SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4937-15T1

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

P.H.,

Defendant-Appellant,

and

A.H., Jr. and Ja.R.,

Defendants.

IN THE MATTER OF
D.R. and J.R.,

Minors.

Submitted February 6, 2018 – Decided April 9, 2018

Before Judges Carroll, Leone, and Mawla.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Cumberland County, Docket No. FN-06-0060-14.

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

Gurbir S. Grewal, Attorney General, attorney for respondent (Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Tasha M. Bradt, Deputy Attorney General, on the brief).

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor, J.R. (Noel C. Devlin, Assistant Deputy Public Defender, Of Counsel and on the brief).

PER CURIAM

Defendant P.H. (Grandmother) appeals, challenging the family court's finding that she abused or neglected her grandchildren D.R., born 1998, and J.R., born 2000 (collectively "the children"), by allowing them to have unsupervised contact with their father, A.H., Jr. (Father), Grandmother's son. Because Grandmother exposed the children to a substantial risk of harm by allowing them to have unsupervised contact with Father, we affirm.

I.

The following facts were contained in the testimony and evidence admitted at the fact-finding hearing. On June 1, 2000, Father plead guilty to sexual assault by force or coercion and was sentenced to five years in state prison. Father is a Tier II sex

offender and subject to community supervision for life (CSL) under Megan's Law, N.J.S.A. 2C:7-1 to -23. His Megan's Law status bars him from unsupervised contact with minors.

The children resided in the home of Grandmother and A.H. (Grandfather) beginning in 2000. Grandmother was granted Kinship Legal Guardianship (KLG) over the children in orders dated February 10, 2003. The KLG orders named Grandmother as their "Caregiver" and required "all visitation [between the children and their birth parents] shall be authorized and supervised by the Caregiver."

The grandparents' home was a two-story house with a basement. The basement had three rooms, including one with a bed in it. After his release, Father would frequent the home and would sometimes stay overnight.

When D.R. was eleven years old, she began to exhibit behavioral problems, such as running away from home. The Division placed D.R. in residential treatment facilities. In 2013, D.R. was a resident at the Insight Program Treatment facility and met regularly with Christina Zakrzewski, L.S.W., for therapy sessions. Between July and October 2013, Zakrzewski made four referrals to the New Jersey Division of Child Protection and Permanency (the Division) due to disclosures of sexual abuse by D.R.

On October 23, 2013, the Division commenced an investigation. Caseworker Monica Maher interviewed J.R. J.R. said D.R. was lying.

When asked if he was ever alone with Father, J.R. said "no and when he is over we play video games and my grandparents check on us every ten minutes."

Grandmother told Maher she did not believe D.R.'s claims. Grandmother said that Father was convicted for having sex with an underage girl, the Father just "got caught up in something," that he should not be subject to Megan's Law, and that "he doesn't look like one of those people." Grandmother acknowledged that Father kept his belongings in her basement between his frequent incarcerations, but denied that he resided there. Grandfather told the caseworker he could not recall a time when the children were alone with Father.

On November 1, 2013, Maher and Detective Louis Rodriguez from the Vineland Police Department (VPD) interviewed D.R. and R.R. According to Maher's report, and the testimony of Maher and Rodriguez, D.R. and R.R. made the following statements.

D.R. cried and shook as she repeated the details of her sexual abuse by Father. Father first forced D.R. to have sexual intercourse with him when she was eleven-years-old, and he

continued to do so until she was fourteen-years-old.[1] Father had intercourse with her between five and twenty times.

D.R. stated Father would visit the grandparents' home, and sometimes resided there. When Grandmother was upstairs, Father would force D.R. to play the "quiet game" in which she was not allowed to make any sound as Father had intercourse with her. During their sexual intercourse, Father would make J.R. responsible for "watching the door." Father also forced D.R. and J.R. to touch each other in a sexual manner to arouse Father. Father told D.R. he would hurt J.R. if she did not comply.

D.R. also stated that when Father was residing in motels, on several occasions Grandmother left D.R. at the motel with Father so he could "babysit" her. On one occasion, Father had sexual intercourse with her while his friend watched. On another occasion, Grandmother let Father and his friend take D.R. on a drive to the mall, but they drove instead to a motel. Father fondled D.R. during the drive and had sex with her in the motel. Finally, when the grandparents went to work they would leave Father alone in the house with the children, and Father had sexual intercourse with D.R.

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[1] D.R. claimed Father last had sex with her on Thanksgiving Day in 2012, but several witnesses said defendant and D.R. could not have been alone that day, and the trial court ultimately found her claim not credible.

J.R. stated Father would sleep on the couch one or two nights a month. J.R. denied any knowledge of sexual acts between D.R. and Father, and accused D.R. of being a liar. J.R. stated that D.R. had reported her sexual abuse to Grandmother the previous summer, but that Grandmother did not believe her.

One of the detectives said J.R. was not being truthful. J.R. then admitted Father had lived in the family home for a year, during which the children often would be left alone in the house with Father while Grandmother and Grandfather were at work. J.R. said Father slept on the living room couch or in the basement. J.R. said there were times when the children and Father had been in the basement unsupervised for thirty to sixty minutes while their grandparents were upstairs.[2]

Following the interview, the Division removed J.R. from the residence and placed him at a resource home, pursuant to N.J.S.A. 9:6-8.21 to -8.82. On November 4, 2013, J.R. was transported to a crisis hospital after making suicide threats.

On November 6, 2013, the Division commenced this action against Grandmother and Father by filing a verified complaint seeking the custody, care, and supervision of the children. The Division alleged that Grandmother abused or neglected the children

[2] At trial, Maher "believe[d] [J.R.] told the [VPD] 30 minutes was the longest he had been left unsupervised."

under N.J.S.A. 9:6-8.21(c)(4)(b) by failing to exercise a minimum degree of care in providing them with adequate supervision because she permitted them to have unsupervised contact with Father.[3]

At a hearing on the order to show cause, the family court found that Grandmother "provided unauthorized access to the minor children that may have resulted in them being sexually assaulted by their father," and that the removal of the children was necessary to avoid an ongoing risk to their life, safety, and health. The court continued an order banning contact by Father with the children, a ban that remained in place throughout the litigation. The court placed both children in the Division's custody, but J.R. was later returned to Grandmother's custody.

Father was arrested for failing to register as a sex offender. He told Maher he had resided in Grandmother's home for some time, he stayed overnight frequently, and had been left unsupervised with the children for significant periods of time to play games.

A fact finding hearing was conducted over four days in 2014. Zakrzewski, Maher, Rodriguez, and Dr. Ronald S. Gruen testified for the Division, and were found credible by the family court. Grandmother, Grandfather, and the caseworker were called by

[3] The children's mother Ja.R. was also named as a defendant, but did not participate in any stage of the proceedings, and the Division sought no finding against her.

Father. The court credited Grandfather as well. The court found that Grandmother "believes what she says is true, but . . . several of her answers are not credible."

Zakrewski briefly testified concerning the referrals. Maher related the statements made to her by D.R., J.R., Father, Grandmother, and Grandfather. Detective Rodriguez related what D.R. and J.R. said during their interviews.

Dr. Gruen, an expert in the field of psychology, testified as follows. He performed psychological evaluations of D.R. and J.R. in December 2013. He found D.R. to be credible. D.R.'s statements to him were consistent with her statements in Maher's report, and he believed D.R. had been sexually assaulted. D.R. indicated that she intentionally cut herself and had attempted suicide. Cutting and suicide attempts, as well as inconsistent stories, were common behaviors among victims of sexual assault. He diagnosed D.R. with depression and PTSD, diagnosed J.R. with depression, and found these conditions resulted from their dysfunctional environment.

Grandmother testified as follows. Father went to prison for a sexual assault "because a girl told him no to having sex and he had sex anyway." When Father was released from prison, he was subject to certain "restrictions," among them that "he couldn't be left alone with the children." On several occasions, Father

spent the night at her house, sleeping in the basement, but she would get up during the night to check on the children. She allowed the children to be alone with Father in rooms in her house, including the basement, while she was elsewhere in the house because "[y]ou can basically hear from each floor, literally, what's going on." She allowed D.R. to ride in a car with Father and Father's friend while she followed closely behind in her vehicle, but she instructed Father's friend that Father was not to be left alone with D.R. She admitted taking the children to visit Father at a motel where he was living on occasion, but denied ever leaving them there alone. She was never told by D.R. that Father had been sexually inappropriate with or towards D.R.

On cross-examination, Grandmother testified as follows. Father never "lived lived" in her house after being released from prison. She admitted to allowing other adults, such as Father's friend, to supervise the children when they were with Father. She "had seen [Father's friend] a couple of times," but did not know that he had been involved in the same sexual assault for which Father was convicted. She does not believe D.R.'s allegations, but acknowledged that her story had remained consistent since she first shared it in therapy at the Insight Program.

Grandfather testified as follows. He knew Father was subject to Megan's Law and had to be supervised around children. Father

would visit the children at the family home and sometimes spend the night in the basement. The children were allowed to be in the basement along with Father, but Grandfather would probably be in the living room on the first floor, where he could hear what was happening in the basement. The children never told him that Father had acted inappropriately with them.

In its December 16, 2014 written opinion and order, the family court found "credible D.R.'s allegations of sexual abuse beginning at age 11." However, the court found that "[t]he only evidence of these offenses was provided by D.R.," and that "[i]n the absence of corroborating evidence of the sexual assaults, the court cannot find by a preponderance of the evidence that [Father] abused or neglected either D.R. or J.R."

Nonetheless, the court found by a preponderance of evidence that Grandmother had "failed to exercise a minimum degree of care by allowing regular unsupervised contact between [Father] and the children placing the children at imminent risk of harm due to [Father]'s Megan's Law status for a sexual offense." The court found Grandmother was aware that Father had been convicted of a sex offense, that he was a registered Megan's Law offender, and that the KLG orders required her to supervise all visitation between Father and the children. However, she admittedly allowed Father to be with children unsupervised in the basement, permitted

D.R. to be in a car with Father and his friend, and allowed Father to sleep in the home while the children were present. The court did not find credible her claims that she checked on the children during the night. The court also discredited her claim that she could always hear what was occurring in the basement, even if she was on the second floor or if the television was on in the basement or the upstairs.

The family court found that the children had experienced mental and emotional issues, but that it could not conclude they were impaired as the sole result of unsupervised contact with Father. However, the court found that

> [t]he totality of the circumstances in this case support a finding that the children were at substantial risk that their physical, mental or emotional condition was in imminent danger of becoming impaired as a result of [Grandmother]'s routinely allowing [Father] to have unsupervised contact with the children. This unsupervised contact, given [Father]'s history, is one element of the dysfunctional environment referenced by Dr. Gruen.

The court found Grandmother abused or neglected both children.

The family court placed Grandmother's name on the state Child Abuse Registry, but left J.R. in Grandmother's custody. On June 6, 2016, the litigation was terminated because D.R., who was almost eighteen, was in an independent living program.

Grandmother appeals. The Law Guardian for D.R. urges us to affirm the family court's ruling. The Law Guardian for J.R. joins Grandmother in advocating for reversal.

II.

We must hew to our standard of review. We "'defer to the factual findings of the trial court because it has the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand; it has 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) (citation omitted). "Particular deference is afforded to family court fact-finding because of the family courts' special jurisdiction and expertise in family matters." N.J. Div. of Child Prot. & Permanency v. N.C.M., 438 N.J. Super. 356, 367 (App. Div. 2014) (citing Cesare v. Cesare, 154 N.J. 394, 413 (1998)).

"So long as the record contains substantial and credible evidence to support the family court's decision, we may not second-guess its judgment." N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 427 (2012). Even "[w]here the issue to be decided is an 'alleged error in the trial judge's evaluation of the underlying facts and the implications to be drawn therefrom,'" "deference will still be accorded the trial judge's findings unless it is determined that they went so wide of the mark that the judge

was clearly mistaken." N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007) (quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188-89 (App. Div. 1993)).

III.

Grandmother and the Law Guardian for J.R. argue that the evidence was inadequate to show abuse or neglect under N.J.S.A. 9:6-8.21(c)(4)(b). We disagree.[4]

Under N.J.S.A. 9:6-8.21(c)(4), a child is abused or neglected if her

> physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of [her] parent or guardian . . . to exercise a minimum degree of care . . . (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof . . . .
>
> [Ibid. (emphasis added).]

Thus, "a finding of abuse and neglect can be based on proof of imminent danger and a substantial risk of harm." Div. of Child Prot. & Permanency v. E.D.-O, 223 N.J. 166, 178 (2015) (citation omitted).

[4] During the fact-finding hearing, the Division also alleged Father and Grandmother violated N.J.S.A. 9:6-8.21(c)(3), which authorizes a finding of abuse or neglect if a parent or guardian "commits or allows to be committed an act of sexual abuse against the child." However, the trial court rejected those allegations because the sexual abuse was not corroborated.

There is sufficient credible evidence in the record to support the family court's findings that Grandmother abused or neglected the children because she placed them "at substantial risk of harm" and left their "physical, mental, or emotional condition . . . in imminent danger of becoming impaired" by willingly allowing Father to have unsupervised contact. N.J.S.A. 9:6-8.21(c)(4)(b).

Father pled guilty to committing a sexual assault using "physical force or coercion." See N.J.S.A. 2C:14-2(c)(1). His victim was admittedly an underage girl. He was sentenced to five years in prison and CSL. On release, he was rated under Megan's Law as a Tier II sex offender, meaning his "risk of re-offense is moderate." N.J.S.A. 2C:7-8(c)(2). Under CSL, he was generally barred from residing or having contact with minors. N.J.A.C. 10A:71-6.11(c). The KLG orders required Grandmother to supervise any contact he had with D.R. and J.R. Grandmother admitted he had pled guilty to forcing a girl to have sex with him. Yet she repeatedly left Father alone and unsupervised with a young girl and her younger brother.

The family court heard and credited testimony from numerous witnesses that Grandmother left the children alone with Father. Zakrzewski testified that D.R. said Grandmother allowed unsupervised visitation between Father and D.R. Maher testified that both of the children said they were frequently left

unsupervised with Father in the basement of the family home. D.R. reported that Grandmother allowed her to ride unsupervised in a vehicle with Father and one of his friends, and allowed both children to visit Father alone in his various motel rooms. Detective Rodriguez testified that D.R. said she was often left unsupervised in the basement of the home with Father while Grandmother was upstairs, and that both children stated that they had been left alone with Father on multiple occasions. J.R. said they were alone with Father for a half-hour to an hour at a time.

Father admitted to Maher that he had been left unsupervised with the children for significant periods of time. Grandfather testified Father would sometimes spend the night at the family home and was alone in the basement with the children. Even Grandmother admitted she allowed the children to be alone with Father in the basement, and permitted D.R. to ride in a car with Father and his friend.

The family court found it was undisputed: that Father "frequented his parents' home and sometimes spent the night there"; "that the children were allowed to be alone with him in the basement"; that Father "has unsupervised contact with the children in the basement of the family home"; that Father "had unsupervised contact with [D.R.] in his friend's car"; and that Grandmother allowed him to have these unsupervised contacts. These findings

were all supported by the credited testimony cited above. The children's allegations of Father sleeping overnight in the home and being unsupervised in the basement with Father were corroborated by Grandfather and Father, and admitted by Grandmother, who also admitted D.R.'s allegations that she was permitted to ride unsupervised in a car with Father and his friend.

Grandmother ignored her explicit duty under the KLG orders to supervise the children when they were with Father. Instead, Grandmother repeatedly left the children alone with a convicted sex offender whom she knew had used force or coercion to compel an underage girl to have sex, and was barred from having unsupervised contact with children. Exposing young children to a "substantial risk" of being sexually abused or assaulted, or having to watch a sibling be sexually assaulted, is sufficient to put their "physical, mental, or emotional condition . . . in imminent danger of becoming impaired." N.J.S.A. 9:6-8.21(c)(4).

A.

Grandmother contends that the facts before the court were insufficient to support a finding that her failure to supervise rose to the level of gross negligence or recklessness. In a prosecution under N.J.S.A. 9:6-8.21(c)(4)(b), the Division must establish that a parent failed "to exercise a minimum degree of care." A "'minimum degree of care'" requires "something more than

ordinary negligence," namely "conduct that is grossly negligent because it is willful or wanton." E.D.-O., 223 N.J. at 179 (quoting G.S. v. Dep't of Human Servs., 157 N.J. 161, 178 (1999)). "Conduct is considered willful or wanton if done with the knowledge that injury is likely to, or probably will, result[.]" Ibid. (quoting G.S., 157 N.J. at 178).

"[A]ctions taken with reckless disregard for the consequences also may be wanton or willful," and "the concept of willful and wanton misconduct implies that a person has acted with reckless disregard for the safety of others." G.S., 157 N.J. at 178-78. Thus, "'a minimum degree of care' at least requires grossly negligent or reckless conduct." N.J. Dep't of Children & Families, Div. of Youth & Family Servs. v. T.B., 207 N.J. 294, 306 (2011).

"[U]nder a wanton and willful negligence standard, a person is liable for the foreseeable consequences of her actions, regardless of whether she actually intended to cause injury." Ibid. (quoting G.S., 179 N.J. at 179). Therefore, "a guardian fails to exercise a minimum degree of care when he or 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." N.J. Div. of Child Prot. & Permanency v. A.B., 231 N.J. 354, 369 (2017) (quoting G.S., 157 N.J. at 181).

Grandmother asserts the Division failed to prove that she was aware of any risk of allowing the children to be unsupervised with Father, or that she recklessly disregarded that risk. However, as the family court noted, Grandmother testified that she was aware that Father had been convicted of sexually assaulting a girl, forcing her to have sex against her will. She knew he was sentenced to prison, was a registered sex offender, and was released only on the condition he have no unsupervised contact with minors. She knew she was required to supervise any visitation he had with the children. As such, she was "aware of the dangers inherent in" allowing Father to have unsupervised contact with the children, yet she "fail[ed] adequately to supervise the child[ren]". Ibid. That was grossly negligent. It was also reckless, because she "recklessly create[d] a risk of serious injury." Ibid. In any event, it is sufficient if she was "grossly negligent or reckless." T.B., 207 N.J. at 306 (emphasis added).

Grandmother claims she did not comprehend Megan's Law and CSL. She argues only the caseworker's testimony showed Father's Megan's Law status prohibited him from unsupervised conduct with minors. However, Grandmother testified that when Father was released from prison, she understood his release was subject to restrictions, including that "he couldn't be left alone with the children." Grandmother testified she understood this last

restriction to mean, "[t]hat he could not be left alone [with the children] without an adult."

Grandmother argues the court orders were inconsistent. However, as her brief recognizes, under CSL a defendant may have contact with a minor "[w]hen the appropriate court may authorize contact with a minor." N.J.A.C. 10A:71-6.11(d)(4). Thus, CSL was not inconsistent with the KLG orders permitting supervised visitation, or with the similar order requiring supervised visitation regarding Father's third child. Grandmother argues the KLG orders were inconsistent with the CSL paperwork, but she does not supply us with the CSL paperwork, and did not assert she ever saw the CSL paperwork.

Grandmother contends the KLG orders were confusing. However, the KLG orders clearly authorized Father to have contact with the children only when "supervised by the Caregiver," and named P.H. as the "Caregiver." The other language in the KLG orders giving Grandmother the right to "authorize" visitation and "full and final say with regard to visitation" gave Grandmother the right to decide whether to allow visitation. It did not remove the orders' explicit requirement that any visitation had to be supervised by Grandmother. Grandmother's understanding she was required to supervise Father with the children was evidenced by her adamant if implausible assertions she was supervising from two

floors away or from a following car. See N.J. Div. of Youth & Family Servs. v. A.R., 419 N.J. Super. 538, 546 (App. Div. 2011).

Even ignoring that explicit requirement, Grandmother was grossly negligent in ensuring Father's contact with the children was supervised by a responsible adult. She admittedly left Father alone with the children in the basement, for what the children and Father said were significant periods of time, when she could not see and, the family court found, could not hear what Father was doing. She concededly let Father drive off with D.R. accompanied only by his friend from prison, whom she knew little about and who was involved in the sexual assault committed by Father. The family court rightly found she had a "lax attitude toward supervision of her son's contact with the children."

Repeatedly leaving the children alone with a registered sex offender convicted of forcing a girl to have sex against her will posed an "'obvious'" risk. A.B., 231 N.J. at 371; see N.J. Div. of Child Prot. & Permanency v. K.N.S., 441 N.J. Super. 392, 399 (App. Div. 2015) (finding it was grossly negligent to leave a child with a boyfriend in part because he had a criminal record). That he was "family" did not remove the danger. See N.J. Div. of Child Prot. & Permanency v. K.G., 445 N.J. Super. 324, 347 (App. Div. 2016) (finding grossly negligent leaving a child repeatedly with a mentally-limited brother); N.J. Div. of Child Prot. &

Permanency v. J.A., 436 N.J. Super. 61, 68-69 (App. Div. 2014) (finding grossly negligent letting a child ride with an inebriated parent). Moreover, this was not "an isolated lapse in parental judgment nor a one-time response to an emergency situation," as in the cases cited by Grandmother. K.G., 445 N.J. Super. at 344-47. Rather, Grandmother "made a practice of leaving" the children alone with Father in the basement. See id. at 344.

"Whether defendant's conduct resulted from extremely poor judgment or willful blindness to the danger is immaterial[.]" K.G., 445 N.J. Super. at 344. A guardian "is held to what 'an ordinary reasonable person would understand' in considering whether a situation 'poses dangerous risks' and whether the [guardian] acted 'without regard for the potentially serious consequences.'" J.A., 436 N.J. Super. at 68-69 (quoting G.S., 157 N.J. at 179).

Thus, Grandmother was "aware of the dangers inherent in a situation," and not only "fail[ed] adequately to supervise the child[ren]," but also "recklessly create[d] a risk of serious injury to the child[ren]." A.B., 231 N.J. at 369 (quoting G.S., 179 N.J. at 181). Thus, she "failed to exercise the minimum degree of care." Ibid.

B.

Grandmother claims the Division failed to present any medical expert testimony or evidence to establish that the children had been actually impaired by her failure to supervise their contact with Father. Grandmother notes that in finding Father had not sexually abused the children, the family court said the evidence of D.R.'s PTSD and depression "falls short of creating a nexus by a preponderance of the evidence between [Father's] alleged conduct and D.R.'s mental health issues," and made no specific finding J.R. had been harmed.

However, the family court ultimately chose to base its finding of abuse or neglect not on actual impairment but on imminent danger of impairment. Initially, the court found that "both children have been experiencing mental and emotional issues," and that Dr. Gruen indicated "these conditions were the result of a dysfunctional environment." However, the court conceded: "the court cannot conclude that the children's issues are the sole result of their unsupervised contact with their father and cannot conclude that their physical, mental or emotional condition was impaired because of that conduct."

Instead, the family court cited cases holding: "In the absence of actual harm, a finding of abuse and neglect can be based on proof of imminent danger and substantial risk of harm." E.g., N.J. Dep't of Children & Families, Div. of Youth & Family Servs.

v. A.L., 213 N.J. 1, 23 (2013). The court then found that "[t]he totality of the circumstances in this case support[s] a finding that the children were at substantial risk that their physical, mental, or emotional condition was in imminent danger of being impaired as a result of [Grandmother's] routinely allowing [Father] to have unsupervised contact with the children."

Our Supreme Court has made clear that "circumstances in which actual impairment is lacking will still meet the impairment element if there is 'evidence of imminent danger or substantial risk of harm.' Intuitively, a court need not sit idly by until a child is actually impaired by parental inattention or neglect." A.B., 231 N.J. at 370 (quoting A.L., 213 N.J. at 22). The family court properly found repeatedly leaving the children alone with a sex offender posed a substantial risk and left them in imminent danger of being impaired physically, mentally, or emotionally. That was sufficient to support its finding that Grandmother "abused or neglected both D.R. and J.R. pursuant to N.J.S.A. 9:6-8.21(c)."

The family court added that the "unsupervised contact, given [Father's] history, is one element of the dysfunctional environment referenced by Dr. Gruen." Grandmother seizes on that comment, arguing the court illogically based its ruling on actual impairment when it had just ruled it could not "conclude that their physical, mental or emotional condition was impaired because

of that conduct." Read in context, however, we believe the court's comment was merely an unnecessary aside, not a repudiation of its just-expressed reasoning that Grandmother's conduct posed a substantial risk and threatened imminent impairment.

Grandmother contends such a conclusion is precluded by the family court's finding that Father did not abuse or neglect the children. However, the family court merely found that, because D.R.'s testimony of Father's sexual abuse was uncorroborated, it could not find he "committed an act of sexual abuse against the child." N.J.S.A. 9:6-8.21(c)(3). It was not inconsistent for the court to find that Grandmother put these young children at substantial risk and imminent danger of sexual abuse by repeatedly leaving them alone for significant periods with a person convicted of forcibly sexually assaulting an underage girl.[5]

Because the peril of sexual abuse facing the children was "self-evident," it was not necessary to have expert testimony on Father's risk of re-offense. See A.B., 231 N.J. at 370 (finding, without expert testimony, that "[t]he perils facing a sixteen-

[5] The Division did not claim Father could be held liable for failing to provide care or supervision to the children, whom he could not contact without being supervised himself. We note a court may appoint a kinship legal guardian to "be responsible for the care and protection of the child" only if "the parents are unable, unavailable or unwilling to perform the regular and expected functions of care and support of the child." N.J.S.A. 3B:12A-2, -6).

year-old . . . who is left to fend for herself, bereft of any parental supervision, guidance, or care, are self-evident"). Our Supreme Court does "not require expert testimony in abuse and neglect actions" where, "as here, an adequate presentation of actual harm or imminent danger can be made without the use of experts." A.L., 213 N.J. at 29. There was substantial credible evidence supporting the family court's conclusion that Grandmother's conduct posed an imminent danger.

IV.

Grandmother argues that the family court improperly relied on uncorroborated, out-of-court statements by the children in support of its finding that she left the children unsupervised with Father. This argument is without merit.

Grandmother does not contest the admissibility of the children's statements. In a fact-finding hearing under Title Nine, "previous statements by a child relating to any allegations of abuse and neglect shall be admissible in evidence; provided however, that no such statement, if uncorroborated, shall be sufficient to make a fact finding of abuse and neglect." N.J.S.A. 9:6-8.46(a)(4). "Thus, a child's hearsay statement may be admitted into evidence, but may not be the sole basis for a finding of abuse or neglect." N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 33 (2011).

The family court was well aware of that provision, applying it to rule D.R.'s uncorroborated testimony that Father sexually abused her could not be the basis for a finding that Father or Grandmother "commit[ted] or allow[ed] to be committed an act of sexual abuse against the child." N.J.S.A. 9:6-8.21(c)(3).

The family court properly did not apply the proviso to what it found were D.R.'s "corroborated" and indeed "undisputed" statements that Father "frequented his parent's home and sometimes spent the night there," and "that the children were allowed to be alone with him in the basement." Those statements were corroborated by testimony by Grandfather and Grandmother and by Father's statements.[6] Similarly, D.R.'s statement that she rode alone in a car with defendant and his friend was corroborated by Grandmother. See N.J. Div. of Child Prot. & Permanency v. I.B., 441 N.J. Super. 585, 591 (App. Div. 2015) (noting "an admission" is among "the most effective types of corroborative evidence").

Grandmother argues neither she nor Grandfather admitted that leaving the children alone with Father in those circumstances meant the contact was unsupervised, but that is a legal conclusion.

[6] Father admitted he had unsupervised contact with the children, which would be in violation of a condition of his release. Such statements against interest may serve as corroboration of a child's statements under N.J.S.A. 9:6-8.46(a)(4). See N.J. Div. of Child Prot. & Permanency v. N.T., 445 N.J. Super. 478, 497-500 (App. Div. 2016).

Moreover, "corroborative evidence need not be direct so long as it provides some support for the out-of-court statements." J.A., 436 N.J. Super. at 67. The family court credited the children's corroborated statements, and "[p]articular deference is afforded to decisions on issues of credibility." G.L., 191 N.J. at 605.

Notably, the family court did not rely on D.R.'s uncorroborated statements that the children were left alone with Father while the grandparents were at work, or that Grandmother left D.R. alone at a motel where Father resided. Thus, the court did not violate N.J.S.A. 9:6-8.466(a)(4).

V.

Grandmother argues the admission of a report by Dr. Martin A. Finkel into evidence was reversible error because the medical diagnoses and conclusions in the report were inadmissible hearsay. We review a trial court's evidentiary rulings for abuse of discretion. State v. Kuropchak, 221 N.J. 368, 385 (2015). A trial court's ruling admitting evidence "will generally be upheld unless it is '"so wide of the mark"' as to result in a manifest injustice." State v. J.D., 211 N.J. 344, 354 (2012) (citations omitted). We agree the doctor's opinions were improperly admitted. However, this admission was harmless error.

As we recently explained in N.T.:

> To be admissible as a business record of the Division, a Division report must meet the requirements of N.J.R.E. 803(c)(6), whether the report is offered under N.J.S.A. 9:6-8.46(a)(3), Rule 5:12-4(d), or In re Guardianship of Cope, 106 N.J. Super. 336 (App. Div. 1969). If a Division report is admissible under N.J.R.E. 803(c)(6) and meets the requirements of N.J.S.A. 9:6-8.46(a)(3), Rule 5:12-4(d), or Cope, the court may consider the statements in the report that were made to the author by Division staff personnel, or affiliated medical, psychiatric, or psychological consultants, if those statements were made based on their own first-hand factual observations, at a time reasonably contemporaneous to the facts they relate, and in the usual course of their duties with the Division. However, whether the Division report is offered under N.J.R.E. 803(c)(6), N.J.S.A. 9:6-8.46(a)(3), Rule 5:12-4(d), or Cope, statements in the report made by any other person are inadmissible hearsay, unless they qualify under another hearsay exception as required by N.J.R.E. 805. Expert diagnoses and opinions in a Division report are inadmissible hearsay, unless the trial court specifically finds they are trustworthy under the criteria in N.J.R.E. 808, including that they are not too complex for admission without the expert testifying subject to cross-examination.
>
> [445 N.J. Super. at 487 (emphasis added).]

The family court properly accepted the Division's argument that Finkel's report generally was admissible as a business record under N.J.R.E. 803(c)(6), N.J.S.A. 9:6-8.21(a)(3), and Rule 5:12-4(d). The report had an attached certification that the report was made in the regular course of business as required by N.J.R.E.

803(c)(6). Maher testified Finkel was a Division medical consultant who examined D.R. in Maher's presence. Thus, the first-hand observations in the report were admissible. D.R.'s statements in the report were admissible under N.J.S.A. 9:6-8.46(a)(4), and in any event were repetitive of her statements to the Division's live witnesses. However, the court erred in admitting Finkel's expert opinions without finding them trustworthy under N.J.R.E. 808. See N.T., 445 N.J. Super. at 500-03.

In N.T., the court's failure to make those findings was prejudicial because "the psychologist's diagnoses and opinions were the linchpin of the trial court's opinion, and because the Division's other evidence of harm . . . was less than overwhelming." Id. at 487. The trial court heavily and "expressly relied" on the psychologist's diagnoses and opinions, which led it to find that seeing domestic violence caused actual harm and impairment, and which "were central to the trial court's finding of abuse or neglect." Id. at 503.

By contrast, the family court rejected the conclusion Dr. Finkel's report was introduced to support, namely that Father had sexually abused D.R. Finkel, a pediatrician, was asked "to diagnose and treat any" injuries to D.R. from being "touched in a sexually inappropriate manner." He found no physical evidence of sexual assault. He added: "[t]he primary impact of her experience

is psychological," she was "very traumatized by what she experienced," and "she continues to have symptoms of PTSD."

The family court's opinion noted that D.R. was examined by Dr. Finkel and that there was "no physical evidence of any of the alleged sexual assaults." The court made no further mention of Finkel or his report. The court found no corroboration for D.R.'s claims of sexual assault, and could not find any sexual assaults had occurred. The court cited the testimony of the psychologist Gruen, not the report of pediatrician Finkel, to support its finding that D.R. had PTSD and other mental and emotional issues. The court shelved even that finding, ruling it could not conclude that the children's "physical, mental or emotional condition was impaired because of" their unsupervised contact with Father.

Instead, the family court relied on the substantial risk and imminent danger of impairment as the basis for its finding of abuse or neglect. As set forth above, no medical expert evidence was needed to reach that self-evident finding. Further, the evidence that the children had been repeatedly left alone with a sex offender for lengthy periods was strong and largely undisputed, unlike the weak, differing, and unreliable lay evidence of actual impairment in N.T. Cf. id. at 504.

A hearsay error mandates reversal where it appears "'the error led the [factfinder] to a result it otherwise might not have

reached.'" Neno v. Clinton, 167 N.J. 573, 586 (2001) (citation omitted). Here, Dr. Finkel's report was barely mentioned and was not relied upon in the family court's decision. Thus, the admission of the opinions in Finkel's report was a harmless error not "clearly capable of producing an unjust result." R. 2:10-2.

Affirmed.