

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-3533-16T4

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

A.F.,

Defendant-Appellant,

and

J.G.,

Defendant.

IN THE MATTER OF H.G., L.G. and D.G.,

Minors.

Submitted March 5, 2018 – Decided March 16, 2018

Before Judges Sabatino and Rose.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex
County, Docket No. FN-12-0182-15.

Joseph E. Krakora, Public Defender, attorney
for appellant (Theodore J. Baker, Designated
Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Christina Duclos, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (James J. Gross, Designated Counsel, on the brief).

PER CURIAM

After a two-day fact-finding hearing, the trial court found the proofs established abuse or neglect by defendants A.F. ("the mother") and J.L. ("the father") of their three children, H.G., L.G. and D.G.¹ The mother now appeals, but the father has not. We affirm.

The key incident here occurred on January 8, 2015 when the mother and father had an extensive heated argument at their residence. The mother took the three minor children out to the car and put them in the back seat. The father kicked the car, continuing the argument. The mother responded by admittedly driving the car toward him in the direction of a concrete step. The car struck the father, but apparently did not hurt him. The father then retaliated by smashing the car's windshield. All of this occurred while the children were in the car. A police officer

¹ We use initials to protect the minors' privacy.

arrived and saw the tire tracks leading to the concrete step that confirmed the accident.

The Division of Child Protection and Permanency ("the Division") removed the children from defendants' care and custody following the incident. The ensuing investigation revealed the mother had admittedly been using heroin for the past two months. The Division administratively substantiated both parents for abuse and neglect under N.J.S.A. 9:6-8.21(c).

At the ensuing fact-finding hearing in the Family Part, three Division caseworkers testified, along with the police officer who had investigated the scene. The defense and the Law Guardian put on no witnesses. No expert witnesses testified.

In his oral opinion and corresponding written order after the hearing, Judge Arnold L. Natali, Jr., found that the parents' conduct had placed the children in imminent danger of being harmed and that their behavior justified a finding of abuse or neglect. The judge summarized his conclusion in the following excerpt from his order:

The defendant(s), [the mother] and [the father], abused or neglected the child(ren) based on the court's findings of fact and conclusions of law pursuant to N.J.S.A. 9:6-8.21(c), as follows: The defendants, with a history of domestic violence, engaged in an incident of domestic violence in which [mother] intentionally drove her vehicle toward the home and struck [father] with her

vehicle while he was on the first step of the home (the step described as a concrete block step, see P-4). During this incident, the minor children were in the back seat of the car. During the same incident [the father] punched the windshield of the vehicle breaking it while knowing the minor children were in the back seat. Additionally, [the mother] admitted to a history of substance abuse and use while providing care to the children and had paraphernalia in her possession during said domestic violence incident. The [c]ourt finds that the defendant[s'] actions, in their totality, were grossly negligent and failed to exercise a minimum degree of care and placed the children in imminent danger of being impaired due to their actions on January 8, 2015.

[(Underscoring omitted).]

In his order, the judge checked the box for "established," rather than "substantiated," abuse or neglect. His oral opinion consistently notes a finding of "established" abuse or neglect. See N.J.A.C. 3A:10-7.3(c)(2) (explaining the difference between those degrees of findings). Neither the Division nor the Law Guardian have cross-appealed that aspect of the judge's findings.

The mother's brief on appeal attempts to minimize her behavior. She stresses that the children suffered no actual harm by witnessing the incident, and that the police officer did not observe them to be upset or distressed. In addition, she did not harm her children's father physically by what her brief characterizes as a "glancing blow." She maintains that she did

not engage in a degree of gross negligence sufficient to support the court's determination under the Title Nine statute.

Our scope of review on appeal is a narrow one. "To the extent the appellate issues concern a trial court's findings of fact or credibility determinations, we 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., ___ N.J. Super. ___, ___ (App. Div. 2017) (slip op. at 9) (citing N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014)). The trial court's decision in such Title Nine cases should only be reversed or altered on appeal if the findings below were "so wholly unsupportable as to result in a denial of justice." N.J. Div. of Youth & Family Servs. v. P.P., 180 N.J. 494, 511 (2004) (quoting In re Guardianship of J.N.H., 172 N.J. 440, 472 (2002)). We only apply de novo review to the trial court's rulings on questions of law. See Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Applying these standards of review, we affirm the findings of abuse or neglect, substantially for the well-supported reasons articulated by Judge Natali. Although the children fortunately were not physically harmed in the car, we agree with the judge that they were clearly placed at imminent risk of harm. See N.J.

Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 449 (2012) (explaining that a child need not experience an actual injury for abuse or neglect to be proven). If the car had been driven forward for a few more seconds, the impact could have either killed or seriously injured the father while the children were watching, or perhaps smashed the car into the building and injured the children as well. The mother's behavior under the circumstances bespeaks a failure to provide a "minimum degree of care" that was grossly or wantonly negligent, but not necessarily intentional towards the children. G.S. v. Dep't of Human Servs., 157 N.J. 161, 181 (1999) (citation omitted).

To the extent the mother argues that she was unfairly found responsible for neglect due to her admitted past drug use without concomitant proof that such drug use endangered the children, that argument is unavailing. See N.J. Dep't of Children & Families v. A.L., 213 N.J. 1, 24 (2013) (explaining that not all instances of parental drug use will equate to abuse or neglect under Title Nine). The judge's opinion explicitly did not rest his conclusions on her drug usage.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION