RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5349-15T2

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

A.M.,

Defendant-Appellant,

and

T.M.,

Defendant.

IN THE MATTER OF A.M. and M.M.,

Minors.

Submitted March 5, 2018 – Decided March 15, 2018

Before Judges Sabatino and Ostrer.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FN-12-0280-13.

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

Gurbir S. Grewal, Attorney General, attorney for respondent (Melissa Schaffer, Assistant Attorney General, of counsel; Danielle P. Counts, 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

This child welfare case returns after an additional fact-finding hearing we ordered in an unpublished opinion. N.J. Div. of Child Prot. & Permanency v. A.M., No. A-4122-13 (App. Div. July 30, 2015). The trial court's original finding of defendant A.M.'s abuse or neglect of her two children was essentially based upon stipulated factual contentions. In our 2015 opinion, we ruled there was "no evidence that defendant made a knowing and informed relinquishment of her right to a fact-finding hearing . . . ." Id. at 3-4. We also noted the then-limited record was "insufficient to establish that [defendant's] conduct was wanton and willful . . . ." Id. at 4. The finding of abuse and neglect accordingly was vacated without prejudice, pending the outcome of the fact-finding hearing on remand. Id. at 6.

The amplified record in this case reveals that defendant, a single mother, left her two-year old and three-year old children unattended in her residence for several hours when she went to work mid-afternoon. Although defendant claims she left the

children asleep in cribs and that she had locked the doors to the house as she departed, the two minors somehow were able to get outside. The children were observed around 4:30 p.m. walking down the street about 120 feet from their home. A concerned individual picked them up and notified the police.

The police contacted defendant and arrested her for child neglect. The Division of Child Protection and Permanency ("the Division") removed the children from defendant's care, and brought the present case in the Family Part charging her with abuse or neglect under N.J.S.A. 9:6-8.21(c)(4).

On remand, the trial court heard testimony from the police officer who returned the children to safety, a police detective who investigated the incident, and a Division worker. Defendant elected not to testify. However, the court considered the statements she made during interviews. In those interviews, defendant stated she left the children alone for a few hours because she had been unable to arrange for someone else to watch them. She explained she had been under financial pressure to pay her delinquent mortgage, and that she was fearful of losing her job if she did not report to work that afternoon.

After considering the evidence on remand, the trial judge made several pertinent findings of fact. He found that defendant deviated from her "usual schedule" on the date of the incident

"due to not having a babysitter, or more correctly not trying to find a babysitter on that day," and "made the informed and knowing decision to go to work" so as not to "exacerbate her already grim financial situation." "Recognizing the dangers and risks of leaving these minor children alone at home," defendant changed her work schedule from 3:00 p.m. to 11:00 p.m. to 3:00 p.m. to 6:00 p.m. She "tried to tire [the children] out" by taking them to the park in the morning, and then she put each child in their own crib, closed and locked the doors, and left for work at 2:45 p.m., believing the children were asleep and would remain asleep. Including travel time, defendant "made the decision to leave the children alone in the home, with the doors locked for approximately three and a half hours." The exterior door to the home was "not baby proof." About two hours after defendant left, the children had found a way of exiting the home and were walking along the roadway where they were found.

Additionally, the trial judge found that, due to their very young ages, the children were not able to identify themselves. They were identified only "due to [a] dog that happened to come by, which had tags on it . . . ." The judge further noted defendant initially had lied to police about falling asleep and finding the children gone when she awoke. In her later interviews, defendant

retracted that narrative and admitted that she left the children at home in order to go to work.

Given these critical findings of fact, the trial judge found that defendant "purposely and intentionally planned to leave the children at home for over three hours[,]" and these children "could not communicate with others, could not call for or ask for help." Therefore, "she failed to exercise the minimum degree of care as required by law[,]" and the Division sustained its burden of proof.

Although the judge recognized defendant's "difficult" financial circumstances, he found this was not an "emergency situation," but was a "planned event, where she purposely, knowingly left these children alone in the home." The judge found the facts here are distinguishable from mere negligence cases involving unattended children that did not rise to a Title Nine violation. Defendant's children were too young to be verbal. She knew there was no one else home and no one would be checking in on them. The judge reasoned this conduct was "deliberate and reckless to the children . . . regardless of whether or not the children actually exited the home." He noted the discovery of the children walking on the roadway was "just evidence of the real and substantial and [imm]inent risk that [defendant] exposed her children to . . . ."

In her present appeal, defendant contends the trial court erred by failing to identify any actual risks involved and that her children were not placed in imminent danger. She contends the court relied on inadmissible hearsay in making its decision, and that her conduct was neither grossly negligent nor reckless. Finally, she argues that it was error to include her name on the child abuse registry for what she characterizes as a "single isolated incident." We are unpersuaded.

In reviewing an adjudication of abuse and neglect, we generally afford great deference to the trial court's findings of fact and conclusions of law. N.J. Div. of Youth & Family Servs. v. V.M., 408 N.J. Super. 222, 235 (App. Div. 2009). We will "uphold the factual findings undergirding the trial court's decision if they are supported by 'adequate, substantial and credible evidence' on the record." N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (quoting In Re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)). We intervene in circumstances where the court's "conclusions are 'clearly mistaken' or 'wide of the mark.'" Parish v. Parish, 412 N.J. Super. 39, 48 (App. Div. 2010) (quoting N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008)). Only the trial court's interpretation of the law and its legal conclusions are

subject to de novo review. Manalapan Realty, LP v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995).

We adhere in abuse and neglect cases to the conduct standards set forth in Title Nine of the New Jersey statutes. N.J. Div. of Child Prot. & Permanency v. E.D.-O., 223 N.J. 166, 177 (2015). The Division has the burden of proving abuse and neglect at the fact-finding hearing by a preponderance of the evidence. N.J. Div. of Youth & Family Servs. v. A.L., 213 N.J. 1, 23 (2013).

The purpose of the fact-finding hearing in Title Nine cases is to protect children from acts or conditions that threaten their welfare. G.S. v. Dep't of Human Servs., 157 N.J. 161, 176 (1999). Because the safety of children is of paramount concern, a "court 'need not wait to act until a child is actually irreparably impaired by parental inattention or neglect.'" A.L., 213 N.J. at 23 (quoting In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999)); N.J. Div. of Youth & Family Servs. v. S.S., 372 N.J. Super. 13, 24 (App. Div. 2004).

An abused or neglected child is one

> 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 . . . 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 . . . .

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

Courts have interpreted the phrase "failed to exercise a minimum degree of care" standard set forth in N.J.S.A. 9:6-8.21(c)(4) as capturing a "middle standard" between intent and ordinary negligence. G.S., 157 N.J. at 177. Thus, "the phrase '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" and "actions taken with reckless disregard for the consequences also may be wanton or willful." Ibid. (citations omitted). "So long as the act or omission that causes injury is done intentionally, whether the actor actually recognizes the highly dangerous character of her conduct is irrelevant. Knowledge will be imputed to the actor." Ibid. (internal citation omitted). "[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." Id. at 181.

In order to distinguish between "merely negligent conduct and wanton and willful misconduct" the court in a Title Nine case must evaluate the "seriousness of the actor's misconduct." G.S., 157 N.J. at 178 (citing McLaughlin v. Rova Farms, Inc., 56 N.J. 288,

306 (1970)). "Essentially, the concept of willful and wanton misconduct implies that a person has acted with reckless disregard for the safety of others" Id. at 179 (citing Fielder v. Stonack, 141 N.J. 101, 123 (1995); McLaughlin, 56 N.J. at 305). Under this standard, "a person is liable for the foreseeable consequences of her actions, regardless of whether she actually intended to cause injury." Ibid. In cases where the child has not suffered actual harm, as in this case, "the Division must 'demonstrat[e] some form of . . . threatened harm to a child.'" E.D.-O., 223 N.J. at 181 (quoting A.L., 213 N.J. at 25) (alteration in original).

Applying these standards here, we readily affirm the trial court's findings of abuse or neglect based on the expanded record developed on remand at the fact-finding hearing. The court's determination was soundly based upon substantial credible evidence and consistent with the applicable law.

Although we appreciate defendant may have been coping with difficult circumstances, it did not justify her grossly negligent behavior in leaving her three-year-old child and two-year-old child unattended at home for several hours. The mere fact the children fortunately were found on the street unharmed does not eradicate the very serious risk of harm they experienced.

We reject defendant's contention that the trial court relied on inadmissible hearsay. The records of the Division were

admissible as business records and public records, respectively, under N.J.R.E. 803(c)(6) and (8). See also R. 5:12. In addition, defendant's own statements reported in those records were admissible as statements by a party opponent. See N.J.R.E. 803(b)(1) (party opponent admissions) and N.J.R.E. 805 (regarding hearsay within hearsay).

Mindful that the Division eventually returned the children to defendant's care, we discern no injustice in placing her on the registry to recognize her substantiated neglect. We appreciate defendant is remorseful. Even so, her remorse and post-incident responsible behavior do not ameliorate the gross negligence that she committed, which the Division amply proved at the hearing. E.D.-O., 223 N.J. at 189.

Affirmed.