

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0751-21

NEW JERSEY DIVISION OF  
CHILD PROTECTION AND  
PERMANENCY,

Plaintiff-Respondent,

v.

L.C.

Defendant-Appellant,

and

Z.P.,

Defendant.

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

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Argued May 23, 2023 – Decided June 13, 2023

Before Judges Geiger, Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Hudson County,  
Docket No. FN-09-0131-20.

David A. Gies, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; David A. Gies, on the briefs).

Lisa J. Rusciano, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Donna Arons, Assistant Attorney General, of counsel; Michael C. Caulfield, Deputy Attorney General, on the brief).

Julie Goldstein, Assistant Deputy Public Defender, argued the cause for minor (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Meredith A. Pollock, Deputy Public Defender, of counsel; Julie Goldstein, of counsel and on the brief).

#### PER CURIAM

Defendant L.C. (Linda) is the biological mother of E.P. (Emerson), who was then four years old and in the sole physical custody of his maternal grandfather J.C. (Jason), pursuant to an order entered in a separate FD case, with supervised visitation by Linda in place. She appeals from the termination of this Title 30 care and supervision litigation, in which the Division of Child Protection and Permanency (Division) did not seek the termination of parental rights.<sup>1</sup> Linda argues the Family Part judge did not consider whether the child's best interests would be served by continuing the Division's care and supervision

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<sup>1</sup> We use initials and pseudonyms to protect privacy interests and to maintain the confidentiality of the record. See R. 1:38-3(d)(12).

of Emerson and provision of services, and contends that her due process rights were violated. The Division and the Law Guardian support the termination of the litigation. Defendant Z.P. (Zack), the biological father of Emerson, did not attend any of the hearings or participate in this appeal. We affirm.

Emerson was born in December 2016. On April 19, 2017, the Division received a child welfare services referral from the Hoboken Police Department reporting concerns for Emerson because Zack had dropped Emerson off at Hoboken Medical Center pursuant to the Safe Haven Infant Protection Act, N.J.S.A. 30:4C-15.5 to -15.11, but had returned twenty minutes later after having a change of heart and was permitted to leave with Emerson.

On June 13, 2018, the Division received a referral expressing concerns for Emerson because Linda was "using some drugs." Several attempts by a Division caseworker that day and later that week to meet with Linda were unsuccessful because no one was home. Subsequent efforts to contact Linda by letter and telephone were also unsuccessful. A visit to Zack's last known address in Jersey City was likewise unsuccessful.

On August 24, 2018, the Division received a referral that Linda was "using marijuana heavily every day."<sup>2</sup> The reporter indicated that Linda was using marijuana in Emerson's presence. During a home visit, Jason advised the caseworker that Linda was out. He reported that Linda lived with him, his wife L.V. (Lucy), a minor daughter, and Emerson.

The same day, the caseworker also received information that approximately three weeks earlier, Linda was observed with marks and bruises on her neck and face. The reporter suspected Linda had been abused by Zack, who allegedly had a short temper, and was aggressive towards her. When interviewed by the caseworker, Linda admitted she smoked marijuana on

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<sup>2</sup> At the time, marijuana was an illegal controlled dangerous substance. After the enactment of the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. 24:61-31 to -56, we recently held "that a parent's status as a recreational marijuana user cannot suffice as the sole or primary reason to terminate that parent's rights under Title 30, unless the Division proves with competent, case-specific evidence that the marijuana usage endangers the child or children." N.J. Div. of Child Prot. & Permanency v. D.H., 469 N.J. Super. 107, 113 (App. Div. 2021), certif. denied, 250 N.J. 395 (2022). In D.H., we advocated a case-specific and non-categorical approach to the law, and the Division must still "demonstrate, by the clear and convincing evidence required under Title 30, that the parent's usage poses a risk of harm to the child to a degree that satisfies the first and second prongs of the termination criteria." Id. at 133. As with parents who abuse alcohol, which is also legal for recreational use, termination of parental rights may be appropriate in cases where parents abuse marijuana to the extent it poses a substantial risk of harm to the child. Id. at 132.

occasions and last used it three weeks earlier at Zack's residence. She stated her relationship with Zack was "on and off" and they frequently argued over Emerson's care, finances and visitation. Linda indicated she would be open to services but denied any domestic violence issues with Zack. She denied using marijuana in Emerson's presence. Linda claimed she only used marijuana a couple of times per month and was willing to comply with random urine screens and a substance abuse evaluation.

On August 30, 2018, Linda reported to the caseworker that she had a history of substance abuse and would smoke marijuana at parties and while spending time with Zack. When advised five days later that she had tested positive for marijuana, Linda indicated she was interested in receiving treatment. Two days later, the case worker explained that a Safety Protection Plan (SPP) would be implemented because of the positive drug screen.

Linda was referred to New Pathway Counseling Services, Inc. (New Pathway) for a substance abuse evaluation. The evaluation recommended individual therapy. Drug screens conducted by New Pathway on November 1, 9, 13, 16, 20, and 27, 2018, tested positive for THC, the active ingredient in marijuana. New Pathway reported Linda was in denial about her reliance on marijuana, poorly motivated, unwilling to follow directions, and at risk of

termination for non-compliance if she did not attend sessions as required. On January 18, 2019, New Pathway discharged Linda from treatment and recommend a higher level of care as she tested positive for THC twelve times out of twelve screenings. New Pathway also reported that Linda had missed sixteen of thirty-three group sessions.

On August 12, 2019, the Division received a referral reporting that Linda was intoxicated and in the street with no shoes on, and that Emerson was home with the maternal grandparents. When interviewed that same day, Linda denied anyone drank alcohol in the home, but disclosed that she smoked marijuana a couple of weeks ago because of her anxiety and stated that she saw a psychiatrist in February 2019. The next day, Linda submitted to a urine drug screen, which was positive for THC. The Division scheduled a psychological evaluation for Linda, but she failed to attend.

On August 24, 2019, Jason reported that he obtained an amended domestic violence temporary restraining order (TRO) against Zack in February 2018, based on assault and terroristic threats. The TRO also protected Lucy. Jason reported to the Division that Zack would often verbally abuse Linda. Linda reported "friction and fights" in her relationship with Zack. According to a

police incident report, on December 17, 2018, Zack threatened that he was going to come to Linda's workplace with a gun.

On September 25, 2019, the Division filed a verified complaint and order to show cause for care and supervision of Emerson pursuant to Title 9 and N.J.S.A. 30:4C-12. At a hearing on October 24, 2019, a law guardian was appointed for Emerson. The law guardian did not take a position regarding the Division's application but expressed significant concerns regarding Zack. The court granted the Division care and supervision of Emerson because both parents placed Emerson at risk and ordered Linda to undergo a psychological evaluation.

On October 31, 2019, the court granted the Division care and supervision of Emerson due to concerns regarding Linda's substance abuse and mental health issues, and domestic violence incidents between Linda and Zack.

On November 21, 2019, Linda began substance abuse treatment with Integrity House and attended the program for one month but was subsequently discharged due to non-compliance. In December 2019, Linda tested positive for cannabinoids and THC. A random drug screen on January 8, 2020, came back as diluted. That same day, Linda attended a psychological evaluation.<sup>3</sup> Dr.

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<sup>3</sup> The written report of the psychological evaluation is not provided in the record.

Figurelli recommended that Linda attend a psychiatric evaluation to assess any current need for treatment with psychotropic medication for her anxiety and/or other psychologically based symptoms. Dr. Figurelli indicated that Linda could benefit from individual counseling to address the causes of her anxiety, enhance her coping, and reduce the risk for engaging in self-medicating behavior. He also recommended that Linda complete substance abuse treatment.

On January 9, 2020, the Division dismissed the Title 9 claims because it intended to continue only the care and supervision litigation under N.J.S.A. 30:4C-12 (section 12).

During a Title 30 summary hearing on March 12, 2020, the Division informed the court that Zack had been unresponsive and informed the Division that he does not want to be contacted. The Division requested that care and supervision of Emerson continue "as neither parent is complying with any of the services [offered by the Division], and their compliance would be necessary to ensure the health and safety of the child." The law guardian did not object and requested that Zack's contact with Emerson be supervised. The court granted the law guardian's request and ordered Linda to attend psychological and substance abuse evaluations and submit to drug screenings. The Division



rereferred Linda to Integrity House, but she did not complete a new intake appointment.

On June 2, 2020, the Division learned that Zack had punched Jason in the face. Two days later, the court conducted a Title 30 compliance review hearing and continued the Division's care and supervision of Emerson. The court ordered Linda and Zack to attend psychological and substance abuse evaluations, Linda to submit to random drug screenings, and that Zack's visits with Emerson remain supervised by Division staff at the local Division office, due to his "lack of compliance with the Division and lack of participation in the present litigation." In July 2020, Linda informed the Division that she was pregnant and that her mother and sister had left the family home due to issues with Zack.

On September 10, 2020, the court held a Title 30 summary hearing. The court concluded that Emerson still required the care and supervision of the Division. The court ordered Linda to attend a psychiatric evaluation, substance abuse treatment, and to submit to a drug screening within five days. Zack's contact with Emerson remained supervised.

On September 23, 2020, Linda tested negative. That same day, she attended a mental health counseling intake appointment at Bayonne Community

Mental Health where she declined substance abuse treatment. Linda's mental health counseling was postponed because she gave birth in October 2020. On October 21, 2020, the Division received a referral that Linda was using marijuana.

On December 8, 2020, the Division filed an amended complaint for care and supervision of Linda's new child, A.P. (Albert). On December 9, 2020, Linda underwent a psychiatric evaluation. The next day, the court granted the Division's request to add Albert under its care and supervision based on ongoing concerns for both parents' mental health, substance abuse, and domestic violence, and their refusal to cooperate with recommended services. The court also ordered Linda to attend mental health counseling at Bayonne Mental Health and to attend an intake appointment on December 11, 2020. Tragically, Albert died on December 25, 2020. The cause of death appeared to be from "close sleeping" but the autopsy did not reveal evidence of abuse or neglect.

On January 4, 2021, a consent order was entered dismissing Albert from the complaint, allowing the Division to implement supportive services as necessary for the health and safety of Emerson, and ordering that Linda's contact with Emerson must be supervised until the Division deems the supervision no longer necessary. On January 5, 2021, Linda began substance abuse treatment.

However, she failed to attend her scheduled psychiatric evaluation on February 23, 2021.

In February 2021, Jason reported that Zack damaged Jason's car and threw a bottle at him while Jason and Linda were picking Emerson up from daycare. On March 1, 2021, Linda and Zack argued near Emerson's daycare center, Zack threw Linda's laptop out of his car, Linda cut her hand picking up the laptop, and Zack absconded with Linda's phone. That same day, the Division conducted a Dodd removal<sup>4</sup> of Emerson and placed him with Jason. The Division offered Linda a domestic violence placement pending admission to a "Mommy and Me Program." Her admission to the program was delayed due to her family testing positive for COVID-19.

On March 12, 2021, the Division received a referral reporting the receipt of nude photographs of Linda, and pictures of Emerson dressed in regular clothes, with a caption stating, "for \$50 you can play with him." Linda maintained that she did not send the messages, that her phone was hacked, and that she did not know who sent the messages.

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<sup>4</sup> "A 'Dodd removal' refers to the emergency removal of a child from the home without a court order, pursuant to the Dodd Act, which, as amended, is found at N.J.S.A. 9:6-8.21 to -8.82." N.J. Div. of Child Prot. & Permanency v. T.D., 454 N.J. Super. 353, 363 n.8 (App. Div. 2018) (quoting N.J. Div. of Youth & Fam. Servs. v. P.W.R., 205 N.J. 17, 26 n.11 (2011)).

During a Title 30 compliance review hearing on March 18, 2021, Linda indicated that she wished to give custody of Emerson to her parents. The Division supported that plan, provided that Linda's contact with Emerson remain supervised. The court ordered Linda to attend an updated psychological evaluation, enter substance abuse treatment at a "Mommy and Me" program "if custody of the child is not transferred to a family member" or to enter another "appropriate alternate substance abuse treatment if custody of the child is transferred to a family member," to submit to drug screenings, and to attend mental health counseling. Linda's contact with Emerson remained supervised.

On March 25, 2021, the court entered an order in the Title 30 case reflecting joint legal custody of Emerson with Linda, Zack, and Jason, and physical custody of Emerson with Jason pursuant to the order entered with the consent of Linda the same day in the non-dissolution custody action Jason filed against Linda under an FD docket number. The orders specified that Linda's contact with Emerson shall be supervised by Jason or Lucy, that Zack's parenting time with Emerson shall be arranged by the Division, and that Zack was restrained from the home of Jason and Lucy, any other residence where Emerson was residing, and his daycare.

On April 15, 2021, Linda was discharged from substance abuse treatment at Bayonne Community Mental Health Center due to non-compliance.

At a June 10, 2021 hearing with Jason in attendance, the Division requested that the Title 30 litigation be dismissed because neither parent complied with any of the court ordered services, the case had been opened since 2019, and Emerson was safe in Jason's custody. Linda requested that the Title 30 litigation remain open so that she would have additional time to engage in services, and so that the supervision requirement could be eliminated before terminating the litigation. The court granted Linda's request but warned, "if there's no significant engagement [in services], I will give real consideration to a dismissal at the next hearing." The court denied the Division's request for an expedited return date. The court ordered Linda to complete updated psychological and substance abuse evaluations, submit to random drug screens, and that her contact with Emerson remain supervised by Jason.

On July 1, 2021, the Jersey City Prosecutor's Office reported two domestic violence incidents to the Division involving Linda and Zack. On May 7, 2021, police observed swelling to the left side of Linda's face, which she stated was from Zack striking her with an open hand. Linda refused medical attention and recanted her statement to police after she learned police arrested Zack. On June

23, 2021, Zack punched Linda in the face and threw her to the ground prompting a bystander to intervene to help her. Linda did not cooperate with police regarding either investigation.

Jason applied in the FD case to have Zack removed from the joint legal custody. On July 22, 2021, the court granted Jason and Linda temporary joint legal custody of Emerson and Jason sole physical custody.

In July 2021, Linda reported to the Division that she had recently used marijuana. Linda missed psychological evaluation appointments scheduled in August and September 2021. On August 11, 2021, Linda completed a substance abuse evaluation and was referred to Level 1 outpatient treatment at Freedom of Choice. She did not engage in that treatment.

On September 30, 2021, the court held a final section 12 hearing with Linda and Jason appearing. A caseworker testified that neither parent had engaged in services. The Division advised that it did not have any concerns with Emerson's safety because he was in Jason's custody and renewed its request to dismiss the section 12 litigation. The law guardian agreed that Emerson was safe in Jason's custody but requested that the case remain open until Jason modified the FD order to ensure that Zack's restraints regarding contact with Emerson and the maternal grandparents remained in effect. Linda again opposed

the dismissal of the section 12 litigation because she still wanted more time to engage in services in order to lift the supervised contact requirement.

The court entered an order terminating the section 12 litigation. It noted the Division considered Emerson safe in the residential custody and joint legal custody of his grandparents. The court found that "[Linda] has not complied with services and the child is at risk if . . . there is unsupervised visitation between the child and his mother." The court noted "the Division has done everything it can to keep . . . this child safe. And the responsibility is now on the grandparents. Supervised visitation between [Linda] and the child is in place." This appeal followed.

Defendant raises the following points for our consideration:

I. THE FAMILY COURT JUDGE DID NOT EXAMINE WHETHER THE TODDLER'S BEST INTERESTS WOULD BE SERVED BY CONTINUING THE DIVISION'S CARE AND SUPERVISION BEFORE TERMINATING THE TITLE THIRTY LITIGATION.

II. THE FAMILY COURT JUDGE SO CONFLATED THE TERMINATION HEARING AND DISPOSITIONAL DECISION THAT THE MOTHER'S DUE PROCESS PROTECTIONS WERE DENIED.

Appellate courts "accord great deference to discretionary decisions of Family Part judges[.]" Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App.

Div. 2012) (citing Donnelly v. Donnelly, 405 N.J. Super. 117, 127 (App. Div. 2009)), in recognition of the "family courts' special jurisdiction and expertise in family matters," N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 343 (2010) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)), and the trial court's "better perspective than a reviewing court in evaluating the veracity of witnesses." Cesare, 154 N.J. at 412. Discretion is abused "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Milne, 428 N.J. Super. at 197 (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

A reviewing court will defer to a judge's factual findings determinations when "they are supported by 'adequate, substantial and credible evidence' on the record." N.J. Div. of Youth & Fam. 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)). A trial court's findings of fact should not be disturbed "unless they are so wholly unsupportable as to result in a denial of justice." In re Guardianship of J.N.H., 172 N.J. 440, 472 (2002) (quoting In re Guardianship of J.T., 269 N.J. Super. at 188). In contrast, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference" and are reviewed de novo. Zaman v. Felton, 219 N.J. 199, 216 (2014)



(quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

In addition to guardianship proceedings in which the Division seeks to terminate parental rights, "Title 30 also empowers the Division to seek temporary care and custody of a child who is part of a family in need of services." N.J. Div. of Youth & Fam. Servs. v. A.L., 213 N.J. 1, 18 (2013) (citing N.J.S.A. 30:4C-12). If an investigation reveals that a "child requires care or supervision by the [D]ivision or other action to ensure the health or safety of the child," the Division may apply to the Family Part for an order "placing the child under the care and supervision or custody of the [D]ivision." N.J.S.A. 30:4C-12. The court may grant such relief "at a summary hearing" if "the best interests of the child so require." Ibid. N.J.S.A. 30:4C-12 "expressly empowers the Division to obtain a court order to require a mother to accept services." A.L., 213 N.J. at 32. This includes "order[ing] a parent to undergo treatment for substance abuse." Id. at 34.

"[T]he legislature intended N.J.S.A. 30:4C-12 to authorize the Division to intervene when children need services and a parent cannot provide that help for no fault-based reason." N.J. Div. of Youth & Fam. Servs. v. I.S., 214 N.J. 8, 15 (2013). "N.J.S.A. 30:4C-12 allows for 'intervention by the Division . . . to

protect a child who, although not abused or neglected, is in need of services to ensure its health or safety.'" A.L., 213 N.J. at 19 (omission in original) (quoting N.J. Div. of Youth & Fam. Servs. v. T.S., 426 N.J. Super. 54, 64 (App. Div. 2012)).

"Parents do not have the right to extend litigation indefinitely until they are able to safely care for their children . . . ." N.J. Div. of Child Prot. & Permanency v. S.D., 453 N.J. Super. 511, 524 (App. Div. 2018). The purpose of further hearings in a care and supervision case "is not to check-up on and review a parent's compliance or to manage the case." T.S., 426 N.J. Super. at 66. "The purpose is to require the Division to demonstrate that continued care and supervision is still in the best interests because there is a need to ensure the child's health and safety." Id. at 66-67 (citing N.J.S.A. 30:4C-12). "Absent a showing that services or supervision or both appear to be in the best interests of the child because the services are needed to ensure the child's health and safety, a case should be dismissed." Id. at 66.

Linda complains that her due process rights were violated. We disagree. "[T]he essential components of due process are notice and an opportunity to be heard." First Resol. Inv. Corp. v. Seker, 171 N.J. 502, 513-14 (2002). Linda was warned at a hearing three months earlier that the Title 30 litigation would

be dismissed if there was no "significant engagement" in services. She was thus on notice and had an opportunity to be heard. Linda was represented by appointed counsel at the hearings. A law guardian represented the children. The Division did not seek termination of parental rights.

Unlike Title 9, which requires a dispositional hearing after a finding of abuse or neglect, N.J.S.A. 9:6-8.47, no such requirement is imposed by Title 30 in a section 12 care and supervision case. Rather, the statute requires the court to periodically reexamine the basis for the Division's continued involvement every six months "at a summary hearing held upon notice to the parent, parents, guardian, or person having custody of the child." N.J.S.A. 30:4C-12. At this summary hearing, the court must determine if the child's "best interests" require continued care and supervision or other actions to ensure the child's "health and safety." Ibid. Here, the court conducted the required summary hearings on notice to Linda, and ultimately concluded at the final summary hearing care and supervision was no longer required.

Due process does not always require a formal evidentiary hearing where there are no genuine material facts in dispute and a plenary hearing is not necessary to resolve the issues presented. See Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007); see also P.T. v. M.S., 325 N.J. Super. 193, 214 (App.

Div. 1999). Here, the controlling facts relied upon by the court in dismissing the Title 30 litigation were not in dispute.

Although there was no dispositional evidentiary hearing, there was a dispositional conclusion. Pursuant to the FD custody action, Jason and Linda agreed to shared legal custody with Jason having sole physical custody of Emerson, and Linda having supervised parenting time. If Linda had objected to Jason having sole physical custody, a best interest hearing would have been required in the FD action. Linda did not object. The combined orders in the FD and section 12 actions also restricted Zack's contact with Emerson. The record fully supports this outcome, which met Emerson's needs. Continued care and supervision by the Division was no longer needed to ensure Emerson's health and safety. See T.S., 426 N.J. Super. at 66-67.

While we recognize that parents have a fundamental right to raise their children, that right is not absolute "and must be balanced against the State's parens patriae responsibility to protect the welfare of children." N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007) (internal citations and quotation marks omitted). At any point in the future, Linda and Jason may enter a consent order in the FD action lifting her supervision or restoring her physical

custody. If Jason refuses, Linda may apply for a change in custody or supervision, where she bears the burden of proving changed circumstances.

Linda acknowledges that "[j]udges who handle FN and FD dockets may choose to handle the matters separately or at the same time." B.C. v. N.J. Div. of Child Prot. & Permanency, 450 N.J. Super. 197, 206 (App. Div. 2017). The same judge "should ordinarily preside over both proceeding, whether the FD complaint is heard at the same time as the FN matter or not." Ibid. However, "[h]earing both matters simultaneously is not necessarily preferable." Ibid. Here, the FD order was entered on the same day as the order in this case, by the same judge, and contained identical custody and visitation terms. We discern no error or infringement of Linda's due process rights.

We also discern no basis to disturb the dismissal of the section 12 litigation. In a termination of parental rights case, the Division must prove under the best interests test that it made reasonable efforts to provide services to the parent as a prerequisite to terminating his or her parental rights. Section 12 litigation, in contrast, focuses on the need to provide ongoing care and supervision until the risk to the child no longer exists. Accordingly, dismissal is appropriate when there is no longer a risk to the child. Care and supervision litigation is for the benefit of the at-risk child, and although the Division may

be ordered by the court to provide reasonable services to the parents, there is no requirement that it do so in perpetuity, particularly when a parent resists all efforts for those services.

The record is replete with Linda's failure to avail herself of offered services. This ongoing failure took place both before and after the section 12 case was filed. Her refusal to participate in recommended and court ordered services continued for more than two years with no end in sight. As correctly noted by the trial court, the Division could not be expected to "keep the case open indefinitely."

Put simply, Emerson being safe and well cared for in Jason's sole physical custody, with Linda's supervised parenting time, amply support the trial court's decision, at the request of the Division, to terminate the section 12 litigation. We discern no abuse of discretion or legal error.

Lastly, although not required by the statute, it is an oft-employed judicial practice when dismissing a care and supervision complaint in favor of a consent order determining custody in a FV, FD or FM action, to require notice to the Division of any future application to change custody. It is then in the Division's discretion to conduct an investigation or participate in the future application.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION