

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3121-16T4

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

J.J.,

Defendant,

and

J.L.,

Defendant-Appellant.

IN THE MATTER OF A.R.J. and J.L.,

Minors.

Submitted March 12, 2018 – Decided March 26, 2018

Before Judges Sabatino and Rose.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Mercer County,
Docket No. FN-11-0161-15.

Joseph E. Krakora, Public Defender, attorney
for appellant (Marc R. Ruby, Designated
Counsel, on the brief).

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

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

PER CURIAM

After a Title Nine fact-finding hearing, a Family Part judge found that defendant J.L. abused his five-year-old and one-year-old daughters by engaging in acts of physical and sexual abuse against the children's mother in their presence; physical and sexual abuse of the older child; and non-sexual abuse of the younger child.

Defendant now appeals, claiming trial error and that the proofs of the Division of Child Protection and Permanency were insufficient to meet the statutory criteria for abuse and neglect. We affirm, substantially for the sound reasons detailed in Judge Craig L. Corson's twenty-four-page written opinion dated January 11, 2017.

Defendant J.L. is the biological father of A.R.J. ("Anna"), born in November 2009, and J.L. ("Jane"), born in September 2013.¹ The children's biological mother is J.J. At the times relevant

¹ To protect the minors' privacy, we use initials and fictitious names for them and their parents.

to this matter, the parents and children were living in the same household after defendant's release from prison.

The events that precipitated this litigation emanated from a second referral of potential abuse or neglect to the Division by the children's maternal grandmother in March 2015. An earlier referral by the grandmother, alleging defendant was neglecting his daughter Anna's needs, was deemed unfounded after a Division investigation.

In her second referral, the grandmother reported to the Division that she and her husband were being denied court-ordered visitation with Anna and Jane. She also expressed concerns about the children's mother J.J. "drastically losing weight," and having bruises on and around her neck. Additionally, Anna had been absent from school "for at least two consecutive weeks."

The Division dispatched its Special Response Unit ("SPRU") to the family's apartment in response to the second referral. SPRU workers inquired about Anna's absence from school. J.J. initially claimed that Anna had been absent from school for two weeks due to a stomach virus. The SPRU workers asked J.J. about "several old and deep scratches" on her neck, as well as darkness under her left eye. J.J. brushed off those queries, claiming at the time the marks were "self-inflicted wounds, and old hickey marks."

Further investigation by the Division revealed more troubling information. The investigation showed that defendant would repeatedly confine J.J. and the children in one room, where at times the children would witness him acting violently toward J.J., striking her and forcing her to have sex. Anna, who was then five years old, reported defendant had struck her and sexually assaulted her. Testing ultimately revealed that Anna had contracted a sexually transmitted disease ("STD"). Anna also exhibited an eye injury consistent with her being struck, and she experienced bouts of urinary incontinence.

Based on its investigation, the Division concluded the allegations of neglect, substantial risk of physical injury, and an environment injurious to the health and welfare of the children were all established as to defendant. The Division did not establish, however, any abuse or neglect committed by the children's mother, J.J.

The Division filed a complaint in the Family Part for care and supervision of the children. Meanwhile, defendant was imprisoned for violating parole. The Family Part granted physical custody of Anna and Jane to J.J., with care and supervision remaining with the Division. The court further ordered defendant to have no contact with the children or their mother.

Thereafter, J.J. voluntarily stipulated that she, Anna, and Jane were all in need of services from the Division in order to provide for the children's health and safety. The court continued its no-contact order in light of defendant's upcoming prison release.

In April 2016, Judge Corson conducted a fact-finding hearing pursuant to N.J.S.A. 9:6-8.50. During the Division's case, the judge heard factual testimony from J.J. and expert testimony from a physician who had examined Anna, Dr. Gladibel Medina. The judge found the testimony of J.J. to be "highly credible." In particular, the judge noted:

[J.J.] testified that the physical abuse began when she became pregnant with her second child, [Jane]. [J.J.] testified that [defendant] repeatedly punched her in the face, pulled her hair, kicked and punched her in the stomach, and did so in the presence of their children. [Anna] herself would reveal to Division workers that her Mother had stayed home from church because she was not feeling well, and that her Mother was unable to open her eyes over the previous weekend. . . . The child's observations would be confirmed by the [c]aseworker who would meet with [J.J.] after being advised by [Anna] of her condition. As to the explanations for her physical appearance at the time, [J.J.] . . . testif[ied] at trial that she frequently, and openly, lied in order to cover the physical abuse being perpetrated upon her by [defendant].

The judge also credited Dr. Medina's expert opinions, including her unrebutted findings that Anna had suffered emotional trauma consistent with her allegations about her father's abusive and assaultive conduct.

The children did not testify at the hearing, but the judge did consider statements Anna had made to others, including Dr. Medina and Division workers. Defendant did not call any witnesses or testify in his own behalf.

In his comprehensive written opinion, Judge Corson concluded:

[Defendant's] physical abuse of his daughter constitutes a wanton and willful act contrary to the physical and mental well-being of his children. [Defendant] is found to have unreasonably inflicted, and/or allowed to be inflicted, harm upon his child[ren] when he repeatedly hit his daughters in an unacceptable manner. Likewise, [defendant] is found to [have] unreasonably inflicted direct harm to [Anna] when he sexually abused her, causing not only physical and emotional trauma, but also giving her an incurable lifelong illness that will likely cause her not only emotional distress, but great pain and discomfort.

On appeal, defendant argues there was insufficient evidence of any adverse psychological effects upon the children from witnessing alleged domestic violence upon their mother. In addition, he argues the Division's proofs were inadequate to establish that he sexually or physically abused Anna. In particular, he contends the positive STD test results supplied to

the judge were not reliable corroboration of Anna's hearsay allegations. He argues those test results were not formally admitted into evidence, were based on a sample that was near the end of its "shelf life," and that Anna could have been infected by some other source after her contact with him. Defendant further insists there was insufficient corroboration of any physical abuse inflicted upon Anna.

Our scope of review of the Family Part's fact-finding in Title Nine cases is narrow. We accord substantial deference on appeal to the judge's factual findings if they are sustained by "adequate, substantial, and credible evidence." N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014). With respect to evidentiary rulings, we similarly give "considerable latitude to a trial court in determining whether to admit evidence," and generally "that determination will be reversed only if it constitutes an abuse of discretion." N.J. Div. of Child Prot. & Permanency v. N.T., 445 N.J. Super. 478, 492 (App. Div. 2016) (quoting State v. Kuropchak, 221 N.J. 368, 385 (2015)). Applying these well-established standards of review, we readily affirm Judge Corson's thoughtful and amply supported findings.

Although Anna did not testify at the hearing and her younger sister was only a year old at the time of the events, the Division's un rebutted proofs were more than sufficient to support the court's

conclusion that defendant had committed multiple acts of abuse and neglect with respect to the children. The mother's narrative testimony, although it departed from her initial denials of abuse within the household, persuasively detailed defendant's pattern of aggressive behavior. Given the proof that defendant forced the children to be present in the same room while he attacked their mother, there is easily a circumstantial basis that their witnessing such violence would be traumatic.

We are mindful of defendant's citation to our opinion in N.J. Div. of Youth & Family Servs. v. S.S., 372 N.J. Super. 13, 25-26 (App. Div. 2004), holding that trial courts should not automatically assume children are negatively affected by witnessing domestic violence. However, this case does not involve a situation in which the domestic violence could have occurred in the home without the children realistically being aware of it and affected by it.

Indeed, Dr. Medina's expert medical testimony evidences the residual harm to the children caused by their exposure to these violent acts. As the doctor explained, Anna's exposure to the domestic violence in her home likely caused her to act out in defiance. In describing her experiences to Dr. Medina, Anna told her that defendant was in jail because he did "bad stuff" to Anna, Jane, and J.J. As a result, Dr. Medina opined, Anna exhibited

urinary incontinence and wetting incidents on a daily basis around the time of her disclosure of her father's physical and sexual abuse. The expert testified that such emotional and behavioral experiences were common in children who have experienced a significant negative stressor.

Even if we chose not to rely on the children's exposure to their father's domestic violence upon their mother as a basis for a Title Nine violation, the separate evidence of his abuse of Anna is more than sufficient to sustain the trial court's determination. Under the special hearsay exception codified at N.J.S.A. 9:6-8.46(a)(4), "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." Such corroborative evidence need only provide "support for" the child's out-of-court statements, and need not be unassailable or conclusive. N.J. Div. of Child Prot. & Permanency v. N.B., ___ N.J. Super. ___, ___ (App. Div. 2017) (slip op. at 10) (quoting N.J. Div. of Youth & Family Servs. v. L.A., 357 N.J. Super. 155, 166 (App. Div. 2003)).

Here, there is ample corroboration of the sexual and physical abuse that defendant inflicted upon Anna. The sexual abuse is

consistent with the testing revealing that Anna contracted an STD.² We recognize there is no evidence, either way, as to whether defendant himself is a carrier of an STD. But that uncertainty does not eliminate the corroborative value of test results showing this five-year-old's apparent exposure to a sexually-transmitted disease, which is certainly consistent with her account of being sexually assaulted. We endorse in this regard Judge Corson's explanation of why he found such corroboration present:

[T]his Court finds that [Anna's] statements regarding sexual abuse on the part of [defendant] have been sufficiently corroborated. See N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 33 (2011). Physical evidence of assault is certainly corroborative, and the positive Herpes II test results were deemed by Dr. Medina to be highly indicative of sexual abuse of the child, as said infection could only have been contracted through skin-to-skin contact. Dr. Medina testified at trial that the child's assertions and representations of the abuse could only have been acquired through exposure or experience, and despite the fact that the child presented as "normal" after a physical examination, her positive STD test results indicate, at the very least, that the child had been contacted inappropriately. Moreover, Dr. Medina testified that neither the child,

² The trial judge did not misapply his discretion in overruling defense counsel's initial objection to consideration of the test results. The judge fairly invited defense counsel to procure an expert to rebut the results. No such rebuttal expert was ever offered by defendant. In fact, defense counsel ultimately advised the court he "was no longer objecting to that piece of evidence." See N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 340-42 (2010) (applying the doctrine of invited error).

nor her [m]other, provided any other possible source of sexual, or skin-to-skin contact.


Defendant's claims that the STD test results were unreliable because of "shelf life" factors, and that another person may have exposed Anna to an STD are sheer speculation. The trial judge was obviously unpersuaded by such speculation, and so are we.

Defendant's physical assault of Anna described in her hearsay statements was adequately corroborated by other evidence. That corroboration included a bruise near her right eye a case worker observed when she interviewed Anna, as well as J.J.'s testimony that defendant would "discipline" Anna by inflicting a "pop" on her "hand or on the butt."

All other arguments raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION