

**RECORD IMPOUNDED**

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4260-15T2

NEW JERSEY DIVISION OF CHILD  
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

R.P.,

Defendant-Appellant,

and

J.M. and M.P.,

Defendants.

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IN THE MATTER OF Ro.P., J.M. and  
J.M., Minors.

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Argued November 13, 2017 – Decided April 11, 2018

Before Judges Accurso and Vernoia.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Hudson County,  
Docket No. FN-09-0241-14.

Ryan T. Clark argued the cause for appellant  
(Joseph E. Krakora, Public Defender, attorney;  
Ryan T. Clark, Designated Counsel, on the  
briefs).

Peter D. Alvino, Deputy Attorney General, argued the cause for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Alaina M. Antonucci, Deputy Attorney General, on the brief).

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

PER CURIAM

Defendant R.P. appeals from an August 14, 2014 Family Part order finding she abused or neglected her thirteen-year-old daughter Ro.P. (Rachel)<sup>1</sup> by unreasonably inflicting excessive corporal punishment. Because we agree with the Division of Child Protection and Permanency and the Law Guardian that there is substantial credible evidence in the record supporting the trial judge's finding of abuse or neglect, we affirm.

I.

The facts giving rise to this action are largely undisputed. On April 11, 2013, a Division caseworker responded to defendant's home in response to a referral that defendant hit her thirteen-year-old daughter Rachel with, among other things, a metal spoon. The caseworker interviewed Rachel, who wore a brace on her right wrist. Rachel reported that after she arrived home from school

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<sup>1</sup> We refer to the child by a fictitious name in order to protect her privacy.

that day, defendant was upset their home was disorganized. Defendant threw a full two-liter soda bottle at Rachel, hitting her in the head, and then struck Rachel twice on the right wrist with a metal spoon. When defendant's friend intervened and took the spoon away, defendant struck Rachel twice on the leg with a plastic guitar.

While defendant and her friend argued, Rachel left with her two younger siblings and ran to a neighbor's home. Defendant later went to the neighbor's home and confronted Rachel, who refused to return to defendant's home. Defendant attempted to drag Rachel, first by grabbing and tugging at her, and then by pulling her hair. During the altercation, defendant and Rachel fell to the ground. The neighbor intervened and the altercation ended.

Rachel's seven-year-old brother told the caseworker he saw Rachel come into a bedroom with defendant chasing after her. He saw defendant pick up a plastic guitar and strike Rachel with it. Rachel also told the caseworker that two weeks earlier defendant struck her with a curtain rod because she did not clean her room.

Defendant admitted striking Rachel with the metal spoon and plastic guitar because the child failed to clean her room. Defendant also acknowledged following Rachel to the neighbor's home, where they had a physical altercation and fell to the floor.

During the caseworker's interview of Rachel, the child complained of discomfort and loss of mobility in her right wrist that she attributed to defendant's "assault." She reported having difficulty rotating her wrist. The caseworker and defendant brought Rachel to Bayonne Medical Center. The hospital records reflect there was soft tissue swelling in Rachel's right wrist and trauma to her right hand with subsequent pain, but the X-rays were inconclusive as to the presence of a fracture. It was recommended that Rachel return for additional X-rays to determine if there was a fracture.

Rachel returned to the hospital one week later. Additional X-rays confirmed her wrist was not fractured. The records show, however, she sustained a hand sprain.

The court determined defendant was "out of control with anger" and "violent," and that throwing a full two-liter soda bottle at a thirteen-year-old child's head "is a horrendous, unsafe, [and] violent act." The court concluded that by striking Rachel with a metal spoon on the wrist, "striking her on the leg with the next implement she [could] get in her hands," and pulling her hair while in a rage, she caused the pain and swelling that required medical attention at the hospital. The court found defendant's actions "collectively" constituted excessive corporal punishment,

and entered a fact-finding order that defendant abused or neglected Rachel. Defendant appeals the court's order.<sup>2</sup>

Defendant presents the following argument for our consideration:

POINT I.

THE FACT-FINDING ORDER MUST BE REVERSED AS THE TRIAL COURT MADE INADEQUATE FINDINGS TO SUPPORT A HOLDING THAT THE DAUGHTER IS AN ABUSED OR NEGLECTED CHILD AND THE RECORD LACKS SUBSTANTIAL CREDIBLE EVIDENCE THAT SHE HAS BEEN ABUSED OR NEGLECTED.

II.

Our review of fact findings from the Family Part are "strictly limited." N.J. Div. of Youth & Family Servs. v. I.H.C., 415 N.J. Super. 551, 577 (App. Div. 2010). We will not disturb a finding that is "supported by adequate, substantial, and credible evidence in the record." N.J. Div. of Youth & Family Servs. v. N.T., 445 N.J. Super. 478, 505 (App. Div. 2016) (quoting N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007)).

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<sup>2</sup> Following the caseworker's interviews on April 11, 2013, the Division placed a homemaker in defendant's home to ensure the children's safety. On August 21, 2013, the children were removed and placed in the Division's care and custody. After a series of compliance hearings, on June 9, 2015, the court granted legal and physical custody of the children to their adult half-siblings. On March 22, 2016, the court entered an order terminating the Title Nine proceeding. Defendant appeals only the August 14, 2014 fact-finding order.

More specifically, a reviewing court must ask whether the findings made are reasonable in light of "credible evidence in the record when considering the proofs as a whole" and "giving due regard to the opportunity of the trial judge to determine credibility." N.J. Div. of Youth & Family Servs. v. A.G., 344 N.J. Super. 418, 443 (App. Div. 2001) (citing Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974)). We defer to the findings of family court judges because they have "the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand" and have "a feel of the case that can never be realized by a review of the cold record." N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 342-43 (2010).

The Division bears the burden of proving a child was abused or neglected by a preponderance of the evidence. N.J.S.A. 9:6-8.46(b). Under Title Nine, an "abused or neglected child" includes

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, as herein defined, to exercise a minimum degree of care . . . in providing the child 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 similarly serious nature requiring the aid of the court[.]

[N.J.S.A. 9:6-8.21(c)(4)(b) (emphasis added).]

A parent or guardian fails to meet this minimum standard of care when "she is aware of the dangers inherent in a situation and fails adequately to supervise the child or recklessly creates a risk of serious injury to that child." G.S. v. Dep't of Human Servs., 157 N.J. 161, 181 (1999). A failure to achieve this minimum degree of care can arise by a parent or guardian unreasonably inflicting harm "including the infliction of excessive corporal punishment[.]" N.J.S.A. 9:6-8.21(c)(4)(b) (emphasis added).

The phrase "excessive corporal punishment" is not defined in the statute. Dep't of Children & Family Servs., Div. of Youth & Family Servs. v. K.A., 413 N.J. Super. 504, 510 (App. Div. 2010). Our Supreme Court has noted that excessive corporal punishment cases are fact sensitive, deeming them "idiosyncratic," and cautioning that courts "ought not assume that what may be 'excessive' corporal punishment for a [] child must also constitute . . . excessive corporal punishment in another setting[.]" N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 33 (2011). "[A] parent may inflict moderate correction such as is reasonable under the circumstances of a case," but punishment is excessive where it goes "beyond what is proper or reasonable." K.A., 413

N.J. Super. at 510-11. "[W]e evaluate a claim of abuse by looking to the harm suffered by the child, rather than the mental state of the accused abuser." Id. at 511.

The New Jersey Administrative Code and our case law provide guidance for determining when conduct constitutes excessive corporal punishment. For example, N.J.A.C. 3A:10-2.2(a)<sup>3</sup> lists injuries and risks of harm that "may be abuse or neglect[,]" including head injuries, sprains or dislocations, and substantial risk of physical injury or environment injurious to health and welfare. N.J.A.C. 3A:10-2.2(a)(2), (8) and (11). Where the alleged abuse does not fit 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.

In K.A., we found 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. Ibid. There, a mother struck her

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<sup>3</sup> At the time of the incident and the Family Part's order, 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).



eight-year-old child with a closed fist for about five seconds after the child defied her mother's instructions. Id. at 506. The incident left "four quarter-sized bruises" on the child's left shoulder, ibid., but "the force used did not lacerate the child's skin [or] require any type of medical intervention," id. at 512. We found 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." Ibid.

Similarly, in P.W.R. the Court concluded a "slap of the face of a teenager as a form of discipline – with no resulting bruising or marks – does not constitute 'excessive corporal punishment[.]'" 205 N.J. at 36. The Court recognized the need for "some parental autonomy in the child-rearing dynamic that, of necessity, may involve the need for punishment[,]" and that the State's involvement is limited only to instances of "excessive corporal punishment." Ibid.

In contrast, in M.C. III the Court affirmed a finding of abuse or neglect where a father grabbed, choked, and punched his teenage children, and the children were brought to the hospital and treated for injuries such as scratches, abrasions and swelling, and a soft tissue injury. 201 N.J. at 333-37. The Court determined the defendant abused or neglected the children because he "intentionally grabbed [them] and disregarded the substantial

probability that injury would result from his conduct." Id. at 345.

In Dep't of Children & Families, Div. of Youth & Family Servs. v. C.H., 414 N.J. Super. 472, 476 (App. Div. 2010), we affirmed an abuse or neglect finding where a mother struck her four-year-old daughter with a paddle in the face, arms, and leg, even though the child did not require medical attention when the injuries were discovered the next day. We found the defendant's "unreasonable infliction of corporal punishment was established by [her] admitted use of corporal punishment regularly[.]" Id. at 481; see also N.J. Div. of Youth & Family Servs. v. B.H., 391 N.J. Super. 322, 340 (App. Div. 2007) (affirming a finding of excessive corporal punishment where a parent struck a six-year-old child with a belt and caused a welt under the child's eye).

In N.J. Div. of Youth & Family Servs. v. S.H., 439 N.J. Super. 137, 140-41 (App. Div. 2015), we determined a mother abused or neglected her fifteen-year-old son by throwing a shoe at him, hitting him with her hands and a golf club, and biting him on his back three times. We distinguished K.A. and P.W.R. because of "the nature and extent of the injuries . . . and the instrumentalities used to inflict them." Id. at 146.

Here, defendant argues the court erred in finding abuse or neglect because her conduct was not excessive, Rachel did not

suffer a significant injury, and their altercation was an isolated incident. Defendant contends the circumstances here are similar to those K.A. and, for that reason, the court's abuse or neglect finding cannot be sustained. We are not persuaded.

In K.A., the defendant imposed punishment in response to the actions of a disruptive child with a psychological disorder, and 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.'" K.A., 413 N.J. Super. at 512. We noted that a consideration of such factors is required where a child's injuries do not constitute "per se excessive corporal punishment" to determine whether the defendant's actions "amount[] to excessive corporal punishment." Ibid. (alteration in original).

Defendant was not confronted with a disruptive child who, due to a psychological disorder, presented trying circumstances to a parent. See ibid. To the contrary, Rachel is a thirteen-year-old child who defendant chose to strike in the head with a two-liter soda bottle and on the wrist with a metal spoon simply because she failed to clean her room. But the punishment did not end there. After being disarmed by her friend, defendant was undeterred; she followed Rachel into a bedroom, imposed additional

discipline by striking her with a plastic guitar, and later by pulling her hair, causing a fall to the ground.

In B.H. and C.H., our findings of abuse and neglect "were based [in part] on the use of an instrument to hit the child" and "the unreasonable and disproportionate parental response" to the child's actions. S.H., 439 N.J. Super. 146-47. In K.A., defendant struck her child only with her hands. 413 N.J. Super. at 506. In contrast, defendant opted to impose discipline by using a soda bottle, metal spoon and plastic guitar before choosing to pull Rachel's hair.

Further, defendant's use of implements to impose corporal punishment on April 11, 2013, was not an isolated incident. See id. at 512-13 (finding no abuse or neglect in part because the incident was "aberrational to this family"). Rachel reported that defendant struck her with a curtain rod two weeks earlier, again for simply failing to clean her room.


In addition, the child in K.A. sustained bruises that did not require medical intervention. See K.A., 413 N.J. Super. at 512. Rachel was taken to the hospital, where it was noted that she suffered trauma to her hand and swelling. The hospital recommended that she return to determine if she sustained a fracture. The subsequent X-rays showed no fracture, but the records show Rachel suffered a hand sprain. See N.J.A.C. 3A:10-2.2(a)(11) (providing

allegation of a sprain may be an injury that may be abuse or neglect). The mere fact that Rachel's injuries healed without active medical intervention does not require a reversal of the court's abuse or neglect finding. See, e.g., C.H., 414 N.J. Super. at 476 (affirming an abuse or neglect finding where the injuries did not require any medical attention).

Applying the factors we found determinative in K.A., we are satisfied the court correctly concluded defendant abused or neglected Rachel by imposing excessive corporal punishment. See 413 N.J. Super at 512. The reason underlying defendant's actions, Rachel's unclean room, does not support defendant's decision to strike the child with the soda bottle, metal spoon and plastic guitar. The incident was not isolated. And, the record does not reveal any circumstances supporting defendant's use of the various implements to impose the 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. Defendant's use of the various implements to impose discipline exposed Rachel to a substantial probability she would sustain injury and, in fact, caused injury to the child.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION