

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2290-21

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

M.M.,

Defendant,

and

S.A.,

Defendant-Appellant,

IN THE MATTER OF Z.A. and
Z.A., minors.

Submitted September 18, 2023 – Decided October 18, 2023

Before Judges DeAlmeida and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FN-07-0107-21.

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

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 minors (Meredith Alexis Pollock, Deputy Public Defender, of counsel; Neha Gogate, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

Defendant S.A. (Sadik)¹ appeals, challenging the Family Part's order finding that he sexually abused one daughter and placed his younger daughter at risk of sexual abuse. We affirm.

I.

We summarize the facts presented in the testimony and the evidence admitted at the fact-finding trial. Sadik is married to and resided with defendant

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

M.M. (Mireya)². The couple has two girls Zoe and Zola, respectively, five years old and three years old at the time of the alleged incidents (collectively, the girls).

In June 2019, the family became known to the Division of Child Protection and Permanency (Division) based on a referral from an anonymous reporter citing concerns of unexplained marks on Zoe and Zola. Following an interview with their parents and observations of the girls, the Division closed the case.

Since 2019, the girls have resided with their maternal grandparents, Harry and Maya, because of a family arrangement. When the children spent weekends with their parents and was restricted to the one bedroom the family rented in a four-bedroom apartment occupied by multiple tenants.

In October 2020, a month and a half after Zoe's last visit with her parents, she exhibited behavior that concerned her grandparents: nervousness, nightmares, and "screaming about bad people." When Maya asked Zoe about the "bad people," she responded Sadik was "bad people" because "while bathing her, [he] touched her [genitals]." Maya told Mireya about Zoe's statement.

² The trial court made no findings against Mireya; and therefore, she is not a party to this appeal.

When Maya asked Zoe about bad people in front of Mireya, Zoe repeated Sadik had touched her genitals. Sadik "immediately" denied that he touched Zoe when confronted by Mireya and Maya.

Based on Zoe's revelation, Mireya and Maya took Zoe to her pediatrician. Only Mireya was present during the examination, which exhibited no evidence of sexual abuse. The pediatrician advised therapeutic services for Zoe and referred Maya to Newark Beth Israel Medical Center (NBIMC). When Maya called to schedule an appointment for services and gave the reason for the referral, she was directed to bring Zoe into the emergency room for a sexual assault evaluation.

A NBMIC physician made a referral to the Division based on Maya's disclosure that Zoe said Sadik "touched [her] [genitals] with his mouth." The external examination showed no physical signs of trauma and no signs of penetration. Zoe was then referred to NBIMC Regional Diagnostic and Treatment Center (RDTC) for assessment.

NBMIC's referral precipitated the Division's action. As part of the Division's investigation, the physician was interviewed and repeated Maya's report of inappropriate touching. The physician also reported that when he

spoke with Zoe, she "disclosed [Sadik] touched her [genitals] while giving her a bath."

Zoe was interviewed and did not report any inappropriate sexual contact. She informed the investigator Sadik bathed her when her mother was sleeping, and Zola was in another room watching television. Zola was unable to be fully interviewed due to her age.

Maya recounted Zoe's disclosures and the pediatric and hospital examinations. Maya also denied telling Mireya that Zoe said she was "touched on her [genitals] by [Sadik] with his lips" because she did not want Mireya to tell Sadik for fear that he [would] "run and disappear." Maya also stated Sadik called, denied that he inappropriately touched Zara, and expressed "there must be confusion."

Mireya declined an in-person interview at the apartment because there was "not much privacy" with the multiple tenants. She retold Maya's and Zoe's statements to her concerning the inappropriate touching.

The next day, another Division investigator conducted a follow-up investigation. Maya retold Zoe's statements and the results of the examinations. The investigator informed Maya that a police report had to be filed with the Essex County Prosecutor's Office (ECPO) to open an investigation into the

allegations. Maya complied and filed a police report with the Special Victims Unit the same day.

The ECPO initiated an investigation and conducted a forensic video interview (FVI) with Zoe on December 3, 2020. During the interview, Zoe maintained eye contact and was responsive to the questions as she detailed the incidents and disclosed additional incidents of sexual abuse by Sadik. Zoe also identified where Sadik touched her body and where she touched him on anatomical pictures of a girl and boy.

However, as the ECPO detective attempted to elicit specific details of these incidents, Zoe became confused and unsure. When asked if the incidents actually occurred, Zoe stated it did not happen and then upon further questioning she stated, "It did happen." Zoe also stated that her grandmother practiced with her prior to the interview. While Zoe was unable to describe the time of the alleged events, she confirmed each disclosure at the end of the interview. After the interview was completed, the Detective recommended a psychosocial assessment for Zoe. Later, ECPO closed the investigation against Sadik.

The same day, ECPO detectives secured a formal statement from Sadik. Although Sadik admitted to bathing Zoe, he "strongly denied" touching Zoe at any time other than during bathing.

Following the interview with ECPO, Sadik was also interviewed by the Division investigator. Sadik again denied he touched Zoe inappropriately or asked Zoe to touch him. He agreed to and signed the safety protection plan prohibiting him from having contact with the girls and that they would continue to reside with Maya.

Five days later, on December 8, 2020, the Division commenced this action by filing an order to show cause and verified complaint in the Family Part pursuant to N.J.S.A. 9:6-8.21 to - 8.73, N.J.S.A. 30:4C-12, and Rule 5:12-1 to - 7, for the care and supervision of the girls. In its complaint, the Division alleged Sadik had sexually abused Zoe and placed Zola at risk of sexual abuse.

At the hearing on the order to show cause, the family court found: "Zoe had made repeated disclosures of inappropriate touching by [Sadik]," Zoe "exhibited concerning behaviors"; Mireya had been "dismissive of [Zoe's] disclosures;" and the Division became involved after the hospital made the referral; and the Division had "concerns regarding the family's follow-up" because it was untimely after Zoe's disclosure.

The same day, the court entered an order granting the Division's application for the care and supervision of the girls. The girls continued to reside with the maternal grandparents pursuant to the Division's safety

protection plan. Also, all contact between Sadik and the girls was suspended, pending the Division's investigation and receipt of the RDTC evaluation report (RDTC Report) and recommendations.

The Division arranged for Diane E. Snyder, Ph.D., a licensed psychologist, to conduct a psychosocial evaluation. Snyder completed the RDTC psychosocial evaluation and prepared the RDTC Report.

Thereafter, the Division substantiated the allegations against Sadik.

A fact-finding trial took place over three consecutive days in June 2021. The Division submitted Zoe's out-of-court statements through exhibits and testimony from Division expert Dr. Snyder and Maya.

Sadik did not object to Snyder's qualifications as an expert in child abuse and maltreatment. However, Sadik objected to Snyder's qualifications as an expert in sexual abuse. In response to defense counsel's voir dire question, Snyder stated sexual abuse is a subcategory of maltreatment. When questioned further concerning whether she was permitted to render an opinion that a child suffered sexual abuse, Snyder stated professionals in the field no longer "[made] that finding under diagnosis[,] [b]ut if the child . . . report[ed] sexual abuse [they] can refer to it as what the child reported." Further, the professionals "do not confirm sexual abuse, physical abuse, or neglect."

She further testified she considered the Division records reliable when analyzed by her. She explained that the Division is asked questions and interviews are conducted. Findings are reported and a determination is then made whether the child needs treatment. Snyder stated the result is the psychosocial evaluation and referenced the RDTC Report. Ultimately, Snyder was qualified as an expert in child abuse and maltreatment, and her report was admitted into evidence without objection.

Dr. Snyder explained the methodology used in conducting her evaluation of Zoe. Before the evaluation, Snyder reviewed the Division screening summary, the RDTC referral form, the FVI summary, and viewed the FVI interview video with Zoe. She further explained she interviewed Maya, Mireya, and the Division investigator by telephone due to COVID-19 protocols. Snyder conducted an in-person clinical interview of Zoe pursuant to RDTC policy. All interviews were standard protocol for experts in her field.

Concerning the FVI interview, Snyder reviewed the video, the video summary prepared by another RDTC staff member, and summarized Zoe's statements. Snyder explained her method was standard practice at RDTC and complied with the best practices of the American Professional Society on the Abuse of Children (APSAC). She found the FVI interview was "littered in

detail" in "child language," provided "a lot of detail," and provided "clarity to the occurrence," which she found significant. Snyder testified Zoe's detailed description of the occurrences was "so substantial" because it "[went] to knowledge that would be beyond normal childhood education" and her demonstration of that knowledge was also beyond what "children would not ordinarily have."

Snyder's testimony was consistent with the RDTC Report. She described Zoe's demeanor during the clinical interview as "cooperative," "amiable," and said she "responded to questions relatively easily" and without reluctance. Snyder highlighted that Zoe never said, "I don't know" or "I don't remember," and she responded to questions "with answers that match[ed] the question." She stated Zoe's spontaneous remarks were relevant because she "add[ed] her own information which came from her own experience in her own words." She was permitted to testify in detail to the statements made by Zoe describing the sexual incidents with Sadik. Referencing the RDTC Report, Snyder testified Zoe spoke in her own voice and concluded "that [was] how [Zoe] construct[ed] her experience." Lastly, Zoe said she was worried about Zola "being alone."

Snyder explained she has interviewed children who were "coached," and Zoe "did not appear, in any way, to be a child who was coached" because "she

had her own way to report" and her answers were "elaborate." Snyder also testified that she did not ask Maya whether she had coached Zoe because it was "not a part of [their] protocol to ask the parent if they coached the child." Furthermore, Snyder noted Zoe provided her with details that she did not reveal in the FVI. She stated that it is "[common] for children to make personal decisions at different times about what they want to tell and who they want to tell it to."

Snyder recommended a referral to individual trauma focused therapy for Zoe and no contact with Sadik. She also recommended Sadik be evaluated by a professional experienced with individuals who sexually offend minors.

Maya testified that she noticed significant changes in Zoe's behavior during the summer of 2020. Maya's testimony was also consistent with her disclosure to the Division investigator, Zoe's pediatrician, and hospital physician. Maya also described an additional incident. Initially, Zoe told Maya that she had a "secret" with Sadik, and she could not tell Maya. After encouraging Zoe to tell Maya the secret, Zoe divulged "[Sadik] touch[ed] her in her [genitals]." Maya admitted that neither she nor Mireya contacted the police or the Division about the disclosures because they "were not sure" and "[did not know if [Zoe] may [have been] confused.]"

When questioned about coaching or practicing with the children because she wanted custody, Maya denied rehearsing with Zoe. Maya testified that she told Zoe "to tell the truth about what happened."

Sadik testified on his own behalf. He denied having "any type of inappropriate contact with" Zoe. Sadik further explained that when the girls visited, he either slept in the bed or on the carpet and the girls slept on a cot. Occasionally, Zoe slept in the bed with him and Mireya.

In a July 29, 2021 order, the family court found Sadik committed acts of sexual abuse against Zoe and placed Zola at risk of sexual abuse pursuant to N.J.S.A. 9:6-8.21(c). In an oral opinion, the court concluded the Division proved by a preponderance of the evidence that Sadik abused Zoe and placed Zola at risk. The court stated the Division satisfied the preponderance standard due to Zoe's "precocious knowledge of sexual acts of contact" and that it "was more likely true than it [was] not true."

Citing State v. D.G., the family court also considered the reliability of Zoe's out-of-court statements. 157 N.J.112 (1997). In doing so, the court noted Zoe's interview with Dr. Snyder. Despite the court finding Snyder's testimony "left a tremendous amount to be desire[d]," the court found she collected a "wealth of information" and conducted Zoe's interview within the parameters of

her profession. Acknowledging Zoe's statements were "inconsistent," "evolving," and "changing," the court found Zoe's interview with Snyder "demonstrate[d] a precocious knowledge of sexual activity that a child of that age would not ordinarily have" when considered with the admitted evidence. The court concluded "from [Zoe's] peculiar, precocious knowledge of sexual acts . . . it was more likely true than it [was] not true."

The family court further credited Snyder's testimony and stated that he did not think "this was a made[-]up story by Dr. Snyder." The court found it "very likely that [Zoe] said those things to Dr. Snyder" and "if . . . [Zoe] ha[d] this knowledge [it found] that to be corroborative."

The court rejected Sadik's contention that Maya had an evil motive against him or his family, finding that assertion lacking evidentiary support.

Lastly, the family court noted that it reviewed Zoe's FVI interview pursuant to the agreement of all parties and admitted into evidence by stipulation by all counsel.³ The court found the video "very compelling" and stated, "Zoe was certainly a bright, articulate, and pleasant child." The court noted Zoe was

³ In an April 21, 2021 order, the court memorialized the parties' stipulation that Zoe's FVI video statement would be admitted at trial.

"responsive to the questions asked," "interested" although "distracted at times," and "delivered the information in a matter-of-fact way."

In a February 16, 2022 dispositional order, the family court terminated the litigation. The court continued physical custody of the girls with Maya. Additionally, Sadik was ordered to complete a psychosocial evaluation.

Sadik now appeals. The Division and the Law Guardian urges us to affirm the family court's ruling.

II.

We must hew to our standard of review. "[W]e accord substantial deference and defer to the factual findings of the Family Part if they are sustained by 'adequate, substantial, and credible evidence' in the record." N.J. Div. of Child Prot. & Permanency v. N.B., 452 N.J. Super. 513, 521 (App. Div. 2017) (quoting N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014)). "This is '[b]ecause of the family courts' special jurisdiction and expertise in family matters.'" N.J. Div. of Child Prot. & Permanency v. A.D., 455 N.J. Super. 144, 155 (App. Div. 2018) (quoting N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 343 (2010)).

Reversal is warranted only when a trial judge's findings are "'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably

credible evidence as to offend the interests of justice.'" Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div.), certif. denied, 40 N.J. 221 (1963)). Further, the trial judge's "interpretation of the law and the legal consequences that flow from established facts" are not subject to deference and are reviewed de novo by this court. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Accordingly, we do not "second-guess or substitute our judgment for that of the family court," so long as "the record contains substantial and credible evidence to support [its] decision" N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448-49 (2012).

A child has been abused or neglected when the child's

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 or guardian . . . 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)(b).]

"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)).

At the fact-finding trial, "[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; accord N.J.S.A. 9:6-8.46(b)(1). As we have noted and critical to our consideration of this appeal, at any Title Nine hearing, prior statements "made by the child relating to any allegations of abuse . . . shall be admissible . . . provided . . . no such statement, if uncorroborated, shall be sufficient to make a fact finding of abuse" N.J.S.A. 9:6-8.46(a)(4).

III.

Guided by these principles, we perceive no basis to disturb the family court's finding the Division met its burden in demonstrating Sadik sexually abused Zoe and placed Zola at risk for sexual abuse.

At trial, Sadik challenged Zoe's out-of-court statements as uncorroborated by the Division's investigation and "coached" by Maya who allegedly harbored an ill-motive toward him. Now on appeal, Sadik contends the Division failed to present evidence that sufficiently corroborated Zoe's allegations of sexual abuse by Sadik. Sadik argues the family court relied on the Division investigator's "impression from viewing the FVI video in the [Screening] Summary" which was "extremely prejudicial" because there was no verbatim recording of the video. He further argues that despite the "engaging questions," Zoe did not disclose that she was abused. We reject Sadik's contentions because the Division's screening summary shows Zoe reported inappropriate touching to Maya, Mireya, the NBIMC physician, and Dr. Snyder, which was admitted at trial without objection from Sadik or the Law Guardian.

Even more, Sadik also contests the admissibility of Snyder's opinion and the RDTC Report as a net opinion for the first time on appeal. At trial Sadik, however, accepted Dr. Snyder as an expert and stipulated to the admission of the RDTC report. Because Sadik did not raise this issue in the family court, despite being provided the opportunity to do so before the court, we decline to address it for the first time on appeal. US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 483 (2012) (noting "our appellate courts will decline to consider

questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest") (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)).

However, for the sake of completeness, we address the issue. We reject Sadik's argument that Snyder's testimony and the RDTC Report constituted a net opinion. The court appropriately relied upon Zoe's statements regarding sexual contact with Sadik as detailed in the FVI video and the RDTC Report corroborated by testimony largely from Snyder and Maya, again without objection. Snyder reviewed the video as well as the video summary. Snyder's testimony referenced statements contained in the FVI video, screening summary, and RDTC report were admissible under N.J.R.E. 703 because the statements are "reasonably relied upon by experts in the field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence."

Additionally, the court credited the "wealth of information" collected by Snyder and determined Zoe "demonstrate[d] a precocious knowledge of sexual activity that a child of that age would not ordinarily have" when the record was viewed in its entirety. Nor did the court find Snyder's testimony was "made-up"

given Zoe's "peculiar, precocious knowledge of sexual acts." The court therefore concluded it was "more likely true than it [was] not true" that the sexual abuse happened. We find no error in the court's ruling.

Sadik also asserts for the first time on appeal, he was deprived of his due process because he was not afforded the opportunity to confront Zoe. As already noted, because Sadik did not raise this issue in the family court at the time of the fact-finding trial, we also decline to address it for the first time on appeal. US Bank Nat. Ass'n, 209 N.J. at 483.

Nevertheless, we disagree and briefly address Sadik's argument. Here, Sadik never specifically requested Zoe be produced as a witness. Rather, after engaging in pre-trial hearing motions with the court, Sadik stipulated to the admission of the FVI video and raised no objection to the court determining Zoe's credibility by viewing the videoed statements. The court reconciled Zoe's "inconsistent" and "evolve[ed]" statement and found Zoe's initial allegations credible and corroborated without her live testimony based on the record.

To the extent we have not addressed any of Sadik's remaining arguments, we are satisfied they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION