

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0503-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

E.A.,

Defendant,

and

P.A.,

Defendant-Appellant.

IN THE MATTER OF E.A.,
a minor.

Submitted December 7, 2022 – Decided September 22, 2023

Before Judges Accurso and Natali.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Essex County,
Docket No. FN-07-0071-20.

Joseph E. Krakora, Public Defender, attorney for
appellant (Phuong V. Dao, Designated counsel, on the
brief).

Matthew J. Platkin, Attorney General, attorney for
respondent (Melissa H. Raksa, Assistant Attorney
General, of counsel; Amy Melissa Young, Deputy
Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian,
attorney for minor (Meredith Alexis Pollock, Deputy
Public Defender, of counsel; Jennifer Sullivan,
Assistant Deputy Public Defender, of counsel and on
the brief).

The opinion of the court was delivered by
ACCURSO, P.J.A.D.

Defendant P.A. appeals from the Family Part's April 8, 2020 order entered after a fact-finding trial that he abused and neglected his sixteen-year-old daughter E.A. (Evelyn) in violation of N.J.S.A. 9:6-8.21(c) by engaging in acts of sexual abuse.¹ Because we agree with the Division of Child Protection and Permanency and the law guardian that there is substantial credible

¹ We refer to defendant and other family members by initials or fictitious names in accordance with Rule 1:38-3(d)(12).

evidence in the record to support Judge Cavanaugh's finding of abuse and neglect, we affirm.

Evelyn testified at the hearing. So did her stepmother, a Division investigator and the psychologist who evaluated Evelyn for the Division. The investigator testified she was dispatched to Evelyn's home, where she lived with defendant, her stepmother, her stepmother's mother, three very young siblings and defendant's brother Maxwell, to investigate a report by one of Evelyn's former teachers. The teacher reported that a conversation she'd had with the girl made her suspect that Evelyn was being sexually abused by her father and might be at risk of self-harm.

According to the investigator, Evelyn had started to cry when asked about the report to the Division, and stated she didn't want to go to foster care. Although admitting she'd been touched inappropriately by her father and that she'd swallowed a lot of pills a few weeks before, she refused to provide the investigator any details, despite the investigator's several attempts over more than an hour. It wasn't until her stepmother arrived and denied knowing anything about defendant inappropriately touching Evelyn, that the girl told the investigator what her father had done.

Evelyn confided her father had been molesting her since after her eighth-grade graduation and had done "everything to her sexually but penetrate her" with his penis. She claimed her stepmother knew, and she'd told Maxwell, who was Evelyn's same age. The investigator testified Evelyn was very upset throughout the whole of their encounter and wanted to be reassured that nothing was "going to happen" to her young siblings or Maxwell as a result of her disclosures.

The investigator testified she spoke to Maxwell, who told her he knew something was going on, although he wasn't sure what, because he'd once seen his brother touch Evelyn's backside inside their home. Eventually, Evelyn told him everything that had happened.² The investigator testified she did not

² After the hearing, the trial judge granted defendant's motion to exclude the hearsay statements attributed to Maxwell, who did not testify at trial. The trial judge acknowledged that in N.J. Div. of Child Protection and Permanency v. T.U.B., 450 N.J. Super. 210, 228-229 n.10 (App. Div. 2017), we had assumed, without deciding, that "child" in N.J.S.A. 9:6-8.46(a)(4), which provides that "previous statements made by the child relating to any allegations of abuse or neglect shall be admissible in evidence," extends to "non-party children" such as Maxwell. She nevertheless declined to base her ruling of the admissibility of Maxwell's statements to the investigator "on an assumption that the Appellate Division included in a footnote." Because the issue was not raised on appeal, we do not consider it further — beyond noting that we are not aware of any published opinion that has deemed the hearsay statements of a non-party child inadmissible in a Title 9 trial and note the many cases that recount the hearsay statements of non-party children without comment. See,

interview defendant as she had been advised not to do so by the Essex County Prosecutor's Office.

Evelyn testified the first time her father sexually abused her had been in the summer after eighth grade in their basement, when she'd brought him some food.³ According to Evelyn, her father touched her breast and buttocks under her clothing and touched her vagina. After that time, he'd regularly taken her into his bedroom early Saturday mornings after her stepmother had gone to

e.g., N.J. Div. of Youth & Family Servs. v. A.R.G., 361 N.J. Super. 46 (App. Div. 2003), aff'd as mod., 179 N.J. 264, 845 A.2d 106 (2004); N.J. Div. of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 624, 626-27 (App. Div. 2010). We are aware there exists a question as to "whether overlapping out-of-court statements of children can, without more, satisfy the statutory corroboration requirement," see N.J. Div. of Child Prot. & Permanency v. M.C., 435 N.J. Super. 405, 423 (App. Div. 2014), abrogated on other grounds by N.J. Div. of Child Prot. & Permanency v. E.D.-O., 223 N.J. 166 (2015) and superseded by N.J. Div. of Child Prot. & Permanency v. M.C., No. A-2398-12 (App. Div. Aug. 4, 2016), but that is a different issue predicated on the admissibility of the statements of non-party children.

³ Evelyn's examination was conducted by the court in chambers with all counsel present and a live video feed into the courtroom to allow P.A. to view the testimony in real time, with breaks to allow P.A. to confer with his counsel and suggest additional questions. Because Evelyn spoke very softly, many of her answers to questions were not captured in the transcript, with the transcriber denoting them as inaudible. In February 2022, we granted the law guardian's motion for a limited remand pursuant to Rule 2:5-3(f) to allow the trial judge to reconstruct the record of Evelyn's testimony, which was made part of the Division's appendix. Defendant has not made either the conduct of Evelyn's examination or its reconstruction an issue in this appeal.

work and the rest of the family was still asleep. On those occasions, he would touch her under her clothing and make her "drink his nipples," while he masturbated to ejaculation. The last time it happened was on a bed in the back of the cab of defendant's over-the-road truck. She was clear defendant had never touched her with his penis and never demanded that she touch him beyond making her "drink his nipples."

Evelyn testified she'd told her stepmother about the abuse shortly after the encounter in defendant's truck. Angry about defendant having taken away her cell phone, Evelyn threatened him that she would tell her stepmother what he'd been doing to her. He invited her to do so, and listened while Evelyn reported the abuse to her stepmother.⁴ According to Evelyn, her stepmother "started believing" her until defendant "started to make up lies," including that she'd stolen some money that had gone missing in the household. When Evelyn told her stepmother defendant was lying, he slapped her face.

Evelyn testified that later that night she swallowed a bottle of pills her pediatrician had prescribed for her. She couldn't say what the pills were for or

⁴ The Division did not charge Evelyn's stepmother with abuse. Although Evelyn's biological mother, E.A., was charged, she lives in Ghana and did so during the time of P.A.'s abuse of their daughter. The Division deemed the charge against E.A. unfounded, and she has not participated in this appeal.

how many she'd taken. She also claimed she'd cut herself on her arm at some point before she told her stepmother, but that the cuts were superficial and only bled "a little."

Tiesha Finley, Ph.D., testified for the Division about her psychosocial evaluation of Evelyn. She related what Evelyn told her about the abuse during her clinical interview, which was consistent with what she'd told the Division's investigator. Dr. Finley also described the standard protocol of tests employed by the Regional Diagnostic Treatment Centers and the results of those assessments for Evelyn. She testified Evelyn "had clinically significant elevations in areas of post-traumatic stress, namely dissociation," which she described as being "emotionally blunted" and "significant symptoms of sexual concerns." Dr. Finley diagnosed Evelyn as suffering from "other traumas, stressor-related disorder," consistent with the trauma symptoms she'd observed in other children in confirmed sex abuse cases. Dr. Finley testified it was her opinion that Evelyn's trauma symptoms were not connected with her separation from her mother in Ghana when she was nine years old or the extent of the chores she was expected to perform at home.

Evelyn's stepmother testified for defendant. She claimed that until the birth of her second son in 2017, which would have been when Evelyn was in

eighth grade, she'd enjoyed a very good relationship with her stepdaughter. She testified that after that, Evelyn "totally changed," testifying her stepdaughter "was always angry," talked over her, screams, lies "a lot" and always had "attitude." She also testified defendant was a loving and caring father, but was "strict on the kids," which Evelyn didn't like, always wanting "to be her own boss." She claimed that before the Division got involved, Evelyn was very close to her father, whom she referred to as her "best dad."

In response to questions from defendant's counsel, Evelyn's stepmother also testified there had been a tenant living in their basement in 2017. On cross-examination, she recalled the tenant was male and left in 2018, but she had "forgot[ten] his name." When the court had asked Evelyn, at defense counsel's behest, whether someone named James had ever lived in the basement, she responded that the only person who ever lived in the basement was a woman named Vivian. Evelyn testified after Vivian left, her father converted her apartment to his office, the place where's he'd first abused her. Defendant did not testify.

After hearing the testimony and considering the documents in the record, with the exception of certain embedded hearsay, including Maxwell's statements, which she'd deemed inadmissible, Judge Cavanaugh issued a

comprehensive thirty-nine-page opinion in which she explained her reasons for finding by a preponderance of the evidence that defendant sexually abused Evelyn. The judge declared the case a difficult one, acknowledging it rested primarily on Evelyn's prior out-of-court statements and "most importantly" on Evelyn's direct testimony — which Judge Cavanaugh found credible and compelling.

The judge found Evelyn testified about the abuse in a way that was "personal, sincere and convincing," notwithstanding the "continuing disclosure of these acts in front of others has to be difficult and traumatic." She found Evelyn to have been consistent in her statements describing the abuse, finding whatever small discrepancies existed "to be insubstantial." The judge specifically rejected defendant's claim Evelyn's testimony should be given little weight based on there having been a tenant in the basement when Evelyn said her father assaulted her there, and that the Division didn't even establish that she'd been prescribed any medication by her pediatrician, much less that she'd consumed a whole bottle of it after allegedly telling her stepmother about her father's abuse. The judge believed Evelyn's testimony and found defendant's theory about a tenant in the basement not supported by her stepmother's testimony.

Although acknowledging Evelyn's stepmother "presented as a concerned wife and mother," Judge Cavanaugh was convinced "she knew [of the abuse] prior to the Division's involvement." The judge stated she found the stepmother's testimony to the contrary "not credible." Judge Cavanaugh found the witness "has a great deal at stake here; these are allegations by her stepdaughter against her husband. She has an interest in protecting him and her family unit."

Finally, although rejecting defendant's claim that Evelyn's testimony required corroboration, finding the law to be to the contrary, the judge found Evelyn's testimony was corroborated by Dr. Finley's credible testimony on the emotional impact of the abuse.

Defendant appeals, arguing the court erred by relying on "Evelyn's inconsistent and uncorroborated statements," which are "insufficient to sustain the finding of abuse," and by allowing "Dr. Finley to testify about the consistency and trustworthiness of Evelyn's statements," an objection not raised to the trial court. Neither of these arguments has any merit and warrant only brief comment. R. 2:11-3(e)(1)(A) and (E).

Defendant is incorrect that Evelyn's statements required corroboration to support a finding of abuse against defendant under N.J.S.A. 9:6-8.46(a)(4).

We held nearly ten years ago "the corroboration requirement of the statute does not apply where the child victim testifies to the abuse at a fact-finding hearing." N.J. Div. of Child Prot. & Permanency v. Y.A., 437 N.J. Super. 541, 542 (App. Div. 2013); see also Fall & Romanowski, N.J. Family Law: Child Custody, Protection & Support § 31:1-5 at 599 (2022-2023) ("statements made by a child testifying at trial need not be corroborated to be considered as proof of abuse or neglect.").

And although arguing that Dr. Finley "improperly vouch[ed] for the veracity" of Evelyn's "uncorroborated statements," defendant does not quote the transcript where he alleges Dr. Finley did so, and indeed concedes she did not testify defendant sexually abused his daughter. Instead, he argues Dr. Finley's offered opinion that Evelyn's statements about the abuse "were consistent — improperly declared that [defendant] was guilty of the abuse because Evelyn was telling the truth."

Our review of Dr. Finley's testimony reveals only that she diagnosed Evelyn as suffering from trauma related to sexual issues. She didn't opine on the veracity of Evelyn's allegations against her father or whether defendant was "guilty." As we explained in New Jersey Division of Child Protection and Permanency v. I.B., 441 N.J. Super. 585, 591, 598 (App. Div. 2015), the type

of "psychological evidence of emotional effects" of the sort Dr. Finley provided, is "routinely admitted in Title Nine cases" and "admissible as substantive evidence to corroborate the child's allegation of abuse." See N.J. Div. of Youth & Family Servs. v. Z.P.R., 351 N.J. Super. 427, 436, 439 (App. Div. 2002). Although there was no obligation on the Division to present corroboration of Evelyn's allegations in this case, as Judge Cavanaugh correctly noted, we find no error in the judge finding Dr. Finley's testimony corroborative of Evelyn's statements.

Defendant's arguments essentially reduce to quarrels with the judge's fact-finding, which we are simply in no position to reject. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974). As our Supreme Court has stated on many occasions, often in the context of abuse and neglect matters, "appellate courts '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, 342-343 (2010) (quoting N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008)).

Judge Cavanaugh viewed the case as a difficult one. But after carefully and conscientiously weighing the testimony of Evelyn and her stepmother, she believed Evelyn had been sexually abused by defendant and told her stepmother so. Defendant has provided us no basis to second-guess those critical credibility findings.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION