

RECORD IMPOUNDED

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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-2041-16T4

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

H.W.P., Jr.,¹

Defendant-Appellant,

and

S.A.,

Defendant.

In the Matter of
H.W.P., III, S.P.,
T.P., and M.P.,

Minors.

Submitted March 21, 2018 – Decided April 9, 2018

Before Judges Fuentes and Koblitz.

¹ We use initials and pseudonyms to identify the parties to preserve the confidentiality of these proceedings. R. 1:38-3(d)(12).

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Morris County,
Docket No. FN-14-0045-15.

Joseph E. Krakora, Public Defender, attorney
for appellant (Marina Ginzburg, Designated
Counsel, on the brief).

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Joseph E. Krakora, Public Defender, Law
Guardian, attorney for minor H.W.P. III (Maria
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Joseph E. Krakora, Public Defender, Law
Guardian, attorney for minors S.P., M.P., and
T.P. (David Ben Valentin, Assistant Deputy
Public Defender, on the brief).

PER CURIAM

Defendant H.W.P., Jr., (father) and S.A. (mother) are the biological parents of four children: Julius, born in 1998; Sam, born in 2006; Maria, born in 2008; and Tommy, born in 2010. Defendant appeals from the judgment of the Family Part that found he committed acts of child abuse and neglect under N.J.S.A. 9:6-8.21(c)(4) by inflicting physical and emotional harm on his children in the form of excessive corporal punishment. In this appeal, defendant argues the court erred in reaching this

conclusion because the evidence does not support he abused his children.² We reject these arguments and affirm.

I

On November 3, 2014, the Division of Child Protection and Permanency (Division) filed a Title 9 abuse and neglect verified complaint and order to show cause against the father of these children. The Division alleged defendant used excessive corporal punishment as a form of parental discipline. The Division claimed defendant was especially abusive to Julius, who was sixteen years old at the time. The Division sought legal and physical custody of all four children and a court order restraining defendant from having any contact with Julius.

Before issuing any relief, the court conducted a plenary hearing at which defendant was "provisionally" represented by counsel from the Public Defender's Office. The children were represented by a staff attorney from the Office of the Law Guardian. S.A. appeared pro se.³ The trial court instructed her to complete an application to determine her eligibility to be represented by the Public Defender's Office.

² S.A. did not appeal the Family Part's decision.

³ The Deputy Attorney General (DAG) representing the Division made clear to the court that the Division "isn't concerned about the care that [S.A.] provides the children."

Division investigative worker Jessica Fox testified that she became involved with this family on September 25, 2014, when then eight-year-old Sam told his teacher he wanted to live with President Obama. According to the Screening Summary Fox filed, the child told the teacher: "You just don't know how horrible my life is. My father beats me and my mom pulls my ear." Fox testified that she visited the family home, met with defendant, and "the three youngest children." Fox stated she had "some concerns based on what the eldest child [Julius] had talked about and concerns that [S.A.] had brought to me regarding the verbal abuse"

The reports Fox filed on September 26, 2014 describe in detail the physical violence defendant inflicted on the children as a form of "discipline," as well as the resulting marital strife this caused between defendant and S.A. According to Fox, S.A. claimed that she and defendant fought "on a regular basis mostly over [Julius]." At this point, S.A. began to cry and told Fox that she felt "stuck and wish[ed] she had more help."

Defendant's reaction to Julius being involved in an accident with the family car on August 22, 2014 was an issue of particular concern to the Division. In response to the judge's questions, defendant admitted he disciplined Julius when he arrived home. Defendant testified that he ordered the boy to remove his pants

and football padding, and struck him with a belt "more than ten times" while the child was wearing only his boxer shorts. When asked to demonstrate which part of the belt he used to strike the boy, defendant stood up from the witness chair and removed his belt. The judge then stated: "Let the record reflect that the defendant has folded the belt over in two. He's holding it by the end of the belt buckle and having a double strap."

In response to his attorney's question, defendant clarified that he struck his son with the "non[-]buckle part" of the belt. When asked whether Julius was crying, defendant responded: "Nah. He don't cry . . . He just was like why don't you just leave me alone. That's what he said." Defendant also testified that he weighed approximately 250 pounds and engaged in boxing as a recreational sport. At the conclusion of this preliminary evidentiary hearing, the judge reviewed the evidence presented and reaffirmed that the Division had the burden of proving, by a preponderance of the evidence, that the preliminary relief requested was factually and legally warranted.

The judge noted that the Legislature has defined "child abuse" to include "unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment[.]" N.J.S.A. 9:6-8.21(c)(4). The judge then addressed defendant as follows:

I'm looking at your face. You've got this disbelief on your face, Mr. [P.]. I grew up with the belt. You grew up with the belt. It doesn't make it right. The belt is not allowed. It's just not. Remove it from your parenting toolbox because it's not the way to raise children.

It's been proven over and over again that excessive corporal punishment does nothing but raise children who beat their kids. And . . . that's not going to be allowed.

So multiple strikes with a belt is a problem. And here you've admitted that you don't even know how many times you hit him.

And what's important between physical discipline and excessive corporal punishment is whether you act in anger when you apply the physical discipline.

It's one [thing] to say I have a graduated system of physical discipline, first I take things away and then . . . I give them timeouts and finally I give them five strikes with a belt. That's something that's controlled in your mind. When you're angry and you hit a child in anger that's excessive corporal punishment.

So I find that there is enough here, including what's set [forth] in the verified complaint - - [defendant] admitted that he and [S.A.] both believe in physical discipline[.]

He stated to Ms. Fox on September 26th, "I am old school and I do believe in physical discipline." [Defendant] also said, "the way I was raised we got beaten."

Ms. Fox advised [defendant] of various studies that found that physical discipline was not only ineffective but also could have lasting negative impacts to children, including

learning disabilities, anxiety and depression, low self-esteem, and violent behavior.

[Defendant] expressed skepticism of this and said he would continue to use physical punishment when he felt it was necessary.

The judge's detailed findings continued from this point to cover eighteen additional transcribed pages. The judge further found that defendant had "a very rigid mind set with respect to parenting." He believed Julius was "very manipulative." The judge expressly noted that defendant never spoke about what was in the best interest of his son. The judge concluded that defendant would benefit from parenting classes. Defense counsel objected to the Division's request that defendant be restrained from having any contacts with the children, noting that S.A. had voluntarily left the marital residence.

The judge found it was in the best interest of the children to return to the marital residence and attend their local school. The court restrained defendant from returning to the marital residence and from having any contacts with S.A. or the children. The judge found credible and reasonable S.A.'s "increasing concern . . . as to the way that [defendant] was acting with respect to [Julius] and with respect to the children."

II

The Division referred the family to the Center for Evaluation and Counseling (CEC). As described in the CEC's December 19, 2014 report: "At issue in this assessment was whether or not [Julius] had been impacted by [defendant's] alleged physical and verbal abuse and whether or not the other children were impacted by [defendant's] behavior towards [Julius]." The assessments and conclusions reached in the report were performed by Stephanie Kurilla, a Licensed Associate Counselor, and Maria V. Mendoza, a Licensed Clinical Social Worker.

Kurilla evaluated the mother S.A. According to Kullia, S.A. characterized her interactions with defendant after Julius's accident with the family van as extremely stressful and emotionally debilitating. She claimed defendant was unwilling to appreciate how his behavior had negatively affected the entire family. Kurilla noted the following comments S.A. made that reflect how the home environment had deteriorated:

The past couple of months, I can't sleep. I'm stressed. (She was) walking through the house on eggshells. He would not speak to my son [Julius] since August 2014, when he crashed the van. Here I am having to do everything and he won't pay for anything, or do anything that has to do with my son. It's just not fair. [Defendant] does not see. He is still blaming me and my son [Julius], and I try to tell him. "Why won't you see it?"

Kurilla also interviewed and assessed Julius. He told her that after the accident with the van, defendant began "hitting him in the face in front" of his football coach. On the way home, defendant continued to reach across and hit him in front of his classmates and threatened him by saying: "I'm going to beat your ass[.]"

The Family Part lost jurisdiction over Julius after he reached the age of majority before the start of the two-day fact-finding hearing.⁴ The Division called two witnesses at the fact-finding hearing, Kurilla and Division permanency caseworker Fadia Ferguson, who testified about the events that triggered the Division's involvement with this family. The judge admitted Kurilla as an expert witness in the fields of "forensic assessment and child abuse and neglect." Kurilla described her interactions with the parents and the children as reflected in the psychological assessment report she coauthored with her colleague, Licensed Clinical Social Worker Maria Mendoza.

Kurilla described her interview with Julius concerning defendant's use of physical punishment as a means of discipline. She also described the emotional trauma Julius experienced when

⁴ N.J.S.A. 9:6-8.21(c) defines an "abused or neglected child" as "a child less than 18 years of age[.]"

defendant would refer to him and his mother using vulgar and demeaning language.

He said . . . his father called him a piece of shit, worthless, would . . . call people and say the same things. He said he also would hear his father use the same words when speaking to his mother and then he said he says the same things to me now. So, worthless, piece of shit, ongoing. At one point he said . . . mistake, that he called him a mistake[.]

According to Kurilla, Julius "felt a lot better" since he is no longer residing with defendant. Not having any contacts with his father had had "a positive impact on him[.]" Julius emphasized to Kurilla that "he would prefer to have no contact with [defendant] . . . until the end of my days on this world." The Division requested Kurilla and Mendoza to determine whether Julius had been "emotionally abused" by defendant. Kurilla testified that the definition of "psychological maltreatment" involves "a pattern of parenting or extreme incidents where the child is made to feel worthless, unloved, not valued or endangered." Based on the evidence she had reviewed, Kurilla opined that "this was an emotionally abusive situation."

Defendant testified in his own defense. He made clear that he believed in corporal punishment as a proper method for disciplining his children. He also admitted that he intentionally refused to have any contact with Julius after the van accident.

This included not responding to a text message Julius sent him six days after the accident. When asked whether he ever called Julius "retarded," defendant responded: "I'm trying to remember what context because I might have said, that's retarded shit right there, something like that, but don't [necessarily] remember this context." Defendant also admitted that he called Julius "a piece of shit" while defendant was speaking on the phone with his cousin. When the judge asked defendant why he believed that his wife also endorses corporal punishment as a form of parental discipline, defendant responded: "You know what? I can't remember everything that we've talked about in the 20 plus years."

The judge placed her factual findings on the record on June 25, 2015. She comprehensively reviewed the evidence the Division presented and found defendant had physically and emotionally abused Julius in the form of excessive corporal punishment. The judge specifically cited the van accident incident as an example of this pattern of parental discipline.

[Julius] reported to [Division caseworker Cardillo] that during the van accident his father pulled him out of the car and hit him in the face in the parking lot in front of many people. He was threatened with a beating the entire ride home, which lasted about 20 minutes. When he got home, his father hit him with a belt on his bare skin countless times. He stated he was . . . "beat," . . . until his mother came home, for approximately 25 to 30 minutes. [Julius] stated that the verbal

abuse hurt more because it was every day. "The pain of the verbal abuse does not go away."

The judge also found that S.A. and the other children corroborated Julius's account of how his father treated him.

The Judge found defendant's demeanor as a witness indicated that he was "easily frustrated" and needed to be "in control." She noted defendant "had to be redirected several times to respond to the question that was asked." Defendant did not display any sense of regret or contrition. Indeed, "he felt justified in his reactions due to the poor behavior of [Julius]."

Applying the standard adopted by the Supreme Court in G.S. v. Div. of Youth and Family Servs., 157 N.J. 161, 178 (1998), the judge found defendant willfully and with the knowledge that injury was likely to or probably would result, repeatedly struck his then sixteen-year-old son with a belt. The judge concluded this form of corporal punishment as a means of discipline constituted child abuse within the meaning of N.J.S.A. 9:6-8.21(c)(4).

Citing this court's decision in Div. of Youth and Family Servs. v. I.H.C., 415 N.J. Super. 551 (App. Div. 2010), the judge found that defendant's parenting approach also placed the other younger children in physical and emotional danger. The judge quoted this court's holding in I.H.C., that "the risk, or pre-disposition, that a defendant may harm the children is expressly

admissible in an abuse or neglect case despite the general evidentiary prohibition contained in N.J.R.E. 404(b)." Id. at 575-76. Thus, the judge found she was not required to wait until one of the other children was actually harmed by defendant before taking preemptive action. In re Guardianship of Dmh, 161 N.J. 365, 383 (1999).


III

Defendant argues the Division did not present sufficient evidence to support the Family Part's finding that he abused and neglected his children under N.J.S.A. 9:6-8.21(c)(4). Defendant also contends the judge's factual findings are not corroborated. This court's review of a trial court's fact finding is limited. N.J. Div. of Child Prot. & Permanency v. K.F., 444 N.J. Super. 191, 200 (App. Div. 2016). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). We are bound to defer to the "factual findings and legal conclusions of the trial judge unless . . . convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Rova Farms Resort v. Investors Ins. Co., 65 N.J. 474, 484 (1974)).

Against this standard of review, defendant's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). As the Supreme Court has noted, "[a]buse and neglect cases are generally fact sensitive. Each case requires careful, individual scrutiny." N.J. Div. of Youth and Family Servs. v. P.W.R., 205 N.J. 17, 33 (2011). We are satisfied the trial judge correctly found that beating a sixteen-year-old boy with a belt on his bare skin for a period of over twenty minutes constitutes excessive corporal punishment. Cf. Dep't of Children & Families, Div. of Youth & Family Servs. v. K.A., 413 N.J. Super. 504, 511-12 (App. Div. 2010). The record developed before the Family Part indisputably showed that defendant's disciplinary methods were not only physically abusive but also emotionally cruel. The expert testimony supports the judge's finding that defendant's verbal interactions with his oldest son was particularly cruel and emotionally traumatic. This conduct falls within the definition of child abuse under N.J.A.C. 3A:10-2.2(a)(12) as "Mental or emotional impairment." See also K.A., 413 N.J. Super. at 511.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION