

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1404-21

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

E.L.,

Defendant-Appellant,

and

L.L.,

Defendant.

IN THE MATTER OF A.L., P.L.,
and M.L., minors.

Submitted March 21, 2023 – Decided July 12, 2023

Before Judges Sumners and Susswein.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Monmouth County,
Docket No. FN-13-0062-21.

Joseph E. Krakora, Public Defender, attorney for
appellant (Arthur D. Malkin, Designated Counsel, on
the briefs).

Matthew J. Platkin, Attorney General, attorney for
respondent (Donna Arons, Assistant Attorney General,
of counsel; Julie B. Colonna, Deputy Attorney General,
on the brief).

Joseph E. Krakora, Public Defender, Law Guardian,
attorney for minors (Meredith Alexis Pollock, Deputy
Public Defender, of counsel; Noel C. Devlin, Assistant
Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant E.L. (Ed)¹ appeals the Family Part's order finding he abused or neglected his three sons, in accordance with N.J.S.A. 9:6-8.21(c)(4)(a) and (b), because they suffered harm from being exposed to his domestic violence against his wife, L.L. (Laura), the children's mother. The New Jersey Division of Child Protection and Permanency (the Division) and the Law Guardian oppose the appeal. We affirm.

¹ We use initials and pseudonyms to preserve the confidentiality of these proceedings. R. 1:38-3(d)(12).

I

In November 2020, Laura reported to the Division that Ed—who had been released from prison about five months earlier and returned to residing with his family—was physically abusing her in the presence of their three children, A.L. (Alan) (age nine), P.L. (Phil) (age seven), and M.L. (Mike) (age six). She claimed the attacks made her fear for her children's life.

Three days before the referral, Laura packed to move out of their home, but Ed locked her out when she attempted to take the children. She obtained a temporary restraining order (TRO) against him, who at the time had physical custody of the children. Because Ed would not return the children, the police assisted Laura in retrieving them. The police also served Ed with the TRO. Laura took the children to reside with her and her adult son from a different relationship. Ed eventually discovered where they were living and entered the home. The police were contacted, and Ed was arrested for violation of the TRO.

Due to Laura's report that Ed was sending her threatening messages, the Division wanted her and the children to stay at a domestic violence shelter as part of a safety plan. She refused, and the Division conducted a Dodd removal²

² A "Dodd removal" refers to the emergency removal of a child from a home without a court order as authorized by the Dodd Act. N.J.S.A. 9:6-8.21 to -8.82.

of the children. The court approved placing the children in the custody of the Division. The Division placed them with an aunt.

The court further ordered Laura to comply with the Division's recommendations, including substance abuse and psychological evaluations, and domestic violence services.³ Ed, who was incarcerated, was ordered to attend a substance abuse evaluation and a batterer's intervention program while in prison.⁴ Given his confinement, the court allowed Ed supervised video or phone contact with the children once per week as available at the facility.

As part of the Division's investigation, the children were interviewed. Alan initially stated "his father was hitting his mother recently and he curses at [his] mother [a lot]. [He] denied being fearful of either parent, [stating] that he feels safe in his home with his mother." After being placed with his aunt, Alan told a Division caseworker it was his father, never his mother, who started the fights. Phil revealed his parents argue a lot. Mike stated his father threw his mother across the couch and punched her but could not recall any recent verbal or physical altercations between them.

³ The trial court entered subsequent orders requiring Laura to comply with the Division services. We do not detail them, nor Laura's compliance history, because they are not relevant to disposition of this appeal.

⁴ Ed was reincarcerated due to violation of his probation.

Ed was also interviewed by the Division. He denied hitting Laura, asserting he had "issues with a man hitting a woman." He claimed Laura was the aggressor because of medication she was taking.

At the conclusion of its investigation, the Division filed a complaint against Ed, alleging he abused or neglected his children by exposing them to risk of harm by engaging in domestic violence against Laura.⁵

Following a two-day fact-finding hearing, the court issued an order, determining Ed abused or neglected the children per N.J.S.A. 9:6-8.21(c). The court ruled the Division proved by a preponderance of evidence that the children suffered emotional harm from witnessing Ed commit acts of domestic violence against Laura.

The court explained its decision in an oral opinion. The court deemed all witnesses credible, specifically stating Laura was "very credible." Ed did not testify. He had one witness, a former employer, who testified that Ed and Laura "always fight."

The court noted Laura's testimony that she feared Ed, which influenced her decision to drop a prior domestic charge against him. The court found her

⁵ Laura was also charged with abuse or neglect, but no judgment was entered against her.

fear was supported by her attempt to relocate with the boys, but Ed tried to keep them from her. The court noted Laura had obtained a final restraining order when Ed failed to appear at the domestic violence hearing. The court rejected Ed's claims that Laura was the perpetrator of domestic violence against him, from which he was trying to protect himself and escape.

The court credited Carla J. Cooke, Ed.D.'s testimony, based upon her psychological evaluation of Alan, that she suspected child abuse and found Alan was affected by parental relationship distress. Alan told Dr. Cooke that "sometimes my dad would hit first, sometimes my mom." Dr. Cooke recommended a psychiatric evaluation and individual therapy for Alan to address his post-traumatic stress disorder with dissociative symptoms.

The court also credited Jason Coleman, Psy.D.'s testimony, based upon his clinical assessment of Phil and Mike.⁶ Dr. Coleman opined Phil's "exposure to domestic violence reinforced [his] perception that his home environment was unpredictable and that his mother [was] not safe." Phil told him that he had seen "his father drink beer and then beat up [m]om." Phil reported being "fearful" when he observed this. With respect to Mike, Dr. Coleman testified he

⁶ Dr. Coleman's assessments and reports of Phil and Mike were prepared with Michelle S. Zuckerman, Psy.D.

conducted limited psychological testing due to his age. Mike also told Dr. Coleman that he saw his parents fighting, and he saw his dad hit his mother. Mike reported feeling sad and crying. Dr. Coleman stated Phil and Mike's emotional development were harmed by seeing the domestic violence, and he diagnosed both boys with an adjustment disorder with anxiety. He recommended Phil receive general individual therapy and Mike receive individual play therapy to address their respective problems.

Laura testified regarding incidences of being physically abused by Ed. She also acknowledged her history of mental health issues.

Agreeing with the opinions of Drs. Cooke and Coleman, the court ruled the Division proved by a preponderance of evidence that the children suffered emotional harm after witnessing their father perpetrate acts of domestic violence against their mother. The court agreed with the experts that the children required services to address that harm. The court continued its prior order, requiring Ed to complete a batterer's intervention program and suspending his visits until the children's therapists could opine on whether contact with him was in their best interests.

Following two subsequent hearings, the court, over Ed's objections, continued the suspension of his parenting time until he began the recommended services in prison, after which the issue could be revisited.

II

Our review of family court decisions is limited. Hand v. Hand, 391 N.J. Super. 102, 111 (App. Div. 2007). "We accord deference to factfindings of the family court because it has the superior ability to gauge the credibility of the witnesses who testify before it and because it possesses special expertise in matters related to the family." N.J. Div. of Youth and Family Servs. v. F.M., 211 N.J. 420, 448 (2012). "We will not overturn a family court's factfindings unless they are so 'wide of the mark' that our intervention is necessary to correct an injustice." Ibid. (quoting N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008) (quotations omitted)). "It is not our place to second-guess or substitute our judgment for that of the family court, provided that the record contains substantial and credible evidence" to support its decision. Id. at 448-449.

"Abuse and neglect actions are controlled by the standards set forth in Title Nine of the New Jersey Statutes." N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 31 (2011). The purpose of a fact-finding hearing is "to

determine whether the child is . . . abused or neglected." N.J.S.A. 9:6-8.44. "[T]he safety of the child shall be of paramount concern." N.J.S.A. 9:6-8.28(a), -8.31(a), and -8.32. In making a finding of abuse or neglect, a court considers "the totality of the circumstances, since '[i]n child abuse and neglect cases the elements of proof are synergistically related.'" N.J. Div. of Youth & Family Servs. v. V.T., 423 N.J. Super. 320, 329 (App. Div. 2011) (quoting N.J. Div. of Youth & Family Servs. v. C.H., 414 N.J. Super. 472, 481 (App. Div. 2010)).

Regarding "the quantum of proof required in a fact-finding hearing brought under Title Nine, it is well established that [the Division] must prove that the child is 'abused or neglected' by a preponderance of the evidence, and only through the admission of 'competent, material and relevant evidence.'" P.W.R., 205 N.J. at 32 (citation omitted) (quoting N.J.S.A. 9:6-8.46(b)). "Under the preponderance standard, 'a litigant must establish that a desired inference is more probable than not. If the evidence is in equipoise, the burden has not been met.'" Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006) (quoting Biunno, Weissbard, & Zegas, Current N.J. Rules of Evidence, cmt. 5(a) on N.J.R.E. 101(b)(1) (2005)). "The evidence must demonstrate that the offered hypothesis is a rational inference, that it permits the trier[] of fact to arrive at a conclusion grounded in a preponderance of probabilities to common experience." N.J. Div.

of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 615 (App. Div. 2010) (alteration in original) (quoting In re Estate of Reininger, 388 N.J. Super. 289, 298 (Ch. Div. 2006)).

An "[a]bused or neglected child" includes a minor child

whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent . . . 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, . . . or by any other acts of a similarly serious nature requiring the aid of the court.

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

"[N]on-intentional conduct is sufficient to warrant a finding of abuse if the injury to the child is demonstrated." N.J. Div. of Youth & Family Servs. v. S.S., 372 N.J. Super. 13, 24 (2004) (citing G.S. v. Dep't of Human Servs., 157 N.J. 161, 175-82 (1999)). Because intent is not required to find abuse under Title 9, the trial court must determine "[w]hether a parent . . . has failed to exercise a minimum degree of care . . . in light of the dangers and risks associated with the situation." G.S., 157 N.J. at 181-82. To that end, a parent "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.

III

Ed argues on appeal that the Division failed to establish the children were placed at risk of harm by witnessing domestic violence. He maintains the expert evaluations of Alan, Phil, and Mike did not conclude they suffered harm due to domestic violence. He argues the trial court erred by relying on inadmissible hearsay of the boys' statements set forth in the Division's investigation reports and the experts' testimony instead of interviewing the children. We are unpersuaded.

The trial court did not base its finding of abuse or neglect solely on the inadmissible testimony. The court rejected Ed's argument that he was merely trying to defend himself against Laura's physical attacks on him. The court appropriately relied upon the children's hearsay statements regarding their parents' domestic violence detailed in the Division's reports and the experts' testimony because they were corroborated by the testimony of Laura and Ed's former employer. See N.J. Div. of Child Prot. & Permanency v. S.K., 456 N.J. Super. 245, 272 (App. Div. 2018) ("[A] child's hearsay statement may be admitted into evidence, but may not be the sole basis for a finding of abuse or

neglect." (quoting P.W.R., 205 N.J. at 33)); N.J. Div. of Child Prot. and Permanency v. N.B., 452 N.J. Super. 513, 521 (App Div. 2017) ("Corroborative evidence 'need only provide support for the out-of-court statements.'" (citing N.J. Div. of Youth and Family Servs. v. L.A., 357 N.J. Super. 155, 166 (App. Div. 2003))); N.J.S.A. 9:6-8.46(a) (establishing "previous statements made by the child relating to any allegations of abuse or neglect shall be admissible in evidence; provided, however, that no such statement, if uncorroborated, shall be sufficient to make a fact finding of abuse or neglect"). In addition, the experts' testimony referencing the boys' statements was admissible under N.J.R.E. 703 because the statements are "reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence." Furthermore, there was credible evidence of Ed's domestic violence against Laura beyond the boys' out-of-court statements. See N.B., 452 N.J. Super. at 522.

Ed also argues he was denied due process because he had limited contact with his attorney, and the court's restriction of contact with his children "constructively terminate[d] his parental rights." Because the issues were not briefed—no citation to the record or the law—beyond making the conclusionary assertion, we will not consider them. See Oasis Therapeutic Life Ctrs., Inc. v.

Wade, 457 N.J. Super. 218, 234 n.12 (App. Div. 2018) (declining to consider an issue not briefed). That said, for the sake of completeness, we briefly address the arguments.

There is nothing in the record indicating Ed's attorney-client relationship prejudiced his due process rights. And Ed's parental rights were not constructively terminated. Indeed, the court held: "Legal custody of the children will be continued with the parents. Physical custody of the children will be continued with the mother."

We conclude the "children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence." N.J.S.A. 2C:25-18; see also S.S., 372 N.J. Super. at 25. Thus, we see no reason to disturb the trial court's order that Ed abused or neglected his children by exposing them to his violent behavior towards Laura.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION