SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2564-15T1

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

J.D.,

Defendant-Appellant.

IN THE MATTER OF D.D., N.D., I.D., and A.D., minors.

Submitted October 23, 2017 – Decided April 27, 2018

Before Judges O'Connor and Vernoia.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FN-20-0086-13.

Joseph E. Krakora, Public Defender, attorney for appellant (Marcia K. Werner, Designated Counsel, on the briefs).

Christopher S. Porrino, Attorney General, attorney for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Sharon A. Walli, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Lisa M. Black, Designated Counsel, on the brief).

PER CURIAM

In this appeal, we consider whether there was sufficient credible evidence supporting a Family Part order finding defendant, J.D., abused or neglected his three children, D.D. (Dennis),[1] born in March 2001, I.D. (Ida), born in July 2002, and N.D. (Nancy), born in January 2008, "by beating them with a belt, hand, [and] twig and by punching [Dennis] in the chest." Because we conclude there was sufficient credible evidence supporting the court's factual findings and determination, we affirm.

I.

Defendant and V.D. are the biological parents of the three children.[2] The Division of Child Protection and Permanency[3] (Division) first became involved with V.D., defendant and their children in response to a 2007 referral. During the following five years, the Division responded to five additional referrals,

[1] We employ initials and pseudonyms to protect the privacy of the parties and children.

[2] In 2012, V.D. gave birth to the couple's fourth child, A.D. (Alice). No finding of abuse or neglect was made as to Alice.

[3] At the time the Division first became involved with the children, it was known as the Division of Youth and Family Services (DYFS). Pursuant to L. 2012, c. 16, effective June 29, 2012, DYFS was renamed the Division of Child Protection and Permanency.

all of which were determined to be unfounded. The Division, however, continued to provide services to the family during that period.

On Tuesday, December 18, 2012, the Division received its seventh referral, alleging the children showed signs of physical abuse by defendant. The referent acknowledged a lack of personal knowledge concerning the alleged abuse, but reported that Ida had welts on her back two days earlier. The referent suspected defendant had hit the child. The referent also explained that two days earlier Dennis said he suffered stomach pains because defendant punched him in the chest and stomach.

A Division caseworker responded to the referral. According to the caseworker's testimony at the fact-finding hearing and her report that was admitted in evidence, on December 18, 2012, she interviewed Ida at the child's school. Ida reported that following Superstorm Sandy on October 29, 2012, defendant returned to live at the home Ida shared with V.D., Dennis and Nancy.[4]

Ida explained that after defendant's return to the home, he and V.D. argued, but not as badly as they had in the past. She recalled that thirteen months earlier in November 2011, she saw

[4] There was evidence presented at the fact-finding hearing that V.D. obtained a domestic violence restraining order against defendant in July 2012, that she withdrew in October 2012.

V.D. on the floor of V.D.'s bedroom. According to Ida, V.D.'s face was red, as if she had been hit by defendant.

Ida told the caseworker the children were disciplined by V.D. and defendant, and defendant "pretty much tortured her and [her] brother [Dennis]," by "beat[ing] them with a belt, sometimes with [an open] hand and a twig from the back yard." Ida explained that defendant hit them "for some things that [she] and [Dennis] did and then sometimes it would be for no reason at all." She said Nancy "will get hit but not that often." Ida said defendant "hit" her during the prior week, and denied she had any marks on her body. Ida told her grandmother that defendant and V.D. hit her, and defendant said she would "get the butt whooping of [her] life" if she told "what's going on in this house."

Ida reported that in November 2012, V.D. hit her in the face while defendant grabbed her by the collar. V.D. then apologized for hitting her. Ida advised the caseworker she is afraid of her parents, but is more afraid of defendant because he "hits harder than mom." Ida said she wanted her parents "to stop hitting us." Prior to completing Ida's interview, the caseworker determined Ida did not have any visible bruises or other signs of injury.

Following Ida's interview, the caseworker went to the family's home and interviewed Dennis and Nancy. Dennis recalled defendant returned to the home following what Dennis described as

the "hurricane." He said both parents disciplined him, but it was "mostly" defendant. Dennis reported that during the previous weekend, defendant "hit [him] hard in the chest and light on [his] stomach." Dennis said he did not have any marks as a result of being hit, but "it really hurt[] him over the weekend" and "he's afraid of" defendant. The caseworker examined Dennis, but did not find any bruises or other visible signs of injury.

Four-year-old Nancy told the caseworker that defendant sleeps in the home and both V.D. and defendant disciplined her. Nancy explained she "get[s] a whooping" by V.D. and defendant when she gets in trouble. She reported V.D. and defendant "will hit her on her arm or on the hand with their hand or a belt." Nancy also said she saw Dennis and Ida get hit by V.D. and defendant, but she did not provide any further details. The caseworker checked Nancy for marks and bruises, but did not find any.

The caseworker also interviewed V.D. on December 18, 2012. V.D. denied that defendant lived at the home and that she or defendant hit their children.

The following day, the caseworker returned to the home to complete a safety protection plan. V.D. initially denied the caseworker entry into the home, but relented after the caseworker said she would call the police. Defendant was present in the home

and told the caseworker he did not hit the children. He explained that he and V.D. disciplined the children by speaking with them.

On January 3, 2013, the Division filed a complaint seeking the care and supervision of the children. The court granted the request, and barred defendant's return to the home pending further court order. At a subsequent hearing, the court continued the Division's care and supervision of the children, ordered that V.D. and defendant undergo psychological and substance abuse evaluations, permitted defendant weekly, supervised visitation, and ordered services for the children.

Following a series of compliance reviews, on October 21, 2013, the court held a fact-finding hearing. V.D. stipulated to a finding of abuse or neglect based on her failure to address issues related to the care of Dennis and Ida.[5] The hearing continued on the Division's complaint against defendant, with the Division presenting the caseworker as its only witness.

At the conclusion of the testimony, defense counsel argued the Division failed to sustain its burden of proving abuse or neglect by a preponderance of the evidence. Counsel cited the caseworker's testimony that the Division's substantiation of abuse

[5] The court accepted the stipulation and determined V.D. abused or neglected Dennis and Ida by failing to change their bed linen following instances of bed-wetting and sending them to school "dirty and smelling of urine."

or neglect against defendant was based solely on the children's statements, argued none of the children's statements were corroborated by independent evidence, and asserted N.J.S.A. 9:6-8.46(a)(4) barred the court's reliance on the statements to support an abuse or neglect finding. Counsel also claimed the children's statements, even if properly corroborated under N.J.S.A. 9:6-8.46(a)(4), were insufficient to support an abuse or neglect finding.

In its subsequent oral decision, the court reasoned that the children's separate statements corroborated each other and thus supported an abuse or neglect finding under N.J.S.A. 9:6-8.46(a)(4). The court found the evidence showed defendant used excessive corporal punishment by hitting the children with different implements, including his hand, a twig and a belt, and by punching Dennis in the chest. The court found V.D. and defendant's statements denying they hit the children were not credible. The court determined defendant's use of excessive corporal punishment placed the children in imminent risk of harm, and entered an order finding defendant abused or neglected Dennis, Ida and Nancy.

Over the next two years, the court conducted seven compliance reviews. On January 13, 2016, the court entered an order terminating the litigation. The order stated defendant did not

comply with Division services, and directed that his visitation with the children must be supervised by V.D. The court barred defendant from residing with V.D. until he provided the Division with proof he completed a substance abuse treatment program. This appeal followed.

Defendant presents the following arguments for our consideration:

> POINT I
>
> THE DIVISION FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT J.D. PHYSICALLY ABUSED [DENNIS, IDA AND NANCY] BY INFLICTING EXCESSIVE CORPORAL PUNISHMENT UPON THEM. THE TRIAL COURT'S FINDING OF ABUSE AGAINST J.D. WAS NOT SUPPORTED BY THE EVIDENCE IN THE RECORD.
>
> A. THERE WAS INSUFFICIENT EVIDENCE PRESENTED TO SATISFY TITLE 9'S "GROSS NEGLIGENCE" STANDARD.
>
> B. THERE WAS INSUFFICIENT EVIDENCE TO ESTABLISH THAT J.D. INFLICTED "EXCESSIVE CORPORAL PUNISHMENT" UPON [DENNIS, IDA OR NANCY].
>
> POINT II
>
> THE OUT-OF-COURT STATEMENTS OF [DENNIS, IDA AND NANCY] DO NOT CONSTITUTE CORROBORATIVE EVIDENCE AND ARE, THEREFORE, INSUFFICIENT TO SUPPORT A FINDING OF ABUSE AGAINST J.D.

II.

Well-established principles guide our review of a trial court's finding of abuse or neglect. "[W]e accord substantial

deference and defer to the factual findings of the Family Part if they are sustained by 'adequate, substantial, and credible evidence' in the record." N.J. Div. of Child Prot. & Permanency v. N.B., 452 N.J. Super. 513, 521 (App. Div. 2017) (quoting N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014)). "Indeed, we recognize that '[b]ecause of the family courts' special jurisdiction and expertise in family matters, [we] should accord deference to family court factfinding.'" N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 343 (2010) (alteration in original) (citation omitted). However, "if the trial court's conclusions are 'clearly mistaken or wide of the mark[,]' an appellate court must intervene to ensure the fairness of the proceeding." N.J. Div. of Youth & Family Servs. v. L.L., 201 N.J. 210, 227 (2010) (alteration in original) (quoting N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008)).

A "trial judge's findings are not entitled to [the] same degree of deference if they are based upon a misunderstanding of the applicable legal principles." N.J. Div. of Youth & Family Servs. v. Z.P.R., 351 N.J. Super. 427, 434 (App. Div. 2002) (citing Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). We owe no deference to the trial court's legal conclusions, which we review de novo. State v. Smith, 212 N.J. 365, 387 (2012) (citations omitted).

"The Division bears the burden of proof at a fact-finding hearing and must prove . . . harm . . . by a preponderance of the evidence." N.J. Dep't of Children & Families, Div. of Youth & Family Servs. v. A.L., 213 N.J. 1, 22 (2013). The Division must sustain that burden through the admission of "competent, material and relevant evidence." N.J.S.A. 9:6-8.46(b); N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 32 (2001); see also N.J. Div. of Youth & Family Servs. v. L.A., 357 N.J. Super. 155, 166 (App. Div. 2003) ("[I]t is paramount that any finding [of abuse or neglect] must be based on competent reliable evidence.").

Here, the Division's evidence concerning defendant's alleged abuse or neglect consists of the children's statements to the caseworker. The court relied upon the children's statements as the basis for its abuse or neglect finding. Defendant argues, however, the children's separate statements could not properly corroborate each other, and therefore there was insufficient evidence supporting the court's abuse or neglect finding. See N.J.S.A. 9:6-8.46(a)(4). We disagree.

"In matters involving the alleged abuse and neglect of children, the New Jersey Rules of Evidence are supplemented by statute and court rule." L.A., 357 N.J. Super. at 166. N.J.S.A. 9:6-8.46(a)(4) provides that when the Division alleges abuse and neglect of a child, "previous statements made by the child relating

to any allegations of abuse or neglect shall be admissible in evidence; provided, however, that no such statement, if uncorroborated, shall be sufficient to make a fact finding of abuse or neglect."

To establish corroboration of a child's statement under N.J.S.A. 9:6-8.46(a)(4), "[s]ome direct or circumstantial evidence beyond the child's statement itself is required." N.B., 452 N.J. Super. at 522. Corroboration can be established by varied means. Z.P.R., 351 N.J. Super. at 436. "The most effective types of corroborative evidence may be eyewitness testimony, a confession, an admission or medical or scientific evidence." L.A., 357 N.J. Super. at 166. "However, corroborative evidence need not relate directly to the accused." Ibid. The "evidence 'need only provide support for the out-of-court statements.'" N.B., 452 N.J. Super. at 521 (quoting L.A., 357 N.J. Super. at 166).

Corroborative evidence that is sufficient to support a court's reliance on a child's statements for a finding of abuse or neglect may be circumstantial because there is often no direct physical or testimonial evidence to support a child's statements. See Z.P.R., 351 N.J. Super. at 436. For example, in Z.P.R., we determined that a child's age-inappropriate sexual behavior corroborated the child's statements about a parent's improper sexual conduct. Z.P.R., 351 N.J. Super. at 436. In contrast, in

N.B., we found insufficient evidence of corroboration, in part because a psychologist's report stating the child suffered from post-traumatic stress disorder as a result of the alleged abuse or neglect constituted inadmissible hearsay under N.J.R.E. 808. 452 N.J. Super. at 523-26.

Applying these principles, we are convinced the trial court correctly determined the three children's separate statements provided sufficient corroboration of each other to support the court's finding of abuse or neglect under N.J.S.A. 9:6-8.46(a)(4). The record supports the court's determination. Ida said defendant punched[6] Dennis in the chest during the weekend preceding the December 18, 2012 referral, and Dennis independently reported defendant hit him in the chest "hard" during the weekend. Similarly, Ida and Dennis separately reported V.D. and defendant both physically disciplined them. Dennis stated he was mostly afraid of defendant, and Ida said she feared defendant more than V.D., because defendant hit harder. In addition, Ida reported defendant hit the children with his hand, a belt and a twig, and

[6] Defendant argues the caseworker's testimony that Ida said defendant punched Dennis is not credible because the caseworker's report indicates Ida said defendant "hit" Dennis. The court found the caseworker's testimony credible and we defer to the court's credibility findings because "it has a 'feel of the case' that can never be realized by a review of the cold record." E.P., 196 N.J. at 104. We therefore accept the court's finding that Ida reported defendant punched Dennis in the chest.

four-year-old Nancy told the caseworker defendant struck the children with his hand and a belt.

We are not persuaded by defendant's contention there was insufficient corroboration because not every fact related by each child was directly corroborated by the others. "The case law does not require that the evidence be specific before it can be deemed corroborative of [a] child's out-of-court statements." Z.P.R., 351 N.J. Super. at 435. There must only be some evidence beyond the solitary assertion of a child. See N.B., 452 N.J. Super. at 522.

We also reject defendant's contention the children's statements were insufficient as a matter of law to provide sufficient corroboration under N.J.S.A. 9:6-8.46(a)(4). Defendant offers no reasoned basis that the consistent admissible statements of three children describing the same acts of abuse or neglect do not provide the corroboration required under N.J.S.A. 9:6-8.46(a)(4). The statute supplemented the New Jersey Rules of Evidence by rendering admissible "previous statements made by [a] child relating to any allegation of abuse or neglect." L.A., 357 N.J. Super. at 166; see also N.J. Div. Of Child Prot. & Perm. v. J.A., 436 N.J. Super. 61, 66-67 (App. Div. 2014) (finding uncorroborated statements of a child are admissible under N.J.S.A.

9:6-8.46(a)(4)). Thus, each child's statement constituted admissible evidence corroborating what the other children said.

We are mindful that we "must protect against conflating a statement's reliability with corroboration," and N.J.S.A. 9:6-8.46(a)(4) requires "independent evidence of corroboration" to support a finding of abuse or neglect. N.B., 452 N.J. Super. at 522. The statements of the three children are sufficiently reliable to be deemed admissible evidence under N.J.S.A. 9:6-8.46(a)(4). Moreover, under the circumstances presented, each child's statement provides independent, direct and admissible evidence supporting the allegations of abuse or neglect made by the others. See N.B., 452 N.J. Super. at 522 (requiring direct or circumstantial evidence supporting the child's out-of-court statement for corroboration under N.J.S.A. 9:6-8.46(a)(4)); L.A., 357 N.J. Super. at 166 (finding corroboration under N.J.S.A. 9:6-8.46(a)(4) requires only evidence supporting a child's out-of-court statements).

This is not a case where the court relied on the consistent statements of a single child to support a finding of abuse or neglect. Consistency of the statements of a child alone does not constitute corroboration under N.J.S.A. 9:6-8.46(a)(4). N.B., 452 N.J. Super. at 523. There must be "independent evidence of corroboration . . . in order to find abuse or neglect." Id. at

522. Here, the separate admissible statements of each of the children provided the independent corroboration required for a finding of abuse or neglect under N.J.S.A. 9:6-8.46(a)(4).[7] Cf. ibid. (finding insufficient corroboration of a child's statements describing abuse or neglect that were supported only by inadmissible reports and testimony of a psychologist).

We are also satisfied the children's statements provided sufficient credible evidence supporting the court's finding the children were abused or neglected by defendant's use of excessive corporal punishment. Defendant, however, contends that even if

[7] Defendant does not argue or rely on New Jersey Division of Child Protection & Permanency v. M.C., 435 N.J. Super. 405, 422-24 (App. Div. 2014), remanded for reconsideration on other grounds, 223 N.J. 160 (2015), where we considered, but did not decide, whether overlapping statements of children provide sufficient corroboration under N.J.S.A. 9:6-8.46(a)(4). An argument not briefed on appeal is deemed waived. Jefferson Loan Co. v. Session, 397 N.J. Super. 520, 525 n.4 (App. Div. 2008); Zavodnick v. Leven, 340 N.J. Super. 94, 103 (App. Div. 2001). In any event, for the reasons noted, we disagree with the M.C. panel's suggestion that overlapping confessions cannot provide the required corroboration. M.C., 435 N.J. Super. at 423. The panel relied on standards applicable to whether there is sufficient corroboration of a criminal defendant's confession to support a conviction. Ibid. The panel noted that, "[i]n the context of confessions, the trial court must determine 'whether there is any legal evidence, apart from the confession of facts and circumstances, from which the jury might draw an inference that the confession is trustworthy.'" Ibid. (quoting State v. Lucas, 30 N.J. 37, 62 (1959)). In our view, however, the M.C. panel did not recognize that unlike in a criminal case, the children's overlapping statements separately constituted "legal evidence" that was admissible under N.J.S.A. 9:6-8.46(a)(4), and therefore constituted the requisite corroboration under the statute.

the children's statements are accurate and accepted, the court erred in finding abuse or neglect because his conduct was not excessive and there is no evidence the children suffered any injuries. We are not persuaded.

The phrase "excessive corporal punishment" is not defined in N.J.S.A. 9:6-8.21(c)(4)(b). Dep't of Children & Family Servs., Div. of Youth & Family Servs. v. K.A., 413 N.J. Super. 504, 510 (App. Div. 2010). Excessive corporal punishment cases are fact-sensitive and "idiosyncratic." P.W.R., 205 N.J. at 33. We "ought not assume that what may be 'excessive' corporal punishment for a [] child must also constitute . . . excessive corporal punishment in another setting." Ibid. "[A] parent may inflict moderate correction such as is reasonable under the circumstances of a case," but punishment is excessive when it goes "beyond what is proper or reasonable." K.A., 413 N.J. Super. at 510-11.

N.J.A.C. 3A:10-2.2(a)[8] lists injuries and risks of harm that "may be abuse or neglect[,]" including "[s]ubstantial risk of physical injury or environment injurious to health and welfare." N.J.A.C. 3A:10-2.2(a)(8). Where the alleged abuse does not fit

[8] At the time the Family Part's order was entered, N.J.A.C. 10:129-2.2(a) listed injuries and risks of harm that may constitute abuse or neglect. Effective January 3, 2017, N.J.A.C. 10:129-2.2(a) was recodified in N.J.A.C. 3A:10-2.2. The recodification did not change the pertinent substantive provisions here. See 49 N.J.R. 98(a).

neatly into one of these categories, the determination of whether a parent's action rises to the level of abuse or neglect requires consideration of not only the nature of the child's injury, but also the circumstances surrounding the incident. K.A., 413 N.J. Super. at 512.

Defendant argues that the circumstances here are similar to those K.A. and, for that reason, the record is insufficient to support the court's abuse or neglect finding. In K.A., we found that an isolated incident with a "psychologically disruptive child, unable or unwilling to follow verbal instructions or adhere to passive means of discipline" did not constitute abuse or neglect where the parent struck the child with a closed fist and caused four small bruises on the child's shoulder. Id. at 506, 512. We determined that the "[b]ruises, although, visible, never exposed [the child] to any further harm if left untreated[,]" and the isolated incident was "not part of a pattern of punishment." Id. at 512; see also P.W.R., 205 N.J. at 36 (finding no abuse or neglect where a parent slapped a teenage child on the face as a form of punishment but did not cause any bruises or injury).

We found the reasons underlying the actions, the isolation of the incident, and the trying circumstances the defendant faced due to the child's conduct provided "the prism through which we determine whether . . . actions [are] indeed 'excessive.'" Ibid.

When a child's injuries do not constitute "per se excessive corporal punishment," a consideration of such factors is required to determine whether the defendant's actions "amount[] to excessive corporal punishment." Ibid. (alteration in original).

Here, there is no evidence defendant was confronted with disruptive children who presented trying circumstances to a parent. See ibid. Instead, the evidence shows defendant inflicted corporal punishment by various means, including the use of his hand, a twig and a belt, at times for no reason at all.

Unlike in K.A., the record here is bereft of evidence that defendant's use of his hand, a belt and twig was for the purpose of taking control of an unruly or defiant child, thus justifying the use of corporal punishment that was not deemed excessive. Defendant's striking of his three children, including a four-year old, with his hand, a belt or other implement for no reason related to justifiable discipline constitutes, by definition, excessive corporal punishment. See N.J. Div. of Youth & Family Servs. v. S.H., 439 N.J. Super. 137, 146-47 (App. Div. 2015) (finding the defendant's use of implements and infliction of corporal punishment was unjustified and excessive in response to the child's misbehavior and use of profanity). Similarly, punching his young son in the chest for no apparent reason, causing the child pain over the course of a weekend, is the paradigm of excessive corporal

punishment because there is no evidence defendant's actions were related to punishment. See K.A., 413 N.J. Super at 510-11 (finding punishment is excessive when it is "beyond" what is reasonable). Lacking any evidence showing there was a justifiable reason to employ corporal punishment in the manner and by the means the children described, and considering Ida's testimony that defendant struck the children at times for no reason at all, the record supports the court's abuse or neglect finding. See S.H., 439 N.J. Super. at 146-47 (finding abuse or neglect findings may be based in part on "the unreasonable and disproportionate parental response" to the child's action).

The evidence shows that unlike in K.A., defendant's use of corporal punishment was not an isolated incident. See K.A. 413 N.J. Super. at 513 (finding no abuse or neglect in part because the incident was "aberrational to this family"). According to Ida, defendant "beat" and "tortured" the children with the implements, and four-year-old Nancy confirmed that when defendant struck her, he used his hand and a belt. Dennis separately explained that defendant struck him with his hand, most recently during the weekend prior to the referral.

Moreover, the fortuitous circumstance that the children did not sustain physical injuries that could be observed or required medical intervention does not require a reversal of the court's

abuse or neglect finding. See, e.g., Dep't of Children & Families, Div. of Youth & Family Servs. v. C.H., 414 N.J. Super. 472, 476 (App. Div. 2010) (affirming an abuse or neglect finding where the injuries did not require any medical attention).

Defendant is also unlike the defendant in K.A. in an important respect. In K.A., the defendant "accepted full responsibility for her actions, was contrite, and complied with Division-sponsored counseling." 413 N.J. Super. at 512. Following the "isolated incident," the situation improved and there was no further need for Division involvement. Ibid. Here, defendant never took responsibility for his actions, and denied he ever struck the children. The court determined the children's statements were credible and rejected defendant's denials as not credible. In addition, the court determined that defendant had not complied with Division services and barred him from unsupervised contact with the children pending further court order.

Viewing the facts through the prism of factors we established in K.A., it is clear the court correctly concluded defendant abused or neglected the children by imposing excessive corporal punishment. See K.A., 413 N.J. Super. at 512. There is no evidence there were justifiable reasons underlying defendant's actions, defendant's use of excessive corporal punishment was not isolated, and there are no circumstances supporting defendant's

use of the various implements to impose the level of corporal punishment defendant employed here. Punishment is excessive if a parent's intentional act exposes a child to "the substantial probability that injury would result from [the parent's] conduct." M.C. III, 201 N.J. at 345. As the court correctly determined, defendant's use of excessive corporal punishment exposed the children to a substantial probability the children would face injury.

Affirmed.