SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1406-15T2

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

Q.W.,

Defendant-Appellant,

and

A.W. and M.T.,

Defendants.

IN THE MATTER OF N.W. and A.W.,

Minors.

Submitted April 25, 2017 – Decided January 11, 2018

Before Judges Leone and Vernoia.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, Docket No. FN-09-0424-12.

Joseph E. Krakora, Public Defender, attorney for appellant (Joan T. Buckley, Designated Counsel, on the briefs).

Christopher S. Porrino, Attorney General, attorney for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Steven J. Colby, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Charles Ouslander, Designated Counsel, on the brief).

The opinion of the court was delivered by

LEONE, J.A.D.

Defendant Q.W. (Mother) appeals from an October 19, 2015 order terminating this Title Nine proceeding. Mother claims the trial court erred in proceeding to a fact-finding hearing without Mother's knowing and intelligent waiver of her right to counsel. We agree. We delineate the proper colloquy for a family court to follow in determining whether a waiver of counsel has been made knowingly and intelligently. We vacate the September 20, 2012 finding of abuse or neglect and remand for a new fact-finding hearing at which Mother has an opportunity to be represented by counsel.

I.

We summarize the underlying facts. Mother and defendant A.W. (Father), who is the father of the child A.W. (Daughter), were accused of abusing or neglecting Daughter (born 2006) and Mother's

son N.W. (born 1999).[1] Specifically, Mother and Father were accused of engaging in substance abuse and allowing the children to witness and become involved in domestic violence between Mother and Father, including an incident on May 15, 2012. Father was also accused of pushing, hitting, or attempting to push or hit the children on May 15.

On May 16, 2012, an emergency removal of the children was conducted by what is now known as the Division of Child Protection and Permanency (Division). On May 18, 2012, the Division filed a request for an order to show cause (OTSC), as well as a complaint alleging abuse or neglect by Mother and Father in violation of N.J.S.A. 9:6-8.21(c)(4)(b).

On May 18, the initial OTSC hearing was held before the OTSC judge. Mother was present and represented provisionally by an assistant public defender (A.P.D.), who argued the children should be returned to Mother because she had just obtained a temporary restraining order against Father. Father appeared without counsel, but the OTSC judge told him the A.P.D. also spoke for him. The judge upheld the removal, and awarded the Division care, custody, and supervision of the children.

[1] The Division later added N.W.'s father M.T. as a defendant, but no findings were made against M.T. Neither M.T. nor Father have appealed.

The June 11 return hearing on the OTSC was held before a different judge (motion judge). At the start of the hearing, the A.P.D. who had represented Mother stated her client "has indicated that at this time she would like to proceed pro se." The motion judge conducted the following colloquy:

> THE COURT: All right. [Mother], why do you want to proceed pro se?
>
> . . . .
>
> [MOTHER]: Because I feel like I have to speak to you and talk to you more on my own behalf. . . . Maybe you can get a . . . proper understanding. . . .
>
> THE COURT: [You understand] these are very serious proceedings that could ultimately lead to the termination of your parental rights and if you represent yourself, you have to abide by the same rules of evidence as an attorney, so when we have a fact finding trial you're going to have to understand those rules of evidence so that you can proceed and defend yourself.
>
> Do you think you'd be able to do that? . . .
>
> [MOTHER]: Yes. Yes, [judge].
>
> THE COURT: If I find that you are not able to do that, I'm going to appoint an attorney and I might even appoint a guardian ad litem if I don't feel you are capable of doing that. Do you still want to proceed pro se? Did you read the complaint? Do you understand the charges . . . do you know why you're here?
>
> [MOTHER]: Yes, I know why I'm here.

THE COURT: Why?

[MOTHER]: Because someone — well, someone that I no longer am friends . . . with had called [the Division] on me.

THE COURT: But do you understand that a Judge has already granted the initial order to show cause and has granted the Division custody of your children?

[MOTHER]: Well, I was told that that Judge wasn't familiar with Family Court. That's what she told me.[2]

. . . .

THE COURT: Do you think that . . . you're going to be able to represent yourself? You sure you want to represent yourself?

[MOTHER]: I don't feel like I'm . . . being helped by her, not last time . . . or this time.

THE COURT: . . . [A]re you going to hire your own attorney or you can go to legal services?

[MOTHER]: I asked her can I do that and she told me that I can't just switch from her to another person.

THE COURT: Well, if I grant your application you can.

[MOTHER]: Oh, okay. I would like to do that.

THE COURT: Well, I would recommend that you have an attorney.

[MOTHER]: Okay.

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[2] Mother's use of "she" and "her" apparently referred to the A.P.D.

> THE COURT: If you don't want to use the public defender, that's fine. I can relieve the public defender as counsel. But I would strongly suggest you either hire an attorney or you go to legal services and see if they would represent you.
>
> [MOTHER]: Thank you.
>
> THE COURT: All right. You're relieved as counsel.
>
> [THE A.P.D.]: Thank you.

The A.P.D. did not participate further in the June 11 hearing. The motion judge heard testimony, received some comments from Mother, and ordered the children to continue in the Division's care, custody, and supervision. At the end of the hearing, the judge scheduled the next hearing for 9:00 a.m. on September 20, 2012, before a different judge (the trial judge). The motion judge added: "I would strongly suggest, [Mother], that you get an attorney to represent you."

The motion judge's June 11 order stated that the A.P.D. "was relieved as [Mother's] attorney per [Mother's] request. [Mother] was advised of her right to counsel, however, she indicated that she will proceed pro se on this matter." The order added that the September 20 hearing was a "Fact-Finding." The Division's attorney sent Mother a letter listing the exhibits and witnesses the Division would call, and explaining the findings the Division would seek at the September 20 fact-finding hearing.

When the September 20, 2012 fact-finding hearing commenced at about 10:00 a.m. before the trial judge, Mother and Father were not present. Father's attorney informed the trial judge "it's my understanding that [Mother] is pro se and will be representing herself and she is also not in the building." The following exchange took place:

> [DIVISION'S ATTORNEY]: And, Your Honor, just by way of — for more information, both defendants were present at the last court hearing, which was before [the motion judge]. [Mother] chose to proceed pro se.
>
> . . . .
>
> [DIVISION'S ATTORNEY]: She did have a public defender assigned.
>
> THE COURT: Did [the motion judge] question her . . . extensively?
>
> [DIVISION'S ATTORNEY]: Yes, extensively.
>
> . . . .
>
> THE COURT: And she specifically chose to be pro se for the fact finding hearing, also?
>
> [DIVISION'S ATTORNEY]: [The motion judge] went through that with her, Your Honor, yes.
>
> THE COURT: And was she notified of the fact finding in court . . . of this date? Was she told it would be in this courtroom rather [than] in [the motion judge]'s?
>
> [DIVISION'S ATTORNEY]: Yes, Your Honor.

A probation officer left a phone message for Mother on the record stating that the trial judge was proceeding with the fact-finding hearing. The trial judge was "quite concerned" because Mother was "acting as her attorney now." The judge wondered "if although she's insisting on being pro se if she's not showing up if I should appoint an attorney to represent her." The following exchange occurred:

> [FATHER'S ATTORNEY]: The only issue I can . . . anticipate with that, Judge, . . . is the attorney is going to make an objection that they're not prepared to proceed with it. There are voluminous records in this case, and I know, I can anticipate that no attorney would be able to competently represent her just popping in right now. . . .
>
> . . . .
>
> [DIVISION'S ATTORNEY]: She had appointed [the A.P.D.] as her public defender. She chose to not have [the A.P.D.] represent her. And as I said before, . . . [the motion judge] did question her extensively, warned her of the difficulty of proceeding pro se, and that was thoroughly done on the record. I think both counsel were there, too.
>
> THE COURT: Yeah.
>
> [FATHER'S ATTORNEY]: . . . I do recall the discussions that she was seeking private counsel. I think it was the issue she didn't want a public defender, she wanted a private attorney.
>
> And, you know, I know she spoke briefly to me about that and I explained to her that I represented . . . her boyfriend, . . . so I

> cannot represent her. But that was what she expressed to me. So I don't know if she retained private counsel. I don't know.

After a brief recess during which the trial judge apparently telephoned the motion judge, the trial judge decided to proceed, stating:

> [B]ased on what you've told me and my conversation with [the motion judge], we're going to go forward. [The motion judge] has a memory of her being noticed in court that the fact finding would be here this morning and we have to consider moving ahead for the best interest of the children.
>
> She had the opportunity to have counsel and very competent counsel and did not. So we're going to proceed. We're going to start the fact finding.

The trial judge heard the Division's testimony. During the testimony, Mother tried to call the Division caseworker four times. The trial judge told the caseworker: "it's up to you if you want to call her. We're proceeding." The judge heard summations from Father's attorney, the Law Guardian, and the Division's attorney. At 12:37 p.m., as the judge was announcing the decision, Mother appeared in the courtroom. The judge did not discuss with her the waiver of counsel issue. Instead, the judge told her to sit quietly and continued announcing the decision. Mother subsequently interrupted several times to disagree with the judge's recitation of the facts. She eventually asked: "Why am I

here? . . . To listen to her talk"? She left the courtroom before the judge concluded her opinion. The court found both Mother and Father abused or neglected the children.

At the next compliance review, Mother appeared without an attorney, complaining that the trial judge did not give her a chance to speak or do anything. She appeared pro se at two more compliance reviews before saying at a May 13, 2013 permanency hearing that she "would like to obtain an attorney." She was represented by counsel at all remaining hearings.

On October 19, 2015, another judge entered an order terminating litigation, as the children had been returned to Mother's physical and legal custody. Mother appeals, arguing she did not waive her right to counsel.

II.

The Division and the Law Guardian argue we should not hear Mother's challenge to her alleged waiver of counsel because she did not present that challenge in the family court. "[O]ur appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." Selective Ins. Co. of Am. v. Rothman, 208 N.J. 580, 586 (2012) (quoting Nieder v. Royal Indem. Ins. Co.,

62 N.J. 229, 234 (1973)). However, Mother lacked a full "opportunity for such a presentation" at the fact-finding hearing if, as she claims, she was wrongly deprived of the assistance of counsel. Ibid. Although other counsel were appointed for Mother many months later, those counsel were appointed for other purposes, not for challenging the fact-finding hearing. In any event, we choose to address Mother's challenge because it "concern[s] matters of great public interest." Ibid.; see Alan J. Cornblatt, P.A. v. Barow, 153 N.J. 218, 231 (1998).

Trial courts generally are "in the best position to evaluate defendant's understanding of what it meant to represent h[er]self and whether defendant's decision to proceed pro se was knowing and intelligent." State v. DuBois, 189 N.J. 454, 475 (2007). The court's decision is reviewed for an abuse of discretion. Ibid. We must hew to that standard of review.

III.

Mother argues the family court abused its discretion in allowing the fact-finding hearing to proceed while she was not represented by counsel and without her first making a valid waiver of her right to counsel. We agree.

"Courts have long recognized that parents charged with abuse or neglect of their children have a constitutional right to counsel." N.J. Div. of Youth & Family Servs. v. E.B, 137 N.J.

180, 186 (1994). The Legislature has also granted a statutory right to retain counsel, and to have counsel appointed if indigent, in Title Nine cases. N.J.S.A. 9:6-8.43(a); see N.J.S.A. 9:6-8.30(a). "The right is also embodied in our Rules of Court." N.J. Div. of Child Prot. & Permanency v. R.L.M., 450 N.J. Super. 131, 142 (App. Div. 2017) (citing R. 5:3-4(a)). "This requirement ensures that parents have a meaningful opportunity to be heard during Title Nine proceedings and that their fundamental interest in the custody and care of their children is protected." State v. P.Z., 152 N.J. 86, 112 (1997).

The need for counsel is crucial at the fact-finding hearing. "The fact-finding hearing is a critical element of the abuse and neglect process. . . . The judge's determination has a profound impact on the lives of families embroiled in this type of a crisis." N.J. Div. of Youth & Family Servs. v. J.Y., 352 N.J. Super. 245, 264-65 (App. Div. 2002). Accordingly, a defendant has "the constitutional right to assistance of counsel during the fact-finding . . . hearings." N.J. Div. of Youth & Family Servs. v. B.H., 391 N.J. Super. 322, 346 (App. Div. 2007).

Here, it is undisputed Mother had a right to appointed counsel at the fact-finding hearing. However, the family court allowed her to waive counsel and proceed to the fact-finding hearing without representation by counsel. Thus, we must address

defendant's claim that the waiver of appointed counsel was invalid.[3]

Our Supreme Court recently addressed the waiver of appointed counsel in a private adoption case. J.E.V., 226 N.J. at 114. The Court advised:

> If a parent wishes to proceed pro se, the court should conduct an abbreviated yet meaningful colloquy to ensure the parent understands the nature of the proceeding as well as the problems she may face if she chooses to represent herself. Cf. State v. Crisafi, 128 N.J. 499, 511-12 (1992) (describing more in-depth inquiry required before defendant in criminal case may waive right to counsel). Only then will the court be in a position to confirm that the parent both understands and wishes to waive the right to appointed counsel.
>
> [Ibid.]

[3] We recently held a defendant in a termination case who unsuccessfully sought permission to represent himself had no "constitutional right of self-representation," and that N.J.S.A. 30:4C-15.4(a) did "not explicitly grant a right of self-representation." N.J. Div. of Child Prot. & Permanency v. R.L.M., 450 N.J. Super. 131, 147-48 (App. Div.), certif. granted, __ N.J. __ (2017). Nonetheless, we recognized defendants in family cases have a non-absolute "Rule-based right to appear pro se." Id. at 148 (citing R. 1:21-1(a)). Here, we need not address the source of defendant's right to proceed pro se because she was allowed to proceed pro se, unlike R.L.M. Thus, the issue before us is the adequacy of "the trial court's prerequisite inquiry to assure the parent acts knowingly and voluntarily" when the parent is allowed to "waive the right to counsel." Id. at 147 n.10 (citing In re Adoption of J.E.V., 226 N.J. 90, 114 (2016)).

To discern the nature of the "abbreviated yet meaningful" colloquy envisioned by J.E.V., we must examine the "more in-depth inquiry" required for criminal cases by Crisafi and its progeny. Ibid.[4]

In criminal cases, the court must "determine whether an accused has knowingly and intelligently waived that right and to establish the waiver on the record," and the accused "'should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made with eyes open."'" Crisafi, 128 N.J. at 509-10 (quoting Faretta v. California, 422 U.S. 806, 835 (1975)). Specifically, Crisafi required:

> To ensure that a waiver of counsel is knowing and intelligent, the trial court should inform pro se defendants of the nature of the charges against them, the statutory

[4] Other states similarly have looked to their criminal case law to determine the necessity and nature of the colloquy required before a defendant in a family case with a constitutional right to counsel can waive that right. See, e.g., In re Zowie N., 41 A.3d 1056, 1065 (Conn. App. Ct. 2012); Moore v. Hall, 62 A.3d 1203, 1210-11 (Del. 2013); Adoption of William, 651 N.E.2d 849, 851 (Mass. App. Ct. 1995); In re Adoption of J.D.F., 761 N.W.2d 582, 587 (N.D. 2009). Some courts require the criminal standard without change. Bearden v. State Dep't of Human Servs., 42 S.W.3d 397, 401-03 (Ark. 2001); In re C.L.S., 403 S.W.3d 15, 21-22 (Tex. App. 2012). Like our Supreme Court in J.E.V., some courts have explicitly recognized "[t]here is no requirement . . . the court engage in a full Faretta-type admonition and inquiry." In re Angel W., 113 Cal. Rptr. 2d 659, 668 (Ct. App. 2001); see In re J.M., 524 N.E.2d 1241, 1251 (Ill. App. Ct. 1988); In re W.W.E., 67 N.E.3d 159, 170-74 (Ohio Ct. App. 2016); State v. State, 29 P.3d 31, 34 (Utah Ct. App. 2001).

> defenses to those charges, and the possible range of punishment. . . .
>
> In general, the court should also inform defendants of the technical problems they may encounter in acting as their own counsel and of the risks they take if their defense is unsuccessful. Further, the court should inform the defendants that they must conduct their defense in accordance with the relevant rules of criminal procedure and evidence, that a lack of knowledge of law may impair their ability to defend themselves, and that their dual role as attorney and accused might hamper the effectiveness of their defense. Also, the court should explain to the defendants the difficulties in acting as their own counsel and should specifically advise the defendants that it would be unwise not to accept the assistance of counsel.
>
> [Id. at 511–12 (citations omitted).]

Subsequently, the Supreme Court in State v. Reddish, 181 N.J. 553 (2004), "added to the Crisafi inquiry." DuBois, 189 N.J. at 468 (citing Reddish, 181 N.J. at 594–95).

> Taken together, then, the Crisafi/Reddish inquiry now requires the trial court to inform a defendant asserting a right to self-representation of (1) the nature of the charges, statutory defenses, and possible range of punishment; (2) the technical problems associated with self-representation and the risks if the defense is unsuccessful; (3) the necessity that defendant comply with the rules of criminal procedure and the rules of evidence; (4) the fact that the lack of knowledge of the law may impair defendant's ability to defend himself or herself; (5) the impact that the dual role of counsel and defendant may have; (6) the reality that it would be unwise not to accept the assistance of counsel; (7) the need for an open-ended

> discussion so that the defendant may express an understanding in his or her own words; (8) the fact that, if defendant proceeds pro se, he or she will be unable to assert an ineffective assistance of counsel claim; and (9) the ramifications that self-representation will have on the right to remain silent and the privilege against self-incrimination.
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> [Id. at 468–69.]

From this "more in-depth inquiry required before [a] defendant in [a] criminal case may waive [the] right to counsel," we must draw an abbreviated yet meaningful colloquy. J.E.V., 226 N.J. at 114 (citing Crisafi, 128 N.J. at 511-12). We believe warnings (1), (3), (4), (5), (6), and (8), adapted for family cases, are essential to an "abbreviated yet meaningful colloquy to ensure the parent understands the nature of the proceeding, as well as the problems she may face if she chooses to represent herself." Ibid. Such warnings are also essential to provide an adequate evidentiary record for both the family and appellate courts to determine if a parent's waiver of counsel is knowing and voluntary.

Accordingly, we hold family courts in proceedings carrying a right to counsel must inform a defendant seeking to represent himself or herself of:

> (a) the nature of the charges in the family court complaint, and the potential consequences if the Division proves those charges;

(b) the necessity that defendant comply with the rules of family and civil practice and the rules of evidence;

(c) the fact that the lack of knowledge of the law may impair defendant's ability to defend himself or herself;

(d) the impact that the dual role of counsel and defendant may have;

(e) the reality that it would be unwise not to accept the assistance of counsel; and

(f) the fact that, if defendant proceeds pro se, he or she will be unable to assert an ineffective assistance of counsel claim.[5]

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[5] Delaware similarly requires "advising the parent about the dangers of self-representation, for example:

> (1) that the parent will have to conduct his or her case in accordance with the rules of evidence and civil procedure, rules with which he or she may not be familiar;
>
> (2) that the parent may be hampered in presenting his or her best case by a lack of knowledge of the law;
>
> (3) that the effectiveness of his or her presentation may be diminished by the dual role as attorney and respondent;
>
> (4) limited knowledge of the statutory grounds for the petition to terminate his or her parental rights; and

Applying this abbreviated yet meaningful colloquy to an abuse or neglect case reflects the statutory and case law governing such cases. Under warning (a), a family court should advise defendant of the statutory relief the Division is seeking, which may include rulings by the court that the child is abused or neglected, that the child may be removed and placed in the custody or supervision of the Division or another person, that defendant's conduct or contact with the child may be limited by an order of protection, that defendant may be placed on probation, and that defendant may be required to accept services. See N.J.S.A. 9:6-8.50(a), (d), (e); N.J.S.A. 9:6-8.51(a); N.J.S.A. 9:6-8.53(a); N.J.S.A. 9:6-8.54(a); N.J.S.A. 9:6-8.55; N.J.S.A. 9:6-8.56; N.J.S.A. 9:6-8.58.

Under warning (a), the family court should also advise that a finding of abuse or neglect may result in an action to terminate defendant's parental rights to the child. See N.J. Div. of Child Prot. & Permanency v. Y.N., 220 N.J. 165, 179 (2014); see also N.J.S.A. 30:4C-15(a). Further, the court "should advise the defendant that as a result of a finding of abuse and/or neglect, the defendant's name shall remain on the [Division's] Central

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> (5) any other facts essential to a broad understanding of the termination proceeding."
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> [Moore, 62 A.3d at 1210–11.]

Registry of confirmed perpetrators" of child abuse, and that information about defendant may be released to employers, doctors, courts, law enforcement, child welfare agencies, and others. Div. of Youth & Family Servs. v. M.D., 417 N.J. Super. 583, 618 (App. Div. 2011); see N.J.S.A. 9:6-8.10(a) to -8.10(e); N.J.S.A. 9:6-8.11; N.J.S.A. 30:5B-25.3.

Under warning (b), the family court should reference "the rules of family and civil practice" because civil family actions are governed by the rules governing family practice, and by the rules governing civil practice as applicable. R. 5:1-1. Warning (f) reflects both that defendant has a right to effective assistance of counsel, N.J. Div. of Youth & Family Servs. v. B.R., 192 N.J. 301, 306 (2007); N.J. Div. of Child Prot. & Permanency v. P.D., 452 N.J. Super. 98, 116 (App. Div. 2017), and that the right is lost if defendant elects to represent himself, see Reddish, 181 N.J. at 594.

This meaningful colloquy is "abbreviated" by the omission from the "more in-depth" criminal colloquy of requirements which have reduced relevance in civil family proceedings. See J.E.V., 226 N.J. at 114. A family court need not include DuBois's warning (1)'s reference to "statutory defenses." 189 N.J. at 468. There are no statutory defenses in abuse or neglect proceedings that are

not adequately referenced by describing the nature of the charges in the Division's complaint.

A family court also need not give DuBois's warning (3) concerning "the technical problems associated with self-representation and the risks if the defense is unsuccessful." Ibid. Warnings (b), (c), and (d) already caution defendants about the principal technical problems associated with self-representation, namely: the need to comply with the civil, family, and evidence rules; the effect of lack of knowledge of the law on the ability to defend; and the impact of the dual role of counsel and defendant. No other specific technical problems are mentioned in our precedential decisions, and none come to mind that would require warning (3) in a family case. See also State v. King, 210 N.J. 2, 19 (2012) (holding the colloquy's "goal is not to explore a defendant's familiarity with '"technical legal knowledge[,]"' for that is not required" (quoting Reddish, 181 N.J. at 595 (quoting Faretta, 422 U.S. at 835))).

As for the risks if the defense is unsuccessful, warning (a) already advises defendants of the potential consequences if the Division proves its charges. Warning (3) is thus largely covered by the remaining warnings, and can be removed to meet our Supreme Court's goal of an abbreviated colloquy.

A family court also need not give DuBois's warning (7). 189 N.J. at 468. In Reddish, a capital case, our Supreme Court took "this opportunity to amplify our directive in Crisafi" by requiring criminal courts to "ask appropriate open-ended questions that will require defendant to describe in his own words his understanding of the challenges that he will face when he represents himself at trial." Reddish, 181 N.J. at 593, 595. Such open-ended questioning, while desirable, epitomizes the "more in-depth inquiry required before [a] defendant in [a] criminal case can waive [the] right to counsel." J.E.V., 226 N.J. at 114. Eliminating that open-ended amplification is the most obvious way to follow our Supreme Court's instruction that family courts should "conduct an abbreviated yet meaningful colloquy." Ibid.

Finally, a family court need not give DuBois's warning (9): "the ramifications that self-representation will have on the right to remain silent and the privilege against self-incrimination." 189 N.J. at 468. This is another Reddish amplification which is more pertinent to criminal cases. 181 N.J. at 594. A criminal defendant who represents himself at a criminal trial runs the risk that any word he speaks may help convict him in that very trial. An action brought by the Division, such as an action alleging abuse or neglect under N.J.S.A. 9:6-8.21, is a separate civil proceeding. Div. of Youth & Family Servs. v. Robert M., 347 N.J.

Super. 44, 63 (App. Div. 2002) (citing P.Z., 152 N.J. at 100). It is designed "to safeguard abused children from further harm" rather than to punish "criminal culpability." Ibid. As it is a separate, civil proceeding, there is no occasion for "requiring additional protections for the parents of abused children to be imported from our criminal jurisprudence into Title Nine proceedings." See N.J. Div. of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 631 (App. Div. 2010) (quoting P.Z., 152 N.J. at 112).

Thus, in a civil abuse or neglect proceeding, if a defendant with a right to counsel wishes to proceed pro se, a family court should conduct the abbreviated yet meaningful colloquy we have set forth above. That colloquy covers the crucial warnings a defendant should consider in order to make a knowing and intelligent waiver of counsel.

In requiring this abbreviated but meaningful colloquy, we set the baseline for a colloquy waiving the right to counsel in a family cases. Family courts are free to add to this colloquy. They may address any pertinent defenses, raise any other technical problems or risks of self-representation particular to the case, discuss the right to silence and the privilege against self-incrimination when prosecution is threatened, engage the defendant in open-ended questioning, or raise any other concern peculiar to the case to permit the court to determine if a defendant knowingly

and intelligently waived the right to counsel. Nonetheless, we hold the abbreviated yet meaningful colloquy described above will suffice in all but the most exceptional circumstances.

IV.

We must now consider whether the colloquy conducted by the trial court covered the warnings in the abbreviated but meaningful colloquy described above. We recognize the court did not have the benefit of the J.E.V. opinion and "could not have anticipated our decision" implementing it. See DuBois, 189 N.J. at 472 (reversing even though the trial court could not have anticipated the Reddish decision). Nevertheless, "demonstrating that an individual has validly waived [the] right to counsel long required a showing that the waiver was knowing, voluntary and intelligent." State v. Wessells, 209 N.J. 395, 402 (2012) (citing Miranda v. Arizona, 384 U.S. 436, 475 (1964)). Similarly, family courts have long required a defendant's "waiver or renouncement of counsel . . . be made intelligently and understandingly." In re Guardianship of C.M., 158 N.J. Super. 585, 592 (Cty. Ct. 1978); see Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 53 (1981). To make that showing in criminal cases, courts have long employed the warnings enunciated in Crisafi in 1992 and Reddish in 2004. J.E.V. and our decision simply provide an abbreviated version.

Thus, we must review the abbreviated colloquy's requirements "to determine if each was satisfied." See DuBois, 189 N.J. at 469-73. Unfortunately, the colloquy by the motion judge did not include all the warnings required for a meaningful colloquy.

Regarding warning (a), the judge did not warn Mother about the nature of the charges in the family court complaint. The judge asked "Did you read the complaint? Do you understand the charges" but, before Mother could answer, the judge moved on to another question, "do you know why you are here?" Mother's answer — because a friend called the Division on her — failed to show she had any comprehension of the complaint or the charges. The judge also did not warn Mother adequately of the potential consequences. The judge informed Mother that the Division had already taken custody of her children, and that these were "very serious proceedings that could ultimately lead to the termination of your parental rights." However, the judge did not warn Mother of any of the other possible consequences, including that the Division was seeking continuing custody and a finding of abuse or neglect that would continue Mother on the central registry.

The motion judge did not give warnings (b), (c), and (d), except to note that Mother would have to comply with the rules of evidence. The judge did not mention the need to comply with the rules of family and civil procedure, the possible impairment to

her defense from lack of knowledge of the law, or the effect of the dual role of counsel and defendant.

The motion judge did "recommend that [Mother] have an attorney" and "strongly suggest[ed she] either hire an attorney or [she] go to legal services and see if they would represent [her]." This conveyed the gist, albeit in the obverse, of warning (e), which advises that it would be unwise not to accept the assistance of counsel. Finally, the judge did not give warning (f) about the inability to claim ineffectiveness of counsel.

Thus, the motion judge did not conduct a meaningful colloquy. See Crisafi, 128 N.J. at 512. "Only then will the court be in a position to confirm that the parent both understands and wishes to waive the right to appointed counsel." J.E.V., 226 N.J. at 114.

Moreover, "an unequivocal request for self-representation by a defendant is a necessary prerequisite to the determination that the defendant is making a knowing and intelligent waiver of the right to counsel." State v. Figueroa, 186 N.J. 589, 593 n.1 (2006); see N.J. Div. of Child Prot. & Permanency v. R.L.M., 450 N.J. Super. 131, 150 (App. Div. 2017). Mother did not make an unequivocal request to proceed pro se.

Mother initially indicated she thought it was in her best interest to represent herself rather than be represented by the

A.P.D. However, once the motion judge asked Mother if she was going to hire her own attorney or go to legal services, and told her that she could switch from the A.P.D. to another attorney, Mother indicated she "would like to do that." When the judge recommended she retain an attorney or approach legal services, Mother apprised "Okay" and "Thank You." Once the judge raised the possibility of obtaining another counsel, Mother endorsed getting another attorney rather than proceeding pro se. Indeed, at the fact-finding hearing, Father's attorney recalled "the issue [was] she didn't want a public defender, she wanted a private counsel," "was seeking private counsel," and had tried to get him to represent her. Thus, Mother did not make an unequivocal request to proceed without a lawyer.

The trial judge tried to verify that Mother had validly waived her right to counsel. The Division's attorney told the trial judge the inquiry before the motion judge was "extensive," but in fact the inquiry was inadequate. The trial judge did not obtain a transcript of the prior proceeding before the motion judge. The trial judge appears to have spoken with the motion judge, but what was said is not of record. When Mother later appeared, the trial judge did not speak with Mother directly. In any event, the trial

judge did not remedy that Mother received an insufficient colloquy and did not unequivocally elect to proceed without counsel.[6]

V.

In criminal cases, "the failure of the trial court to engage in a thorough exchange with defendant 'does not end our inquiry whether a defendant has waived counsel knowingly and intelligently.'" DuBois, 189 N.J. at 473 (quoting Crisafi, 128 N.J. at 512). "In the exceptional case, if the record indicates that the defendant actually understood the risks of proceeding pro se, a waiver may suffice." Crisafi, 128 N.J. at 513. "This limited exception, when the absence of a searching inquiry will not undermine the waiver of counsel, applies only in rare cases." Ibid. We hold this limited exception applies equally in termination of parental rights and abuse and neglect proceedings.

However, this is not such an exceptional case. See State v. Blazas, 432 N.J. Super. 326, 338-39 (App. Div. 2013). There is no indication Mother was an experienced litigant who actually

[6] Whether Mother had waived her right to counsel is a separate issue from whether she had waived her right to be present by failing to appear for the fact-finding hearing. Nonetheless, we acknowledge "that the deficiencies in the manner in which the trial court handled [this issue] are undoubtedly due, in some measure, to the way in which defendant presented the issue" by failing to appear at the beginning of the hearing when the trial judge might have questioned her directly. See King, 210 N.J. at 20.

understood the risks of proceeding pro se. Cf. Crisafi, 128 N.J. at 513-16; DuBois, 189 N.J. at 473-74. More significantly, it is ambiguous whether Mother actually elected to proceed pro se or simply wanted different counsel. Thus, we must conclude the motion and trial judges abused their "discretion in finding that defendant knowingly and intelligently waived [her] right to counsel." DuBois, 189 N.J. at 475.

We vacate and remand for a new fact-finding hearing at which Mother has an opportunity to be represented by counsel. We do not reach the merits of the family court's finding of abuse and neglect.

Vacated and remanded. We do not retain jurisdiction.