

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4731-15T4
A-4732-15T4

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

C.S. and T.B.,

Defendants-Appellants,

and

Y.B. and C.M.,

Defendants.

IN THE MATTER OF K.B., Q.B., C.M.,
S.B., R.A.B., and A.S.B., minors.

Submitted February 6, 2018 – Decided March 14, 2018

Before Judges Reisner, Hoffman, and Gilson.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Essex County,
Docket No. FN-07-0147-15.

Joseph E. Krakora, Public Defender, attorney
for appellant C.S. (Albert M. Afonso,
Designated Counsel, on the brief).

Joseph E. Krakora, Public Defender, attorney for appellant R.B. (Kimmo Z. H. Abbasi, Designated Counsel, on the briefs).

Gurbir S. Grewal, Attorney General, attorney for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Monisha A. Kumar, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (Lisa M. Black, Designated Counsel, on the brief).

PER CURIAM

Defendants C.S. (Cathy) and R.B. (Robert)¹ appeal from a December 2, 2014 order finding they abused or neglected five minor children by using excessive physical discipline and by exposing the children to domestic violence, substance abuse, and a sexual abuser. We affirm because the findings of abuse or neglect are supported by substantial credible evidence.

I.

Cathy is the mother of six children: K.B., born in December 2002; Q.B., born in November 2003; C.M., born in May 2006; S.B., born in February 2013; R.B., Jr., born in April 2014; and A.B., born in April 2015. Robert is the biological father of the three youngest children. There were no findings of abuse or neglect against the biological fathers of the three oldest children.

¹ We use fictitious names for the parents and initials for the children to protect their privacy interests. R. 1:38-3(d)(12).

The Division of Child Protection and Permanency (Division) has been involved with the family since 2008. The findings of abuse or neglect focus on four incidents that occurred between April and September 2014. At that time, the five older children ranged in ages from eleven years old to less than one year old. The sixth child was born in 2015, and was not the subject of the findings of abuse or neglect.

The first instance involved excessive physical punishment. In April 2014, the older children reported physical punishment, which included being hit with hangers, belts, and shoes. Both Cathy and Robert admitted to using physical discipline on the children. Cathy told a Division worker that she used objects to discipline the children when they were misbehaving. Robert told a Division worker that he also physically disciplined the children because "that's how [he] was raised."

The second incident involved exposing the children to domestic violence. In July 2014, the older children reported that Cathy and Robert frequently argued and that Robert had choked and punched Cathy. In addition, a Division worker observed a door in the home, which appeared to have been kicked in. While Cathy and Robert denied engaging in domestic violence, Cathy did acknowledge to a Division worker that Robert had kicked down a door and that there were times when she and Robert pushed each other.

The third incident involved the three older daughters being exposed to sexual abuse by Robert's brother and the failure of Cathy and Robert to protect the children from that abuse. Robert's brother lived with Robert's mother, who often cared for the children. Two of the daughters reported various times when Robert's brother would inappropriately touch them. One of the daughters also told a Division worker that she had informed her mother of the inappropriate touching. Cathy, however, continued to leave the children in the care of the paternal grandmother even when Robert's brother was present. As a result of Cathy's failure to keep the daughters away from Robert's brother, a third daughter was inappropriately touched by Robert's brother.

The fourth incident involved physical abuse, inadequate supervision, and exposure to substance abuse. In September 2014, the children reported that Cathy and Robert continued to use physical punishment. Specifically, two of the children reported being hit, including Robert hitting one of the children in the head with his knuckles and Cathy hitting another child with a broomstick. One child also reported that she and her siblings had been left alone without either parent present or adult supervision.

In addition, two of the children reported that Cathy and Robert were using marijuana. One of the children described what marijuana looked like and how to roll marijuana in paper. The

other child stated that she had observed both Cathy and Robert consume marijuana. Cathy denied using marijuana and Robert refused to answer questions about his marijuana use. Both parents, however, tested positive for marijuana.

A fact-finding hearing was conducted on December 2, 2014. The Division presented testimony from two of its workers and submitted supporting documents. Cathy testified, but Robert did not. The Family judge found the Division workers credible and Cathy incredible. The judge then found that the Division had proven abuse or neglect by a preponderance of the evidence. Specifically, the court found that Cathy and Robert had used excessive physical discipline on the children and exposed the children to domestic violence, substance abuse, and a known sexual abuser.

Following the fact-finding hearing, the Division continued to provide services to Cathy and Robert. Ultimately, the children were reunited with Cathy and returned to her custody.

The Division then moved to terminate the Title 9 litigation. Cathy moved to compel the Division to produce copies of its records. The court denied that motion in an order entered on May 26, 2016. In that same order, the court terminated the Title 9 litigation.

II.

Cathy and Robert filed separate appeals, which we consolidated. Cathy makes three arguments on her appeal. First, she contends that the Division did not demonstrate that she abused or neglected her children. Second, she argues that the Family judge erred by relying on an expert report from a non-testifying expert. Finally, she challenges the order denying her request for copies of the Division's records. In his appeal, Robert makes one argument contending that there was insufficient evidence to show that he abused or neglected the children. We are not persuaded by any of these arguments and we affirm.

The scope of our review is limited. N.J. Div. of Child Prot. & Permanency v. Y.A., 437 N.J. Super. 541, 546 (App. Div. 2014). We will uphold the Family judge's factual findings and credibility determinations if they are supported by substantial credible evidence. N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007). Accordingly, we will only overturn the judge's findings if they "went so wide of the mark that the judge was clearly mistaken." Ibid. We do not, however, give "special deference" to the Family Part's interpretation of the law. D.W. v. R.W., 212 N.J. 232, 245 (2012) (citing N.J. Div. of Youth & Family Servs. v. I.S., 202 N.J. 145, 183 (2010)). Consequently,

we apply a de novo standard of review to legal issues. Id. at 245-46.

The adjudication of abuse or neglect is governed by Title 9, which is designed to protect children. N.J.S.A. 9:6-8.21 to -8.73; N.J.S.A. 9:6-8.8. Under Title 9, a child is abused or neglected if:

[a] parent or guardian . . . creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; . . . commits or allows to be committed an act of sexual abuse against the child; . . . or 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 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[.]

[N.J.S.A. 9:6-8.21(c)(2), (3), and (4)(b).]

The statute does not require that the child experience actual harm. N.J.S.A. 9:6-8.21(c)(4)(b). Instead, a child is abused or neglected if his or her physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired.

Ibid. In cases where there is an absence of actual harm, but

there exists a substantial risk of harm or imminent danger, the court must consider whether the parent exercised a minimum degree of care under the circumstances. G.S. v. Dep't of Human Servs., 157 N.J. 161, 171 (1999).

The failure to exercise a "minimum degree of care" refers to "conduct that is grossly or wantonly negligent, but not necessarily intentional." Id. at 178. "Conduct is considered willful or wanton if done with the knowledge that injury is likely to, or probably will, result." Ibid. A parent fails to exercise a minimum degree of care if, despite being "aware of the dangers inherent in a situation[,]" the parent "fails adequately to supervise the child or recklessly creates a risk of serious injury to that child." Id. at 181.

The Division must prove by a preponderance of the competent, material, and relevant evidence that a child is abused or neglected. N.J.S.A. 9:6-8.46(b). This burden of proof requires the Division to demonstrate a probability of present or future harm. N.J. Div. of Youth & Family Servs. v. S.S., 372 N.J. Super. 13, 24 (App. Div. 2004), certif. denied, 182 N.J. 426 (2005). Title 9 cases are fact-sensitive, and the court should base its findings 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. The Substantial Credible Evidence

The Division presented evidence that the children had been excessively disciplined and had been exposed to domestic violence, substance abuse, and a known sexual abuser. A substantial portion of that evidence came from what the children reported to Division workers. The children's reports, however, were corroborated by other evidence. See N.J.S.A. 9:6-8.46(a)(4); see also Y.A., 437 N.J. Super. at 547 (stating that when the Division's case involves out of court statements by a child, the child's statements must be corroborated by "eyewitness testimony, a confession, an admission or medical or scientific evidence").

For example, the children's reports of excessive physical discipline were corroborated by both parents acknowledging that they used physical discipline. Cathy told a Division worker that she used objects to hit the children. Robert also acknowledged that he used physical discipline and refused to cease using physical discipline on the children.

The reports by three daughters about being inappropriately touched by Robert's brother were also corroborated by Cathy's and Robert's admissions. Cathy told a Division worker that she was aware of prior instances where Robert's brother had attempted to inappropriately touch two of her daughters. Robert also admitted that he knew about the prior incidents involving his brother inappropriately touching the daughters. Nevertheless, Cathy and

Robert continued to leave the children in the care of the paternal grandmother, while Robert's brother was present.

The children's reports of exposure to substance abuse were also corroborated. One of the children described what marijuana looked like and how to roll it into a cigarette. Another child described observing both Cathy and Robert consume marijuana. Within days of the children making those reports, both Cathy and Robert tested positive for marijuana.

Finally, the children's reports of domestic violence were corroborated by statements made by Cathy. One of the children reported seeing Robert choke and punch Cathy. A Division worker also observed a broken door in the home. Cathy denied the domestic violence, but acknowledged to a Division worker that Robert had kicked open a door during an argument and that she and Robert pushed each other during arguments.

The Family Part found each of those incidents involved abuse or neglect. While Cathy and Robert challenge aspects of the individual acts and incidents, in totality the acts and incidents constitute a preponderance of evidence that Cathy and Robert exposed their children to a substantial risk of harm. N.J.S.A. 9:6-8.21(c); N.J.S.A. 9:6-8.46(b); V.T., 423 N.J. Super. at 329.

B. The Expert Report

Cathy contends that the Family Part committed reversible error when it relied on an expert report from a non-testifying witness, which was not admitted into evidence. Specifically, she contends that the Family Part relied on an expert psychological report and related documents. The record does not support Cathy's argument.

In making the findings of abuse or neglect, the Family judge referenced and stated he was relying on the testimony of the Division workers, which he found to be credible, and documents that had been admitted into evidence. He did not reference a psychological evaluation of Cathy in making his factual findings concerning abuse or neglect. Instead, the reference to the psychological evaluation came up in response to an argument made by Cathy's counsel during summation. Consequently, the record does not support Cathy's argument that the Family judge impermissibly relied on an expert report without hearing the testimony of the expert.

C. Cathy's Request for the Division Records

Following the finding of abuse or neglect, the Division provided services to Cathy and Robert and the court conducted a series of compliance reviews. The Division ultimately agreed to return custody of the children to Cathy. At that point, Cathy made a request for copies of the Division's records. The Family

judge initially postponed terminating the litigation to give Cathy an opportunity to file a motion to compel the production of her Division records.

Under Title 9, all records of child abuse reports are confidential and may only be released under very narrow, enumerated circumstances. N.J.S.A. 9:6-8.10a(a). One of the exceptions allows for the release of Division records to a person appealing a finding of abuse or neglect, but only when disclosure of the records is necessary for a determination of an issue on appeal. N.J.S.A. 9:6-8.10a(b)(12).


Here, the Family judge explained to Cathy that all of the Division records would be available for her review at her attorney's office. The Family judge then found that Cathy's request for personal copies of the Division records was insufficient to warrant disclosure, denied her motion, and entered an order terminating the Title 9 litigation. The judge advised Cathy that he would entertain a motion for reconsideration if she could establish a need for personal copies of the records. Cathy never filed a motion for reconsideration.

Cathy argues that she needed personal copies of the documents to pursue this appeal. The record on appeal, however, demonstrates that Cathy was given access to the Division records that supported the findings of abuse or neglect, and that she failed to establish

a sufficient need for personal copies of those documents. Accordingly, the Family judge correctly denied Cathy's motion to compel the production of her Division records.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION