospital for psychiatric treatment after being discharged from Solstice Counseling, and began attending dialectical behavior therapy (DBT) counseling at Princeton House. According to Jacobowski, the Princeton House therapist indicated Diane did not need substance abuse treatment.

Jacobowski testified that Evan and Brian were doing well in their therapeutic foster home, and that Brian had been approved

for residential treatment at Bancroft. Evan requested overnight visits with his father, which the court approved. At this hearing, there was a discussion that custody of Evan be transferred, temporarily, to his maternal grandmother. The parties agreed that placement with the maternal grandmother would be beneficial, if the grandmother could handle Evan's intense needs. The judge ordered the Division to evaluate the grandmother for placement of Evan.

On September 22, 2015, another judge held a compliance hearing. Jacobowski told the judge that Brian was accepted by Bancroft and would be admitted as a resident within five weeks. He also confirmed that the Division was vetting the maternal grandmother for temporary placement of Evan.

Jacobowski testified that Diane completed the Princeton House program and was discharged with the following recommendations: medical monitoring with a psychiatrist, individual therapy, DBT counseling, skills group sessions, and art therapy. Jacobowski also stated that the Division was trying to obtain a bus pass to allow Diane to attend her urine screens, because she no longer had a car. He further reported that Diane was participating in Robin's Nest Family Ties visitation services.

Due to Brian's high need level, the court ordered the Division to ask Bancroft to accelerate his admission date. Diane asked the

judge for legal custody of Brian when he became a resident at Bancroft, so that she could properly advocate on his behalf. The judge ruled that the Division needed to retain custody to process Brian's transfer to Bancroft, but that, when the Division case was completed, legal custody of Brian would be jointly awarded to Diane and Charles. The judge signed an order requiring Diane to continue individual therapy and any services recommended by Princeton House, and to submit to random eighty-hour alcohol screens.

On January 4, 2016, the judge held a permanency hearing. The Division's counsel advised that the permanency plan was for reunification of the children with Diane. The Division's attorney reported that Diane was attending treatment, providing negative urine screens for alcohol, and regularly visiting Evan at the grandmother's house. Diane's attorney confirmed that Diane "likes . . . therapy," "wants [it] to continue," and "finds it helpful." The Division's only concern at this hearing was whether Diane could secure stable housing.

The Division indicated that all parties agreed it was in Brian's best interest to remain at Bancroft. The Law Guardian agreed that the Division's plan for both children was in their best interests.



On April 28, 2016, the judge held a permanency and Title 30 hearing. Angela Gardner, a Division permanency caseworker, testified. Gardner stated that Diane moved to Pennsylvania since the last court date and refused to provide her new address.<sup>4</sup> According to Gardner, Diane relapsed and it was recommended that she attend a program for the mentally ill and chemically addicted. The caseworker testified that Diane failed to complete DBT counseling and missed several urine screens. In addition, there was an incident at the grandmother's house in January where Diane had been drinking.

Diane did not testify at this hearing. Diane's attorney told the judge that his client lacked visitation with her children since January 2016, and requested an order restoring parenting time. Diane's attorney acknowledged that Diane ceased participating in the Division's offered services, but claimed that "they were causing great problems with her with regard to being able to work, being able to maintain a residence, all the things that we need to do just to take care of our basic life functions." When the judge questioned the explanation for Diane's failure to receive the offered services, her counsel responded, "[Diane] has found those services not to be particularly helpful."

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<sup>4</sup> The judge signed an order compelling Diane to disclose her Pennsylvania address.

Gardner advised the judge that the Division's new permanency plan was for reunification of the children with Charles. Charles had secured housing, which was approved by the Division. Charles was made aware of the various requirements to achieve permanency, including obtaining health insurance for the children, ensuring continuation of the children's services through PerformCare, and registering the children in the local school district. Diane did not object to awarding legal and primary physical custody of Evan to Charles. In fact, Diane's counsel stated:

at some point the Division is going to seek to terminate this litigation. I suspect it will be at the next hearing . . . I would like to get [Diane] back to a point where the [c]ourt feels comfortable in deeming her what we call "safe," . . . so she can be the parent at least of alternate residence at this point.

The judge approved the Division's plan for reunification with Charles, and signed orders transferring legal custody of both children to Charles, transferring physical custody of Evan to Charles, and finding the family in need of continuing care and supervision by the Division. In explaining his reasoning for the entry of these orders, the judge stated:

the [c]ourt has considered the testimony of Ms. Gardner. It is familiar with this case and it has reviewed the [c]ourt report. It has also heard the position of the Law Guardian who does not object to the plan . . . . [H]aving heard all the evidence, I

find that the plan is in the best interest of the two boys for reunification with dad.

The judge also issued the following instruction to Diane:

[A]lthough you may not at this point in time evaluate the Division perhaps with a positive assessment, I don't share in that . . . . [T]his court is going to be bound by previous orders and if those orders . . . require[] you to do certain services, you're going to have to demonstrate by going to those services. They don't have to necessarily be the same . . . providers that the Division has provided to you, . . . but certainly they would have to provide the same type of service and the Division would have to be able to corroborate, meaning they would get proof that you're actually doing those things before the Court can consider lifting supervision.

The judge directed the Division to work with Diane to select a location for alcohol testing accessible by public transportation from her home in Pennsylvania. He also directed Charles to make reasonable efforts to allow Diane visitation with the children, as long as Diane was supervised.

On August 16, 2016, the judge held a compliance hearing. The Division was prepared to dismiss the litigation upon resolution of the following issues: (1) Diane's claim that she was having trouble finding supervisors for her visits with the children, and that Charles was not providing visitation opportunities; (2) Diane's failure to undergo a valid urine screen in eight months; and (3) Charles's insuring both children. The Division asked the

judge to keep the case open to address these issues and, hopefully, eliminate Diane's supervision requirement by the next hearing.

The Law Guardian was unable to make any recommendations, because Charles had not allowed her to visit Evan at his home since the last hearing. Charles's attorney indicated that, although the Law Guardian had not been able to visit, the Division conducted a home visit in June and reported that "the house was fine, [Evan] was fine."

Diane provided a letter from her new therapist stating that therapy was going well and she was complying with her treatment plan. Diane asked the court to vacate the supervision order and deem her the "parent of alternate residence." Diane did not object to Charles having legal and primary physical custody of Evan. Diane explained that she failed to comply with the urine screens because the Division asked her to go to Camden for the screens, and she did not feel safe taking public transportation to that location. Diane asked to take the tests in Pennsylvania, near her home. The Division told the judge that it had no out-of-state vendors to conduct urine screens and argued:

[W]e discussed this at the very last hearing. There was agreement - previously she was attending the urine screens somewhere other than SODAT and she wanted us to change that, which we did and the [c]ourt report indicates that. Now, she's saying she wants them over

in Pennsylvania. All of these are excuses for her not doing these urine screens.

The judge ordered the Division to work with Diane to find a testing location, other than Camden, convenient to public transportation. The judge directed Charles to allow the Law Guardian to visit with Evan at his home and follow a schedule for Diane to visit with the children. The judge also ordered Diane attend DBT counseling and submit to random eighty-hour alcohol screens.

On October 27, 2016, the judge held a Title 30 summary hearing. The Division sought to terminate the litigation, with Charles retaining legal custody of the children and physical custody of Evan.

The Division's counsel had one remaining concern regarding custody of the children and their relationship with Diane. The Division's attorney stated that Diane was ordered to engage in certain services throughout the history of the litigation, including substance abuse treatment, therapy, and random urine screens, and that Diane failed to complete the services. The Division was unable to contact Diane's therapist after repeated attempts, had received no information from her therapist, and was unable to verify the therapist's credentials. The Division reported that Diane had not completed random urine screens and was

scheduling her own testing such that the screens were not random.

The Division's counsel argued:

We have a case that has been open over 890 days and still we're here dealing with the same issues as far as treatment, random screens and even DBT . . . . [Diane] was ordered to do DBT counseling, she dropped out of that. Now, she's coming here again with these excuses about random screens. She wants to dictate when and where she does services and that's not how these cases go . . . . So we have no way of assessing her safety at this point in time because we have no random screens on her and she's not in DBT counseling. We can't get any information out of her private therapist except a letter, no strings, no collaterals, no callbacks to [the permanency worker] . . . . So we have nothing to gauge her safety. Her visits should remain supervised until she can comply.

Diane did not testify at this hearing. Nor did she submit any medical records or urine screen results to the court. Diane's attorney conceded that "[w]e had hoped to come here today with . . . clean screens[,] . . . a set of screens that Your [H]onor could look at, random screens since August, which would allay the [c]ourt's fears, and we don't have them." Diane's counsel offered no explanation for his client's failure to attend treatment or provide information about her private therapy. Diane's counsel objected to closing the litigation, stating that Diane "wants custody of her boys back."

The Law Guardian reported that there were "no concerns with either Evan or Brian's well-being at this point." The Law Guardian reported that Bancroft was "very happy with [Brian]'s progress," and that "[Evan] reports that he likes living with his dad, that things are going well and that's where he wants to stay." Further, the Law Guardian told the judge that "[t]he children are visiting each other and [Evan] reports that these are . . . going well and he wants them to continue."

At this hearing, Charles testified:

I'm just concerned from here on out that [Diane] – my concerns are she still needs to be supervised and that that continues. Her place of residence where she lives right now is not an appropriate setting for my children and I don't believe she's mentally fit and ready to make decisions on the children's behalf. And she has a hard time just taking care of herself, let alone the children. So I just, from here on out, I really want to make sure that her visitations, whenever she wants them to be[, ] remain supervised.

After hearing from the parties, the judge addressed Diane's claim that the failure to provide random urine screens was the Division's fault. The judge stated:

The Division was just trying to do their best efforts to try to find a place after [Diane] time and time again said I can't go there, I can't go here, so they tried and they found out that they don't provide those services. So I understand that, but they were working within the confines of what [Diane] gave them which were very restrictive . . . . And even

now, she says I'll go to Camden, but only on my terms, on my days, at my time. That's not a random screen . . . .

The judge found that concerns regarding Diane's substance abuse and mental health were not resolved and, accordingly, dismissed the litigation, with custody to remain with Charles. He ordered the Division to keep the administrative file open for ninety days so that "[Diane] can work with the Division to comply with the services that have been ordered by the [c]ourt, to get them finished." The judge explained that any further changes in custody required a court order, and that "certainly [Diane] can come back under an FD custody and be heard at a later time."

A final order was signed on October 27, 2016. The order (1) terminated the litigation, (2) awarded legal custody of the children to Charles, continued physical custody of Brian with Bancroft, and awarded physical custody of Evan to Charles, (3) continued Diane's supervised visitation schedule in accordance with the prior court order, and (4) allowed Evan to decline parenting time with Diane, with the parents "to use best efforts to continue consistent visitation."

On appeal, Diane argues that the judge's order awarding custody of Evan and Brian to Charles, and only permitting Diane to have supervised visits with the children was not in the children's best interests.



Our review of a trial court's factual findings is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). "[W]hen there is substantial credible evidence in the record to support the court's findings," the decision should not be disturbed. N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008). However, we owe no deference to a trial court's interpretation of the law, and review issues of law de novo. Mountain Hill, LLC v. Twp. Comm. of Middletown, 403 N.J. Super. 146, 193 (App. Div. 2008).

We also extend special deference to the Family Part's expertise. N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 342-43 (2010). Unless the trial judge's factual findings are "so wide of the mark that a mistake must have been made" they should not be disturbed. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (quoting C.B. Snyder Realty Inc. v. BMW of N. Am. Inc., 233 N.J. Super. 65, 69 (App. Div. 1989)). "It is not our place to second-guess or substitute our judgment for that of the family court, provided that the record contains substantial and credible evidence to support" the judge's decision. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012).

"[P]roceedings under Title 30, other than to terminate parental rights, are governed by the preponderance of the evidence standard." N.J. Div. of Youth & Family Servs. v. I.S., 423 N.J.

Super. 124, 126 (App. Div. 2011).<sup>5</sup> Under N.J.S.A. 30:4C-12, there must be "a showing that the parent has failed to ensure the health and safety of the child and that the child's best interests require" the relief sought. N.J. Div. of Youth & Family Servs. v. I.S., 214 N.J. 8, 27 (2013).

The paramount purpose of N.J.S.A. 30:4C-12 is to protect children. See N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 293 (2007). N.J.S.A. 30:4C-12 "authorize[s] services to children who have not been abused or neglected, . . . but whose needs may be too complex and beyond a parent's or parents' ability to work through without the Division extending minimal supervision, or more intrusive involvement, coupled with services until that is no longer necessary." I.S., 214 N.J. at 36.

Applying these standards, we discern no basis for disturbing the judge's determination that Evan should be placed in Charles's care and custody with continuing services provided by the Division. Charles "was the only appropriate parent to award custody to at the dispositional conclusion of this fact-sensitive Title 30

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<sup>5</sup> In this case, the Division concurrently filed a Title 9 complaint and a Title 30 complaint, but ultimately proceeded with the matter as a Title 30 family in need of services litigation. See N.J. Div. of Youth & Family Serv. v. N.D., 417 N.J. Super. 96, 109 (App. Div. 2010) (terminating a Title 9 action in the absence of an abuse or neglect finding, but allowing the Division to provide care, custody, and supervision to children in need of services under Title 30).

proceeding." Id. at 41. Charles had a stable home, and was willing and able to care for Evan, who wished to live with him. Moreover, there was no objection to Charles having primary custody of the children from the Division, the Law Guardian, or Diane.


The judge found that Diane suffered from depression and post-traumatic stress disorder for which she received sporadic treatment, only to relapse. Diane also had difficulty coping emotionally, especially after Nathan's death, was unable to maintain a steady job and secure housing, and struggled with alcohol addiction during the course of this litigation. The judge repeatedly urged Diane to complete the court-ordered services, provide evidence of her compliance with the services, and undertake any follow up services in order to have unsupervised visitation with the children. Diane's own failure to participate in the court-ordered services and get her life back on course resulted in the judge's custody and visitation determinations. We are satisfied that there was competent, credible evidence in the record to support the judge's finding that it was not safe to return Evan to Diane's care and custody, and that placing the child with Charles served the child's best interests.

Having reviewed the transcripts from the fourteen hearings conducted by the court, spanning two and one-half years of litigation, we find sufficient credible evidence to support the

judge's decision to grant custody of the children to Charles and  
continue supervised visitation for Diane.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION