

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3930-16T1

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

J.S.-L.,

Defendant-Appellant,

and

C.S. and C.T.K.,

Defendants.

IN THE MATTER OF

Da.S.-L, R.S.-L., D.D.C.,
and Di.S.-L.,

Minors.

Submitted April 18, 2018 – Decided May 15, 2018

Before Judges Manahan and Suter.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Hudson County,
Docket No. FN-09-0297-14.

Joseph E. Krakora, Public Defender, attorney for appellant (Laura M. Kalik, Designated Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Jason W. Rockwell, Assistant Attorney General, of counsel; Sara M. Gregory, Deputy Attorney General, on the brief).

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

PER CURIAM

Defendant J.S.-L. (Jamie) appeals from a January 23, 2014 order that terminated the Title 9 abuse and neglect litigation after a finding of abuse and neglect. We affirm.

Jamie and C.S. (Charles) were married and thereafter divorced following a history of domestic abuse. Three children, Da.S.-L (Darla), R.S.-L. (Rebecca) and Di.S.-L (Dina), were born of their marriage. Jaimie and Charles shared joint custody after their divorce.¹ Charles maintained residential custody of the girls in New Jersey during the school year. Jamie lived in Virginia and had parenting time with the girls during the summer and during school vacations.

In the summer of 2013, the girls visited Jamie. During the visit, Darla and Rebecca disclosed that they were subjected to

¹ We use fictitious names for clarity and to protect the anonymity of the parties and children.

years of sexual abuse by Charles, describing to Jamie in detail the manner in which the abuse took place. Regardless of the girls' pleas not to return to their father, Jamie sent them back to New Jersey without taking any measures to protect them.

During a therapy session held on September 9, 2013, Darla and Rebecca stated that they had a "very serious matter" to discuss with the therapist and requested that their session be held together because they felt awkward discussing the matter individually. They then disclosed the sexual abuse by Charles. The girls stated that the abuse began seven years earlier and that it ceased two years prior to their disclosure. The youngest girl, Dina, made no disclosures to the therapist.

On September 10, 2013, the Division of Child Protection and Permanency (Division) received a referral from the therapist that alleged that Charles had sexually abused his children. The Division investigator promptly responded to the referral and reported the allegations to the Hudson County Prosecutor's Office (HCPO). The following day, a Division investigator transported Charles and the girls to the HCPO's Special Victims Unit to be interviewed. The Division caseworker observed.

The HCPO detective interviewed the three girls separately and interviewed Charles last. During Darla's interview with the detective, she reiterated that she and Rebecca attend therapy

separately, but on September 9, they requested to speak to the therapist together to discuss their father's abuse. She further reiterated to the detective that the sexual abuse began seven years ago after reunification with their parents after a previous foster care placement. Darla then described in detail specific incidents of abuse and noted that these incidents would occur twice a week. She added that she felt worried about what people would think of her if they knew what happened, and that if anyone found out, that she and her sisters would be taken away and separated. Darla concluded the interview by disclosing that when she found out Rebecca was also being abused, she decided she had to report the abuse to protect Dina.

Next, the detective interviewed Rebecca, who stated that she was aware that the interview was due to "things that should not happen between parents and children." Rebecca, like Darla, provided the detective with the specifics of the abuse. She stated that she did not reveal the abuse to anyone because she was afraid that nobody would believe her.

The detective then interviewed Dina. Although Dina denied any abuse by Charles, she expressed that Darla and Rebecca told Jamie about the abuse during their visit to Virginia.

When the detective questioned Charles about the sexual abuse, he answered, "Then you should not doubt her[.] I guess that is

what it is." Charles was arrested and charged with aggravated sexual assault and other offenses. Pursuant to N.J.S.A. 9:6-8.29, the Division conducted an emergency Dodd² removal that day and placed the girls in a resource home due to Jamie's Virginia residency.

On September 13, 2013, the Division filed an order to show cause and verified complaint against Jamie and Charles seeking the care, custody and supervision of the children, which the court granted.

Thereafter, a telephone interview was conducted between the Division worker and Jamie. During the interview, Jamie was informed about the disclosures made by Darla and Rebecca. Jamie replied she was aware of the abuse that had taken place. When Jamie was asked by the Division worker why she did not report the abuse to the authorities, she responded, "I guess I was as wrong as he was[,]" and that she was fearful of Charles.

The Division filed an abuse and neglect complaint against both Charles and Jamie. A fact-finding hearing was held on January 23, 2014, which consisted of testimony from the Division caseworker and the admission of Division records. Charles waived his

² "A 'Dodd removal' refers to the emergency removal of a child from the home without a court order, pursuant to the Dodd Act, which, as amended, is found at N.J.S.A. 9:6-8.21 to -.82." N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 26 (2011).

appearance at the hearing due to pending criminal charges. Following the hearing, the court issued an oral opinion finding that the Division proved by a preponderance of the evidence that both Jamie and Charles abused and neglected their children by placing them at a substantial risk of harm. Further, the court stated that Jamie's failure to protect her children from Charles due to her own fear "doesn't absolve her from a responsibility to protect her children." The court held that Charles sexually abused the girls due to the children's "consistent" out-of-court statements that described a pattern of abuse far beyond the knowledge of what a child of that age would know.

Compliance reviews were held on April 28 and September 8, 2014. At that time, the court granted Jamie unsupervised visitation and entered a permanency order granting an extension of the girls' current foster placement. The litigation continued over the next several months with a sequence of compliance reviews.

On June 17, 2016, the court entered a second permanency order that approved the Division's plan for Kinship Legal Guardianship (KLG) with the foster parent. The KLG regarding Darla and Rebecca was finalized on September 29, 2016. On April 7, 2017, the KLG was granted with regard to Dina, and the litigation was dismissed. This appeal followed.

On appeal, Jamie raises the following points:

POINT I

THE TRIAL COURT'S DECISION MUST BE REVERSED BECAUSE THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT A FINDING OF ABUSE AND NEGLECT.

- A. There Was Insufficient Evidence To Support A Conclusion That The Children Were At Substantial Risk Of Harm Or Facing Imminent Danger Within The Meaning Of Title 9.
- B. The Record Below Does Not Provide Sufficient Competent Evidence That [Jamie] Failed To Exercise A Minimum Degree Of Care By Failing To Protect The Children From Their Father.
- C. The Trial Court Improperly Relied Upon Incompetent Hearsay Testimony And The Out-Of-Court Statements Of Children Which Were Not Sufficiently Corroborated.

POINT II

THE INFORMALITY OF THE TRIAL PROCEEDINGS VIOLATED THE PRINCIPLES SET FORTH IN J.Y.^[3] AND S.W.^[4] THUS DENYING [JAMIE] DUE PROCESS (NOT RAISED BELOW).

Our review of the court's factual finding of neglect is limited; we defer to the court's determinations "when supported by adequate, substantial, credible evidence." N.J. Div. of Youth & Family Servs. v. I.Y.A., 400 N.J. Super. 77, 89 (App. Div. 2008)

³ N.J. Div. of Youth & Family Servs. v. J.Y., 352 N.J. Super. 245 (App. Div. 2002).

⁴ N.J. Div. of Child Prot. & Permanency V. S.W., 448 N.J. Super. 189 (App. Div. 2017).

(quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). The trial court is best suited to assess credibility, weigh testimony, and develop a feel for the case, and we extend special deference to the Family Part's expertise. N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 342-43 (2010); Cesare, 154 N.J. at 412-13. Unless the trial judge's factual findings "went so wide of the mark that a mistake must have been made," N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (quoting Snyder Realty, Inc. v. BMW of N. Am., Inc., 233 N.J. Super. 65, 69 (App. Div. 1989)), they should not be disturbed, even if we would not have made the same decision if we had heard the case in the first instance. See Clark v. Clark, 429 N.J. Super. 61, 71 (App. Div. 2012). "It is not our place to second-guess or substitute our judgment for that of the family court, provided that the record contains substantial and credible evidence to support" the judge's decision. N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448-49 (2012).

In pertinent part, N.J.S.A. 9:6-8.21(c)(4) defines a "neglected child" as:

a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian . . . to exercise a minimum degree of care (a) in supplying defendant with adequate food, clothing, shelter, education, medical or

surgical care though financially able to do so or through offered financial or other reasonable means to do so, or (b) in providing defendant with proper supervision or guardianship by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court.^[5]

A court does not have to wait until a child is actually harmed before it can act in that child's welfare. N.J. Div. of Youth & Family Servs. v. V.M., 408 N.J. Super. 222, 235-36 (App. Div. 2009); In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999). Nor does harm inflicted by defendant need to be intentional in order to substantiate a finding of abuse or neglect. M.C. III, 201 N.J. at 344.

In finding neglect, the court must base its determination on the totality of the circumstances. N.J. Div. of Youth & Family Servs. v. V.T., 423 N.J. Super. 320, 329 (App. Div. 2011). A finding of neglect must be based on the preponderance of the evidence. N.J.S.A. 9:6-8.46(b); N.J. Div. of Youth & Family Servs. v. G.M., 198 N.J. 382, 398 (2009).

On appeal, Jamie argues there was insufficient evidence to support the court's finding of abuse and neglect. We disagree.

⁵ This statutory definition applies to both a neglected child and abused child.

The evidence at the fact-finding hearing was "adequate, substantial and credible" and amply supported the finding Jamie failed to exercise a minimum degree of care of the children subjecting the children to a "substantial risk" of harm by sending them back to Charles after the disclosure of his sexual abuse of them. N.J. Div. of Child Prot. & Permanency v. J.A., 436 N.J. Super. 61, 69-70 (App. Div. 2014).

We further disagree with the argument that the court improperly relied on the hearsay testimony of the children at the fact-finding hearing. Under N.J.S.A. 9:6-8.46(a)(4), an uncorroborated statement of sexual abuse by a child is admissible in an abuse or neglect proceeding. However, "an uncorroborated statement . . . is not alone 'sufficient to make a fact finding of abuse or neglect.'" N.J. Div. of Child Prot. & Permanency v. J.A., 436 N.J. Super. 61, 66-67 (App. Div. 2014) (quoting N.J.S.A. 9:6-8.46(a)(4)). "Stated another way, 'a child's hearsay statement may be admitted into evidence, but may not be the sole basis for a finding of abuse or neglect.'" Ibid. (quoting N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 33 (2011)). Corroborative evidence is therefore required. Ibid.

Generally, "[t]he most effective types of corroborative evidence may be eyewitness testimony, a confession, an admission or medical or scientific evidence." N.J. Div. of Youth & Family

Servs. v. L.A., 357 N.J. Super. 155, 166 (App. Div. 2003). "It would be a rare case where evidence could be produced that would directly corroborate the specific allegation of abuse between the child and the perpetrator" N.J. Div. of Youth & Family Servs. v. Z.P.R., 351 N.J. Super. 427, 435-36 (App. Div. 2002). The court in Z.P.R. noted that in most child sex abuse cases, there is no physical evidence and the child victim is the only eyewitness. Id. at 436. Moreover, "[t]he corroborative evidence need not relate directly to the alleged abuser, it need only provide support for the out-of-court statements." Ibid. In sexual abuse cases, corroboration may include "a child victim's precocious knowledge of sexual activity[.]" Ibid.

Here, the children's disclosures about the sexual abuse by Charles were consistent throughout the proceeding and detailed in way that would not have been possible for children of that age unless they actually experienced it.

Finally, we conclude that Jamie's remaining arguments relating to our standard of review and alleged violations of due process are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION