

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
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-4654-15T4

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

D.C.,

Defendant-Appellant.

IN THE MATTER OF A.C.,

A Minor.

Submitted January 25, 2018 – Decided February 5, 2018

Before Judges Simonelli, Haas and Gooden
Brown.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Passaic
County, Docket No. FN-16-0198-15.

Joseph E. Krakora, Public Defender, attorney
for appellant (John A. Salois, Designated
Counsel, on the briefs).

Gubir S. Grewal, Attorney General, attorney
for respondent (Andrea M. Silkowitz, Assistant
Attorney General, of counsel; Yudelka R.
Felipe, Deputy Attorney General, on the
brief).

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

PER CURIAM

Defendant D.C.¹ appeals from the Family Part's May 19, 2016 order approving the permanency plan proposed by the Division of Child Protection and Permanency (Division), terminating the litigation the Division initiated for care and custody of defendant's six-month-old child A.C. (Andy) under Title 9, and directing the case to proceed as a guardianship action under N.J.S.A. 30:4C-15(c). In addition, defendant challenges the trial judge's finding that she abused or neglected Andy under N.J.S.A. 9:6-8.21(c)(4)(a) by failing to provide him with adequate housing.² Based upon our review of the record and applicable law, we affirm.

The Division developed the following facts at the two-day fact-finding hearing. On May 6, 2015, the Division received a referral that defendant was leaving Andy alone in an apartment. A caseworker went to the apartment, which was leased by defendant's cousin, but was unable to establish the allegation of inadequate

¹ Pursuant to Rule 1:38-3(d), we use initials and fictitious names to protect the confidentiality of the participants in these proceedings.

² This October 22, 2015 determination became final and appealable as of right after the entry of the May 19, 2016 order terminating the Title 9 litigation.

supervision. However, the caseworker found that the apartment did not have electricity or gas.

The Division determined that defendant had no job or source of income, and was not eligible for Temporary Rental Assistance. Defendant was also not able to provide the names of any other relatives or friends who could provide temporary housing. Instead, defendant told the caseworker that she planned to "walk around and ask people" she met on the street "if [she could] stay at their home."

The caseworker took defendant and Andy to the Division's office, and the Division found a shelter that would take defendant and Andy for the night. In addition, the Division arranged an appointment for defendant and the baby the next day at the Family Promise Shelter, which offered a number of programs for its clients, including employment and housing assistance.

After defendant agreed to go to the shelter, defendant, Andy, and the caseworker returned to the apartment so that defendant could retrieve some of her belongings. Once she was back in the apartment, however, defendant refused to leave. She told the caseworker that she would use flashlights and candles to light the apartment, and did not need gas to cook because she only planned to feed the child powdered milk. In order to protect the baby,

the Division arranged for an Emergency Child Abuse Program (ECAP) worker to stay in the apartment with defendant and Andy.

Later that night, however, the police contacted the Division to advise that the landlord wanted defendant and the baby to leave the apartment because it was not safe, as there had already been two fires in the building because of tenants improperly using candles. Defendant's cousin also told the caseworker that defendant was not welcome in his home.

The caseworker then made arrangements for defendant and Andy to spend the night in a hotel with the ECAP worker present to monitor Andy. Defendant went to the hotel, but then threatened to leave throughout the evening.

The next morning, a caseworker went to the hotel to pick up defendant and Andy for their appointment at the Family Promise Shelter. Defendant began to yell at the caseworker and stated she wanted to pick up some more of her belongings at the apartment, and then go to the welfare office. The Division agreed to transport defendant and the baby to the apartment and to then have the ECAP worker accompany them to the welfare office.

Once defendant arrived at the apartment, she got into an argument with the landlord, and told the caseworker that she was not going to the welfare office or the Family Promise Shelter

appointment. Instead, she said she wanted to file a complaint with the police about the landlord.

As a result of defendant's failure to secure safe housing for Andy, and her refusal to take advantage of the services and assistance the Division offered, the Division removed Andy from defendant's care later that day. Defendant did not testify at the hearing, and her attorney did not call any witnesses.

At the conclusion of the hearing, Judge Daniel Yablonsky rendered a thorough oral decision, finding that the Division established by a preponderance of the evidence that defendant abuse or neglected Andy by failing to provide him with adequate housing. In so ruling, the judge recognized that defendant may not have had the funds to obtain housing on her own. However, the judge found that defendant abused or neglected Andy because she adamantly refused to take advantage of the services the Division arranged for her and the baby, and instead proposed to attempt to stay in an apartment that did not have working utilities.

During the ensuing months, the Division provided defendant with a host of services, including referrals to vocational training and job training programs, as well as to psychological and substance abuse treatment evaluations and counseling. Judge Yablonsky conducted a permanency hearing on April 7, 2016. The judge found that defendant had not secured a job or stable housing

despite the Division's assistance during the eleven months following Andy's removal from her care, and was still exhibiting unmitigated mental health issues. Accordingly, the judge approved the Division's plan to dismiss the Title 9 matter, and institute a Title 30 action for the termination of defendant's parental rights. This appeal followed.

On appeal, defendant argues in Point I that the judge's determination that she abused or neglected Andy by failing to provide him with adequate housing "is not supported by the evidence." We disagree.

Our review of the trial judge's factual finding of abuse or 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) (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).

In pertinent part, N.J.S.A. 9:6-8.21(c)(4)(a) defines an "abused or 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 . . . in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so[.]

"Whether a parent or guardian has failed to exercise a minimum degree of care in protecting a child is determined on a case-by-case basis and analyzed in light of the dangers and risks associated with the situation." N.J. Div. of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 614 (App. Div. 2010) (quoting G.S. v. Dep't of Human Servs., 157 N.J. 161, 181-82 (1999)). Moreover, a parent may be found to have abused or neglected a child when the parent creates a substantial risk of harm, since a court "need not wait until a child is actually irreparably impaired by parental inattention or neglect." In the Matter of the Guardianship of D.M.H., 161 N.J. 365, 383 (1999).

Applying these standards, we are satisfied there was competent, credible evidence in the record to support Judge Yablonsky's finding that defendant abused or neglected Andy by failing to provide him with adequate shelter even though the Division offered her reasonable means to do so. When the Division began its investigation, it discovered that defendant was living in an apartment that had no electricity or gas. The leaseholder

and the landlord both refused to permit defendant to remain in the apartment.

The Division promptly arranged for shelter for defendant and the baby, but defendant did not cooperate. At first, she would not leave the apartment. Once she finally relented and went to the hotel, she continually tried to leave. The next day, she refused to attend the appointment the Division had scheduled at the Family Promise Shelter, which would have afforded defendant and Andy shelter, together with a range of other services. Instead, defendant again refused to leave the apartment. Thus, the record clearly supports Judge Yablonsky's determination that defendant put Andy in imminent danger and substantial risk of harm by rejecting the opportunity to provide the baby with safe and secure shelter.

Defendant's reliance upon our decision in N.J. Div. of Child Prot. & Permanency v. L.W., 435 N.J. Super. 189 (App. Div. 2014) is unavailing because that case is readily distinguishable from the facts presented here. In L.W., we reversed the trial court's finding of abuse or neglect after a parent was unable to provide her children with adequate housing. Id. at 197. We noted that "poverty alone is not a basis for a finding of abuse or neglect." Id. at 195. We concluded that the evidence did not support the trial court's decision because the parent in that case actively

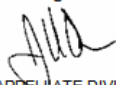
sought housing assistance and employment and, when her efforts were unsuccessful, "did the responsible thing" by seeking the Division's assistance. Id. at 196.

The record in this case simply does not support defendant's contention that Judge Yablonsky's finding of abuse or neglect was based solely on poverty. Rather, the judge properly found that although the Division offered shelter and other services to defendant and her infant son, defendant refused these services, and proposed no reasonable alternatives. Therefore, we reject defendant's contention on this point.³

Finally, in Point II, defendant challenges the judge's approval of the Division's permanency plan. Because a Title 30 guardianship complaint has since been filed to terminate defendant's parental rights, review of the permanency order is now moot. N.J. Div. of Youth & Family Servs. v. A.P., 408 N.J. Super. 252, 255 (App. Div. 2009).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

³ Defendant also asserts that her cousin and the landlord wrongfully evicted her from the apartment and she should have been given the opportunity to institute and complete an appropriate legal action against them before the Division took custody of Andy in order to provide him with shelter. This argument is without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).