RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3109-21

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

J.M.,[1]

Defendant-Appellant,

and

W.D. and A.M.,

Defendants.

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IN THE MATTER OF M.M. and M.M., minors.

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Submitted September 18, 2023 – Decided October 10, 2023

Before Judges Sabatino and Chase.

[1] We use initials to protect the privacy of the parties and confidentiality of these proceedings. See R. 1:38-3(d)(10).

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, Docket No. FN-09-0243-21.

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

Matthew J. Platkin, Attorney General, attorney for respondent (Sookie Bae-Park, Assistant Attorney General, of counsel; Wesley Hanna, Deputy Attorney General, on the brief).

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

PER CURIAM

Defendant J.M. appeals from the Family Part's March 22, 2021 order entered after a fact-finding trial that she abused or neglected her children, ages six and one, in violation of N.J.S.A. 9:6-8.21(c) by failing to provide proper supervision while she was under the influence of PCP. Having reviewed the record, the parties' arguments, and the applicable legal principles, we affirm.

I.

On March 26, 2021, police officers and a caseworker from the New Jersey Division of Child Protection and Permanency ("DCPP") arrived at J.M.'s home

in response to a 9-1-1 call made by J.M.'s six-year-old child. The call was made by the child out of concern for his mother, J.M., who the child stated was under the influence of "dust." The "dust" the child referred to in the 9-1-1 call was later admitted by J.M. to be PCP. J.M. had left the child alone in the home with his one-year-old sibling while she visited a neighbor's home to use PCP. Upon arrival at the home, the responding officers observed J.M. impaired, unsteady, and unwilling to let go of her one-year-old child, who she was holding. J.M. was removed from the home by ambulance, evaluated, and sent to receive in-patient drug treatment. The DCPP arranged for other care for the children until J.M. completed treatment.

On February 10, 2022, a fact-finding trial was held, during which the responding officers and a DCPP caseworker testified. At the conclusion of the trial, the judge found that "[J.M.] caused the children's physical, mental, or emotional condition to be impaired or in imminent danger of becoming impaired as a result of her failure to exercise a minimal degree of care in providing the children with proper supervision." In finding that abuse or neglect was established, the trial judge explained that J.M. was so incapacitated to such a degree that her six-year-old child was forced to seek assistance of emergency services to ensure the well-being of his parent and infant sibling. The trial judge

found that the circumstances jeopardized the safety of J.M. and her children, as the children were under J.M.'s supervision while J.M. was under the influence of PCP. The trial judge found that the DCPP had proved its case by a preponderance of the evidence. Based on these findings, the court entered a fact-finding order determining the children were abused or neglected by J.M.

Defendant appeals, arguing the court erred by failing to consider the totality of the circumstances surrounding a single incident that J.M had thereafter mitigated. Defendant further claims that the court failed to consider the impact on J.M. of a finding of abuse and neglect from a single incident of drug use. The Law Guardian for the minors joins with the DCPP in urging that we affirm.

II.

Our review of a Family Part judge's factual findings is limited. N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261 (2007). "A reviewing court should uphold the factual findings undergirding the trial court's decision if they are supported by 'adequate, substantial and credible evidence' on the record." Id. at 279 (quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)). However, "where the focus of the dispute is . . . alleged error in the trial judge's evaluation of the underlying facts and the implications to be

drawn therefrom, 'the traditional scope of review is expanded.'" J.T., 269 N.J. Super. at 188-89 (quoting C.B. Snyder Realty, Inc. v. BMW of N. Am., Inc., 233 N.J. Super. 65 (App. Div. 1989)); see also N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007). Deference is appropriate even in that circumstance "unless the trial court's findings 'went so wide of the mark that a mistake must have been made.'" M.M., 189 N.J. at 279 (quoting C.B. Snyder Realty, 233 N.J. Super. at 69).

"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." N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 552-553 (2014) (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) (quoting N.J. Div. of Child Prot. & Permanency v. N.B., 452 N.J. Super. 513, 521 (2017)). We disturb a Family Part's findings only if they are "so wholly insupportable as to result in a denial of justice." J.T., 269 at 188 (quoting Rova Farms Resort, Inc. v. Invrs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974)).

III.

"The 'paramount concern' of [N.J.S.A. 9:1-1 to 25-11 ("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(a)). To establish abuse or neglect under Title Nine, the [DCPP] 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); N.J. Div. of Youth & Fam. Servs. v. G.M., 198 N.J. 382, 398 (2009).

A Title Nine finding requires a determination that a child has suffered serious harm or has been placed at risk of serious harm. See N.J.S.A. 9:6-8.8(a). Title Nine, in pertinent part, defines an abused or neglected child as one:

> 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 or guardian, as herein defined, to exercise a minimum degree of care . . . (b) 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).]

The language in N.J.S.A. 9:6-8.21(c)(4) concerning failure "to exercise a minimum degree of care" refers to "conduct that is grossly or wantonly negligent, but not necessarily intentional" and "reckless disregard for the safety of others." N.J. Div. of Youth & Fam. Servs. v. T.B., 207 N.J. 294, 305-06 (2011) (quoting G.S. v. Dep't of Hum. Servs., 157 N.J. 161 (1999)); see also N.J. Div. of Youth & Fam. Servs. v. S.N.W., 428 N.J. Super. 247, 254-56 (App. Div. 2012). Simple negligence alone, however, does not qualify as abuse or neglect. T.B., 207 N.J. at 306-07. DCPP 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)).

A finding of harm must be based on legally competent evidence, not hearsay. N.J.S.A. 9:6-8.46(b); N.J. Div. of Youth & Fam. Servs. v. H.B., 375 N.J. Super. 148, 175 (App. Div. 2005). The Division need not wait until a child is actually harmed before intervening for the child's protection. N.J. Div. of Youth & Fam. Servs. v. S.S., 372 N.J. Super. 13, 24 (App. Div. 2004) (quoting In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999)).

IV.

The trial judge's decision was based on the totality of the circumstances and supported by adequate, substantial, and credible evidence. At the fact-finding trial, credible witnesses established that J.M. has a history of DCPP involvement due to her PCP addiction. At multiple court appearances, J.M. admitted to using PCP in the past. The officers depicted J.M. as an "unsteady, impaired adult at the top of a flight of stairs," while her children, one of which had just called 9-1-1, were "clearly scared" and "very much in need of a diaper change." J.M.'s inability to stand up steadily while holding her one-year-old child, after leaving the premises to use PCP, is sufficient to show she could not

provide "the minimum degree of care" and put the children at "substantial risk of harm" under the Title Nine standard.

While J.M. argues that the trial judge's finding was too harsh because neither child was physically hurt, that argument minimizes how frightening and precarious this situation was for the children. Further, it is unpersuasive that J.M.'s subsequent compliance with the DCPP should determine that abuse or neglect was not established on the critical date of March 26, 2021.

To the extent we have not addressed any of J.M.'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.