RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2613-21

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANENCY,

Plaintiff-Respondent,

v.

W.G.P.,

Defendant-Appellant,

and

J.P. and R.H.C.,

Defendants.

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IN THE MATTER OF O.G.S.
and J.P., III, minors.

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Submitted March 1, 2023 – Decided May 8, 2023

Before Judges Accurso and Vernoia.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Morris County, Docket No. FN-14-0057-21.

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

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

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor J.P., III (Maria Emilia Borges, Assistant Deputy Public Defender, on the brief).

PER CURIAM

Defendant W.G.P. (Willow) is the biological mother of J.P., III (Jay), who was born in 2019.[1] Willow appeals from a Family Part fact-finding order determining that, on March 20, 2021, she abused or neglected Jay by "operat[ing] a motor vehicle, with her then two-year[-]old child in the car, after taking more than one prescription medication, and having consumed two to three pre-mixed cocktails." Having reviewed the record, the parties' arguments, and the applicable legal principles, we affirm.

[1] We use initials and pseudonyms to refer to defendant, her children, and other family members to protect the children's privacy and because all records relating to Division of Child Protection and Permanency proceedings held pursuant to Rule 5:12 are excluded from public access. R. 1:38-3(d)(12).

I.

On March 20, 2021, Officer Joseph Bozzone of the Independence Township Police Department issued summonses to Willow for reckless driving, driving while under the influence, and having open containers of alcoholic beverages in her vehicle. Based on the incident resulting in the issuance of the summonses, the Police Department made a referral to the New Jersey Division of Child Protection and Permanency (Division) reporting that Willow operated her vehicle on March 20, 2021 while under the influence and with two-year-old Jay in the back seat.

Following an investigation, the Division filed a complaint and order to show cause for care and supervision of Jay and Willow's other child, then five-year-old O.S. (Olga). The complaint alleged Willow abused or neglected Jay on March 20, 2021, by placing him in imminent danger of impairing his physical, mental, or emotional condition by failing to exercise the minimum degree of care in providing him with proper supervision and by unreasonably exposing the child to a substantial risk of harm.

The complaint described the results of prior referrals to the Division involving Willow and Jay's biological father, J.P. (Joe), and alleged that, on March 20, 2021, Officer Bozzone was dispatched to a convenience store

following a report there had been an accident involving an individual, Willow, who appeared to be impaired. The complaint alleged Officer Bozzone reviewed a video surveillance recording showing Willow's vehicle had a flat tire, Willow drove to an air pump, and she "appeared to be falling over" after exiting the vehicle. According to the complaint, Officer Bozzone also reported Willow "appeared to be under the influence, failed a sobriety check, and was charged with [d]riving [u]nder the [i]nfluence."

The court entered a July 1, 2021 order granting the Division care and supervision of Olga and Jay, requiring supervised physical contact between Willow and the children, and directing that Willow comply with various services. On the return date of the order to show cause, the court continued the children's care and supervision with the Division and ordered that Willow comply with all recommendations based on psychological and substance abuse evaluations.

The Division presented three witnesses at the fact-finding hearing on its claim Willow abused or neglected Jay on March 20, 2021. Division permanency worker Damian Johnson testified as the custodian of the Division's records in support of the admission in evidence of various screening and investigation summaries concerning referrals of alleged abuse and neglect pertaining to

Willow and her children. The records also included reports from the Division's professional consultants, including an April 8, 2021 report of an assessment of Willow performed by a Clinical Alcohol and Drug Counselor (CADC) intern employed by Preferred Behavioral Health, as well as police reports prepared by Officer Bozzone and two other Independence Township police officers who investigated the March 20, 2021 motor vehicle incident.

The Division also presented testimony from Yesenia Lugo, a Division intake worker. Lugo explained she became involved in the investigation of the alleged abuse or neglect concerning the March 20, 2021 incident following a referral from the Independence Police Department. Lugo testified she interviewed Willow a few days after the incident and Willow reported she failed the field sobriety tests because she had been prescribed medication following a medical procedure — full body plastic surgery in January 2021 — and had stopped taking prescribed medication for her mental health issues. Willow also told Lugo that she resumed taking the medication two days prior to the March 20, 2021 incident. Lugo testified Willow said she had one alcoholic drink on March 20, 2021. Lugo further testified she offered Willow a substance abuse evaluation, which Willow completed on April 6, 2021, but, following the

evaluation, Willow declined to enroll in outpatient care for substance abuse as recommended by the Division.

Lugo detailed the Division's efforts to ensure the children's safety and recalled that Willow stated "she knows she had an alcohol problem[,] and she needed to get the help she needed." Lugo also explained she reviewed the police reports concerning the incident, including a report that two open containers of alcohol were found in Willow's vehicle on March 20, 2021. Lugo testified the Division made a finding the abuse or neglect referral was substantiated because Willow "made the decision to have an alcoholic drink that day, take her medication, drive with her son in the vehicle when she was impaired[,] and had an accident[,]" thereby posing a "serious risk" to Jay.

On cross-examination, Lugo testified Willow reported she was a nurse who worked at a hospital. Lugo also noted that during the substance abuse evaluation which was the subject of the CADC intern's assessment report, Willow told the intern she had two to three drinks during the afternoon of March 20, 2021.

Lugo further testified she was aware Willow "was taking three or four medications for her mental health treatment." Lugo attempted to contact Willow's doctor to confirm the medications, but the doctor did not respond.

Lugo further testified the police did not detect any odor of alcohol at the time of the March 20, 2021 incident, Officer Bozzone stated alcohol was not a contributing factor to the accident, and although the police obtained a urine sample from Willow following the incident, they did not test it for alcohol.

The Division called Officer Bozzone as its final witness. Officer Bozzone explained he was dispatched to a convenience store on March 20, 2021, in response to a report of an accident. He observed plaintiff, her vehicle, and Jay in the vehicle's back seat.[2] The vehicle, which had a flat tire, rested against a barricade next to an air pump.

According to Officer Bozzone, Willow stated the flat tire was caused by a snowbank during her drive "from Bud Lake to Jefferson[,]" the front of her vehicle was damaged when she struck a post in front of the convenience store, and she backed up and hit a post in front of the air pump. He also testified without objection that he reviewed video footage from the convenience store that showed Willow hitting the post in front of the store with her vehicle and then backing up and pulling in front of the air pump. The video recording also showed Willow exiting the vehicle, grabbing the air pump to put air in the tire,

[2] The record shows Jay was properly secured in the back seat.

and then crouching down and falling back "approximately fifteen feet to the ground."

Officer Bozzone further explained he spoke to Willow, who "had a hard time forming sentences[,]" whose "speech was slurred[,]" and who was "swaying back and forth" and using "the vehicle to hold herself up from falling."

Officer Bozzone did not smell alcohol and did not see any alcoholic beverages in the vehicle. He administered two field sobriety tests, and his sergeant administered the horizontal gaze nystagmus test. He testified Willow failed the field sobriety tests. Officer Bozzone did not believe alcohol was a contributing factor to the incident, and he explained a drug recognition expert officer who appeared at the scene also did not believe alcohol was a factor.

According to Officer Bozzone, Willow provided a urine sample and said she was on Ativan. He charged Willow with driving under the influence, reckless driving, and having open containers of alcohol in her vehicle. The final charge was based on a report he received from another officer concerning what was found in the vehicle. Officer Bozzone testified that, following Willow's arrest, he contacted the Division.

Documentary evidence presented by the Division established the test of Willow's urine revealed the presence of amphetamine, mirtazapine, citalopram,

and lamotrigine. The record lacks any competent evidence the presence of those drugs are consistent with, or the product of, the prescription medications Willow reported she had restarted taking two days before the March 20, 2021 incident.[3]

Jay's Law Guardian did not present any witnesses. Willow did not testify, present any witnesses, or proffer any evidence. Following closing arguments of counsel, the court reserved decision.

The court subsequently rendered a decision from the bench finding Jay was an abused or neglected child on March 20, 2021. The court premised its determination Willow abused or neglected Jay on the following findings.

The court found Willow "testified" that, on March 20, 2021, she admitted ingesting more than one prescribed medication after "restart[ing] that medication" that month.[4] The court further found Willow admitted that on March 20, 2021, she "consumed two to three pre-mixed cocktails and then drove

[3] In a Division investigative summary that was admitted in evidence, Lugo reported that Willow said her medications included "Topamax, Lamictal, Ativan, and Vyvanse."

[4] As noted, Willow did not testify at the fact-finding hearing.

with her [two]-year-old child in the vehicle and 'thought[]' . . . that she was okay."[5]

The court further found Officer Bozzone's testimony established Willow's vehicle hit a post, backed up, and then hit an air pump at the convenience store. The court accepted Officer Bozzone's testimony that, shortly after the crashes, Willow had difficulty forming sentences, slurred her speech, and had to hold herself upright. The court also noted Officer Bozzone additionally observed Willow almost fall during one of the sobriety tests he administered.

The court determined the Division established by a preponderance of the evidence that Willow was grossly and wantonly negligent because "she ingested medication, imbibed alcoholic beverages to the point she could barely stand or speak, and drove her 2-year-old son in the vehicle." The court further concluded Willow's actions placed Jay at substantial risk of harm, "specifically of bodily injury or even death." The court also found Willow is "a licensed nurse, and thus must be aware of the dangers of mixing prescription medications with alcohol[,]" and her "disregard [of that] obvious fact was a failure to exercise even a minimum degree of care."

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[5] The court cited the CADC intern's April 8, 2021 assessment report as evidence supporting the finding. Again, we note Willow did not testify at the fact-finding hearing.

The court rejected what it described as Willow's argument a parent should not be held accountable for alleged abuse or neglect when the parent has an adverse reaction to medication that the parent did not know would occur. The court, however, determined such circumstances were not present because Willow's "extreme[]" impairment was "[n]ot because of an adverse reaction to medication, but" instead "because she took more than one prescription drug and mixed it with alcohol."

Based on those findings, the court entered a fact-finding order determining Willow abused or neglected Jay on March 20, 2021, by operating a motor vehicle in which two-year-old Jay was a passenger after taking more than one prescription medication and consuming two or three pre-mixed cocktails. The court subsequently entered a final order terminating the litigation because Jay "remain[s] in the home" with Willow and the "conditions have been remediated." This appeal followed.

II.

We will uphold a trial judge's fact-findings following an evidentiary hearing if they are "supported by adequate, substantial, and credible evidence." N.J. Div. of Child Prot. & Permanency v. B.H., 460 N.J. Super. 212, 218 (App. Div. 2019) (quoting N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527,

552 (2014)). "We 'accord deference to fact[-]findings 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.'" Ibid. (quoting N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 448 (2012)); see also N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008) (recognizing the trial judge "has a 'feel of the case' that can never be realized by a review of the cold record").

However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." R.G., 217 N.J. at 552-53 (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). If the trial court's rulings "'essentially involved the application of legal principles and did not turn upon contested issues of witness credibility,' we review the court's corroboration determination de novo." N.J. Div. of Child Prot. & Permanency v. A.D., 455 N.J. Super. 144, 156 (App. Div. 2018). We disturb a Family Part's findings only if they are "so wholly insupportable as to result in a denial of justice[.]" In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993) (quoting Rova Farms Resort, Inc. v. Invrs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974)).

"The 'paramount concern' of Title [Nine] is to ensure the 'safety of the children,' so that 'the lives of innocent children are immediately safeguarded from further injury and possible death.'" N.J. Div. of Child Prot. & Permanency v. A.B., 231 N.J. 354, 368 (2017) (quoting N.J.S.A. 9:6-8.8). To establish abuse or neglect under Title Nine, the Division must establish by a preponderance of the "competent, material[,] and relevant evidence" that the child is "abused or neglected . . . ." N.J.S.A. 9:6-8.46(b). The Division must present "proof of actual harm or, in the absence of actual harm," through "competent evidence adequate to establish [the child was] presently in imminent danger of being impaired physically, mentally or emotionally." N.J. Div. of Youth & Fam. Servs. v. S.I., 437 N.J. Super. 142, 158 (App. Div. 2014) (alteration in original) (quoting N.J. Div. of Child Prot. & Permanency v. M.C., 435 N.J. Super. 405, 409 (App. Div. 2014)).

The Division alleged Jay was an abused or neglected child under N.J.S.A. 9:8-21(c). The Division was required to prove Jay's

> physical, mental, or emotional condition has been impaired or [was] 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).]

The term "'minimum degree of care' refers to conduct that is grossly or wantonly negligent, but not necessarily intentional." G.S. v. Dep't of Human Servs., 157 N.J. 161, 178 (1999) (citing Miller v. Newsweek, 660 F. Supp. 852, 858-59 (D. Del. 1987)). A parent "fails to exercise a minimum degree of care when [the parent] 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. "The parent is held to what 'an ordinary reasonable person would understand' in considering whether a situation 'poses dangerous risks' and whether the parent acted 'without regard for the potentially serious consequences.'" N.J. Div. of Child Prot. & Permanency v. J.A., 436 N.J. Super. 61, 68-69 (App. Div. 2014) (quoting G.S., 157 N.J. at 179).

Not "every failure to perform a cautionary act" equates to a failure to exercise the requisite minimum degree of care under Title Nine. Id. at 69 (quoting N.J. Div. of Youth & Fam. Servs. v. T.B., 207 N.J. 294, 306-07 (2011)). A negligent "failure to perform a cautionary act" does not support a finding of abuse or neglect under Title Nine. T.B., 207 N.J. at 306-07; see also J.A., 436 N.J. Super. at 69 (explaining "where a parent is merely negligent there is no warrant to infer the child will be at future risk").

Abuse and neglect cases "are fact-sensitive." N.J. Div. of Child Prot. & Permanency v. E.D.-O., 223 N.J. 166, 180 (2015) (quoting T.B., 207 N.J. at 309). Whether a parent has committed abuse or neglect "must be 'analyzed in light of the dangers and risks associated with the situation.'" S.I., 437 N.J. Super. at 153 (quoting N.J. Dep't of Children & Fams. v. R.R., 436 N.J. Super. 53, 58 (App. Div. 2014)).

The Division must satisfy its burden of establishing abuse or neglect based "only" on "competent, material[,] and relevant evidence." N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 343 (2010) (quoting N.J.S.A. 9:6-8.46(b)). The facts supporting its claim of abuse or neglect must be based on admissible evidence. N.J.S.A. 9:6-8.46(a)(1).

Pertinent here, N.J.S.A. 9:6-8.46(a)(3) permits the admission of certain documents as competent evidence based on the Division presentation of proofs satisfying certain conditions. More particularly, and in relevant part, N.J.S.A. 9:6-8.46(a)(3) allows the Division to present as competent admissible evidence the following documents in a Title Nine proceeding:

> [A]ny writing, record[,] or photograph, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence[,] or event relating to a child in an abuse or neglect proceeding of any hospital or any other public or private institution or agency shall be

> admissible in evidence in proof of that condition, act, transaction, occurrence[,] or event, if the judge finds that it was made in the regular course of the business of any hospital or any other public or private institution or agency, and that it was in the regular course of such business to make it, at the time of the condition, act, transaction, occurrence[,] or event, or within a reasonable time thereafter[.]
>
> [N.J.S.A. 9:6-8.46(a)(3) (emphasis added).]

"[T]he key to the admissibility of documents under that section is whether the evidence was created 'in the regular course of business of any hospital or any other private institution or agency.'" M.C. III, 201 N.J. at 346 (quoting N.J.S.A. 9:6-8.46(a)(3)). The Division satisfies that requirement by presenting evidence a proffered document falling within the statute's coverage meets the conditions for admission as a business record under N.J.R.E. 803(c)(6). Ibid.; N.J. Div. of Child Prot. & Permanency v. N.B., 452 N.J. Super. 513, 524 (App. Div. 2017); see also R. 5:12-4(d) (permitting the admission into evidence of reports by the Division's staff and professional consultants meeting the conditions for admission of business records under N.J.R.E. 803(c)(6)).

A document proffered under N.J.S.A. 9:6-8.46(a)(3) is not admissible where the Division fails to present competent evidence satisfying the requirements of the business records exception to the hearsay rule under N.J.R.E. 803(c)(6). N.J. Div. of Youth & Fam. Servs. v. E.D., 233 N.J. Super.

401, 413 (App. Div. 1989). Similarly, hearsay embedded in documents admitted pursuant to N.J.S.A. 9:6-8.46(a)(3) is admissible only upon presentation of evidence establishing an exception to the hearsay rule, N.J.R.E. 802. N.J. Div. of Child Prot. & Permanency v. J.D., 447 N.J. Super. 337, 347-48 (App. Div. 2016).

Here, plaintiff argues the court erred by admitting and relying on the CADC intern's assessment report, screening and investigative summaries concerning referrals of alleged abuse or neglect occurring before and after the March 20, 2021 incident, and police reports concerning the March 20, 2021 incident that were prepared by two officers who did not testify at trial. Plaintiff also argues the court's fact-finding order should be reversed because it reached a "categorical conclusion" she acted in a grossly negligent manner on March 20, 2021 in the absence of substantial credible evidence supporting that finding. We consider the arguments in turn.

A.

"'Trial judges are given wide discretion in exercising control over their courtrooms' and have 'the ultimate responsibility of conducting adjudicative proceedings in a manner that complies with required formality in the taking of evidence and the rendering of findings.'" A.B., 231 N.J. at 366 (quoting N.J.

Div. of Youth & Fam. Servs. v. J.Y., 352 N.J. Super. 245, 264 (App. Div. 2002)). An appellate court reviews a trial court's evidentiary determination for an abuse of discretion. Ibid. A court abuses its discretion when its "decision [is] made without a rational explanation, inexplicably depart[s] from established policies, or rest[s] on an impermissible basis." U.S. ex rel. USDA v. Scurry, 193 N.J. 492, 504 (2008) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

Willow argues the court abused its discretion by admitting and then relying on the CADC intern's April 8, 2021 assessment report that in part included a diagnosis Willow suffered from "Mild Alcohol Use Disorder."[6] The report also stated Willow reported to the intern she "had to stop taking her medication" in March 2021, restarted taking the medication two days before the March 20, 2021 incident, drank two to three "'mixed cocktails' in the afternoon of her arrest," and drove "later that night as she thought she was okay."

Willow does not dispute the report was admissible under Rule 5:12-4(d) and N.J.S.A. 9:6-8.46(a)(3) because it was authored by the Division's professional consultant and the Division otherwise presented evidence the report constitutes a business record under N.J.R.E. 803(c)(6). Instead, she claims the

[6] The court admitted the intern's assessment report in evidence as exhibit P-9.

report is inadmissible because it includes a complex diagnosis and therefore could not be properly admitted without first presenting the intern as a witness at trial and presenting evidence satisfying the requirements for admission of the diagnosis under N.J.R.E. 808. See, e.g., Liptak v. Rite Aid, Inc., 289 N.J. Super. 199, 221-22 (App. Div. 1996) (explaining "[t]he diagnosis of alcoholism, a complex medical condition," in a medical record was inadmissible as a business record); but see N.J. Div. of Youth & Fam. Servs. v. M.G., 427 N.J. Super. 154, 174 (App. Div. 2012) (explaining admissible business record may include a "simple diagnosis based upon objective criteria or one upon which reasonable professionals could not differ").

We reject Willow's argument because she did not object to the admission of the assessment report on those grounds at trial. Instead, Willow's singular objection to the admission of the report was founded on a claim the assessment which is the subject of the report took place following the March 20, 2021 incident that is the basis for the Division's abuse or neglect claim against her. On appeal, Willow does not rely on that objection as the basis for her challenge to the court's admission of the assessment report, and we therefore do not address it. We reject her newly minted objection to the admission of the assessment report — that it contains an inadmissible complex diagnosis —

because her failure to object at trial on that basis rendered it unnecessary for the Division to call the intern as a witness at trial and effectively precluded the Division from addressing the objection at trial. See M.C. III, 201 N.J. at 347-48 (rejecting claims the trial court erred by admitting records under N.J.S.A. 9:6-8.46(a)(3) and Rule 5:12-4(d) based on objections asserted for the first time on appeal because the failure to make the objections made it unnecessary for the Division "to attempt to satisfy the conditions necessary for admission of the documents" and "the Division could have presented such proof if the issue had been raised at trial.").

We are also convinced admission of the assessment report, even if in error, was clearly not capable of producing an unjust result. R. 2:10-2. The record otherwise included competent evidence, including Lugo's testimony Willow admitted she had a problem with alcohol and needed help, establishing Willow had an acknowledged substance use issue with alcohol. Moreover, the court's abuse or neglect determination is based on its findings concerning the March 20, 2021 incident and Willow's various admissions, and not the CADC's intern's diagnosis.

We also observe the assessment included information upon which Willow relies in part as her defense to the claim she abused or neglected Jay on March

20, 2021, including her statement she restarted taking the medication two days before the incident and "thought she was okay" to drive after taking the medication. Willow did not testify at trial, but in her brief on appeal she relies on those purported facts, as she relayed them to the intern, in support of her claim that although she was impaired during the March 20, 2021 incident, she was not grossly or wantonly negligent. Thus, the intern's assessment report provided support for Willow's defense at trial as well as support for her arguments on appeal. Based on all the circumstances and the limited objection directed to a wholly separate issue at trial, the court did not abuse its discretion by admitting the report.

Willow next claims the court erred by admitting in evidence, and considering, Division screening and investigative summaries concerning separate referrals involving Willow and her children occurring before and after the March 20, 2021 incident.[7] Willow claims that, although the summaries are

[7] The following two sets of summaries at issue concern investigations of referrals for incidents occurring prior to March 20, 2021: the July 2017 screening and investigation summaries admitted in evidence as exhibits P-1 and P-2 that pertain to a report of domestic violence between Jay's father and Willow; and the December 2019 screening and investigation summaries, admitted in evidence as exhibits P-3, concerning a report Willow threatened suicide. One set of summaries concerns an incident occurring after the March 20, 2021 incident: the April 2021 screening and investigation summaries

otherwise admissible under Rule 5:12-4(d) and N.J.S.A. 9:6-8.46(a)(3), the court erred by overruling her objection that the summaries were inadmissible as irrelevant to its determination of whether she abused or neglected Jay on March 20, 2021.

"N.J.R.E. 401 defines '[r]elevant evidence' as 'evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action.'" State v. Cole, 229 N.J. 430, 447 (2017) (alteration in original). In its determination of "whether evidence is relevant, 'the inquiry should focus on the logical connection between the proffered evidence and a fact in issue.'" Ibid. (quoting State v. Bakka, 176 N.J. 533, 545 (2003)). The probative value of evidence is the tendency of that evidence "to establish the proposition it is offered to prove." Rodriguez v. Wal-Mart Stores, Inc., 237 N.J. 36, 58 (2019) (quoting Green v. N.J. Mfrs. Ins. Co., 160 N.J. 480, 492 (1999)).

The record shows that following the investigations of the three referrals that are the subject of the challenged summaries, the Division determined any putative allegations of abuse or neglect against Willow were either unfounded or unsubstantiated. Those findings did not render the summaries irrelevant

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admitted in evidence as exhibit P-10 concern alleged domestic violence between Willow and Jay's father.

because they otherwise contain statements and admissions by Willow pertinent to whether her actions on March 20, 2021 — driving while under the influence with Jay in her vehicle — rendered Jay an abused or neglected child and, if so, what disposition should be imposed.

For example, the summaries concerning the incidents prior to March 20, 2021 include Willow's admissible statements concerning her prior mental health and medication history, her employment as "a psychiatric nurse," her admission "she drinks every couple of weeks and typically drinks mixed drinks," and her admission she "has had a gastric sleeve surgery" in the past, "her stomach is smaller[,]" and that, "due to her stomach size[,] she becomes intoxicated quicker."

Those statements and other information in the summaries concerning referrals prior to the March 20, 2021 incident are relevant because they support the Division's position Willow had reason to know her use of alcohol or medication, alone or in combination, might result in the extreme impairment reported by Officer Bozzone. The admissible statements in the summaries therefore tend to prove Willow's operation of her vehicle on March 20, 2021 fell below the minimum degree of care required under N.J.S.A. 9:6-8.21(c)(4). See generally, E.D.-O., 223 N.J. at 178-81 (explaining the nature of willful and

wanton conduct required to support a finding of abuse or neglect under N.J.S.A. 9:6-8.21(c)(4)); G.S., 157 N.J. at 178-79 (same). Thus, the court did not abuse its discretion by admitting the challenged summaries concerning the incidents occurring prior to March 20, 2021.

The relevance of the summaries concerning the April 2021 incident is less clear because they do not contain statements or other admissible evidence "having a tendency in reason to prove or disprove any fact of consequence to the determination" of whether Jay was an abused or neglected child on March 20, 2021. N.J.R.E. 401. Neither the Division nor Jay's Law Guardian point to any admissible evidence in those summaries that is relevant under N.J.R.E. 401 to the court's determination of whether there was abuse or neglect on March 20, 2021. In our view, the relevance of those summaries is limited to the court's disposition based on its finding Willow abused or neglected Jay, see E.D.-O., 223 N.J. at 189-90 (explaining events occurring after the incident for which it is alleged a parent abused or neglected their child are relevant to the risk of harm posed by the parent that a court must consider in selecting the "myriad of dispositions available" after an abuse or neglect finding), but they were not relevant to the court's determination of whether Jay was an abused or neglected child on March 20, 2021.

Any error in the admission of those summaries in the abuse or neglect trial is harmless. In response to Willow's objection to the proffered admission of the summaries concerning the April 20, 2021 referral, the court expressly stated they were admitted "provisionally" subject to its determination of whether they contained relevant admissible evidence under N.J.R.E. 401.[8]

The record lacks any indication the court relied on the summaries in making its abuse or neglect determination. Moreover, the court made clear during its lengthy colloquy with Willow's counsel concerning other objections to the Division's proffered evidence that it would not consider any actions of Willow occurring subsequent to the March 20, 2021 incident to decide whether she abused or neglected Jay that day. We are satisfied the court did not rely on the summaries in making its abuse or neglect determination, and we reject Willow's claim the fact-finding order should be reversed because the summaries concerning the April 20, 2021 referral were admitted in evidence.

We also find no merit to Willow's claim the court erred by admitting in evidence separate police reports from two Independence Police Department

[8] The court also noted the summaries were admitted subject to the condition it would not consider any embedded inadmissible hearsay within the documents. Willow makes no argument, and points to nothing in the record, suggesting the court disregarded that condition of admission of the summaries.

officers who were involved in the investigation of the March 20, 2021 incident.[9] The police reports included information beyond the personal knowledge of Officer Bozzone, the only officer who testified at trial. In pertinent part, the reports described the March 20, 2021 recovery of two empty containers of pre-mixed alcoholic cocktails from Willow's vehicle. Willow claims the reports were inadmissible because the officers did not testify at trial.

The court correctly determined the reports were admissible under N.J.S.A. 9:6-8.46(a)(3) as writings and records of a public agency "relating to a child in an abuse or neglect proceeding."[10] The relevant portions of the reports — those describing the recovery of the two empty cocktail containers from Willow's car — were otherwise admissible evidence because they were based on the personal knowledge of the officers who authored the reports, and the Division satisfied its burden of establishing the reports constituted business records. Under the

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[9] The court admitted the two police incident reports as exhibit P-5.

[10] The Division supported the submission of the police reports with a certification satisfying the requirements for admission of the reports as business records under N.J.R.E. 803(c)(6). Willow did not claim before the trial court that the reports were inadmissible because the Division failed to satisfy the conditions precedent to their admission as business records under N.J.S.A. 9:6-8.46(a)(3), and she does not challenge the court's admission of the reports as business records on appeal. See Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011) (explaining an issue not briefed in a party's initial merits brief is deemed abandoned).

circumstances presented to the trial court, it did not abuse its discretion by admitting the reports notwithstanding Willow's claim to the contrary.

We further reject Willow's tersely asserted claim the court erred by allowing Officer Bozzone to testify about his review of the recording of Willow's operation of her vehicle at the convenience store because the recording was not admitted in evidence. Willow did not object to Officer Bozzone's testimony at trial, and we do not generally consider arguments raised for the first time on appeal unless they "go to the jurisdiction of the trial court or concern matters of great public interest." State v. Robinson, 200 N.J. 1, 20 (2009) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). Neither circumstance is present here.

B.

We next consider Willow's claim the court's fact-finding order should be reversed because it reached a "categorical conclusion" she acted in a grossly negligent manner on March 20, 2021, in the absence of substantial credible evidence supporting that finding and without any analysis of the "dangers and risks associated with the particular situation" presented on March 20, 2021. Willow also claims the evidence did not support a finding she was grossly negligent by operating her vehicle while impaired because her "behavior was

caused by taking medication prescribed to her to combat her mental health issues," and Officer Bozzone did not detect any odor of alcohol or believe alcohol was a contributing factor to her condition.[11] We are not persuaded.

The court's finding Willow was impaired while operating her vehicle with Jay in the rear seat is supported by substantial credible evidence. Officer Bozzone's testimony concerning: his observations of Willow's operation of the vehicle striking the post in front of the convenience store; Willow's admissions the damage to the front and rear of her car was caused by her striking the post and the air pump; and his observations of Willow's slurred speech, inability to stand, swaying, and falling provided ample support for the court's finding Willow was "extremely impaired" on March 20, 2021. See, e.g., N.J. Div. of Child Prot. & Permanency v. V.F., 457 N.J. Super. 525, 537-38 (App. Div. 2019) (declining to find "additional independent proofs" of drug intoxication are required to establish intoxication in an abuse or neglect proceeding beyond a

[11] Willow also argues the testing of her urine sample established there was no alcohol in her system on March 20, 2021. We do not address the claim because the record is devoid of any evidence Willow's urine sample was tested for alcohol and that such a test was negative, and Willow does not cite to any support in the record for the claim. To the contrary, Officer Bozzone offered unrefuted testimony the urine sample was not tested for alcohol, and the urine test lab report does not include any indication the urine sample was tested for alcohol.

police officer's testimony the defendant was unable to stand on his own). Indeed, Willow does not argue on appeal the court erred in making that finding of fact.

Instead, Willow claims the court impermissibly determined she was grossly negligent by "assum[ing] that mixing alcohol and drugs while operating a motor vehicle in the car amounted to abuse or neglect . . . ." The argument is premised on her claim she was not grossly negligent because her "behavior was caused by taking the medication prescribed to her to combat her mental health issues[,]" and her assertion the test of her urine sample "was negative for alcohol."

Willow's arguments are not supported by the record. Beyond her conclusory assertions, there is no evidence Willow's extreme impairment was simply the result of some unexpected and unanticipated reaction to her taking prescribed medications. The urine tests showed multiple drugs in Willow's system, but the record is barren of any evidence the presence of those drugs was the byproduct of any medications prescribed by Willow's physicians.

Similarly, Willow repeatedly relies on the claim that her extreme impairment could not be properly attributed to either her consumption of alcohol or the combination of alcohol and whatever drugs she consumed because the

results of her urine test established there was no alcohol in her system. We observe Willow does not cite to any evidence in the record establishing her urine sample tested negative for alcohol, and our review of the record reveals no such evidence was presented. She appears to rely on the urine sample lab test report to support her claim, but she ignores Officer Bozzone's unrefuted testimony the urine sample was never tested for alcohol. The lab report's failure to mention alcohol does not constitute a negative test for alcohol.

Contrary to the unsupported factual assertions undergirding Willow's claim the court erred by reaching an unsupported categorical conclusion, the court's finding Willow willfully and wantonly engaged in conduct presenting a substantial risk of harm to Jay is supported by the record. Despite Officer Bozzone's failure to detect an odor of alcohol and opinion alcohol did not play a role in the motor vehicle incident, there is substantial evidence establishing Willow consumed alcohol on March 20, 2021, prior to the incident at the convenience store, and, worse yet, that supports a finding she consumed two alcoholic drinks while traveling in the car. The evidence includes Willow's admission to Officer Bozzone she had an alcoholic drink on March 20, 2021 and her later admission to the CADC intern she had two to three alcoholic drinks during the afternoon that day. Additionally, the police recovered two empty pre-

mixed alcoholic cocktail containers in the vehicle she was driving with Jay in the back seat.

The record also shows that, according to Willow, as a result of a gastric sleeve operation, her stomach was smaller, and she therefore became intoxicated more quickly. And, as the court found based on the evidence, Willow worked as a nurse. Those facts support a reasonable inference Willow should have known that consuming two to three alcoholic drinks prior to driving, and perhaps while driving — with her two-year-old son in the car — was willful and wanton conduct.

The evidence further permitted the conclusion Willow consumed not only alcohol prior to the March 20, 2021 incident, but also some type of alleged medication — whether prescription or not — that was revealed through testing which showed four different drugs in her system. Those facts supported the court's finding Willow consumed various drugs and alcohol before or during the excursion via automobile Willow chose to take with her son from one municipality to another that ended with collisions with stationary objects at a convenience store.

Last, the court properly considered the evidence of Willow's extreme impairment and the manner in which she operated the vehicle — causing damage

to her vehicle by striking stationary objects — in its determination she willfully and wantonly failed to exercise the minimum degree of care required under N.J.S.A. 9:6-8.21(c)(4), E.D.-O., 223 N.J. at 178-81, and thereby placed Jay in imminent risk of harm.

We reject Willow's reliance on New Jersey Division of Youth & Family Services v. Y.N., where the Court held that, "absent exceptional circumstances, a finding of abuse or neglect cannot be sustained based solely on a newborn's enduring methadone withdrawal following a mother's timely participation in a bona fide treatment program prescribed by a licensed healthcare professional to whom she has made full disclosure." 220 N.J. 165, 185-86 (2014). Willow claims Y.N. supports her claim her use of prescription medications does not permit a categorical conclusion she abused or neglected Jay.

The circumstances in Y.N. are wholly dissimilar to those presented here. In Y.N., the evidence established the defendant was prescribed methadone by a physician during her pregnancy to address her opiate dependency. Id. at 168. The Court therefore reasoned the defendant did not act in a wanton and willful manner under N.J.S.A. 9:6-8.21(c)(4)(b) by taking the prescribed methadone during her pregnancy that resulted in the child being born with neonatal abstinence syndrome. Id. at 183-84.

Here, there is no competent evidence the drugs found in Willow's system were the product of her taking any prescribed medications, and, even if there was, unlike in Y.N., the court's abuse or neglect finding is not based on the presence of drugs in Willow's system. Rather, here, the court's abuse or neglect finding is founded on Willow's decision to engage in conduct — driving while impaired with Jay in the vehicle — following her ingestion of drugs and alcohol. There are no similar facts present in Y.N.

In sum, Willow's claims the court reached an impermissible categorical conclusion she acted in a willful and wanton manner that is unsupported by the evidence ignores that the court made succinct but sufficiently detailed findings supporting its determination, and each of its findings is grounded in substantial credible evidence. We have no hesitancy in affirming the court's findings and conclusion Willow's operation of her vehicle while extremely impaired following her admitted consumption of alcohol, as confirmed by the empty pre-mixed cocktail containers located in her vehicle, and her admitted consumption of other medications or drugs, constitutes a failure to exercise a minimum degree of care that unreasonably presented a substantial risk of harm to Jay. See, e.g., J.A., 436 N.J. Super. at 68 (explaining a parent "who permits a child to ride with an inebriated driver acts inconsistently with N.J.S.A. 9:6-8.21(c)(4)").

To the extent we have not addressed any of Willow's remaining arguments, we have determined they are without 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