

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3582-20

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

S.H.,

Defendant,

and

J.E.,

Defendant-Appellant.

IN THE MATTER OF N.Y.E.,
A.E. and A.E., minors.

Submitted January 23, 2023 – Decided February 1, 2023

Before Judges Whipple, Mawla, and Smith.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Atlantic County,
Docket No. FN-01-0154-20.

Joseph E. Krakora, Public Defender, attorney for
appellant (Susan W. Saidel, 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).

PER CURIAM

Defendant J.E. (Jay)¹ appeals from the April 15, 2021 order of the Family Part finding he abused or neglected his daughter N.E. (Nina), born September 2009, his son A.E. (Adam), born August 2011, and his daughter A.E. (Ava), born January 2016, within the meaning of N.J.S.A. 9:6-8.21(c)(2) and (c)(4). Because there is substantial credible evidence in the record to support that conclusion, we affirm substantially for the reasons expressed in Judge Pamela D'Arcy's cogent thirty-five-page written opinion. See N.J. Div. of Child Prot. & Permanency v. J.L.G., 450 N.J. Super. 113, 119 (App. Div. 2015).

The facts and procedural history are meticulously set forth in Judge D'Arcy's opinion and we need not repeat them here. Instead, we incorporate its

¹ We use initials and fictitious names to preserve confidentiality and protect privacy. R. 1:38-3(d)(12).

factual findings and legal conclusions by reference, including the history of the Division's interactions with defendant and the minor children's mother, S.H. (Samantha). We add the following brief comments.

The judge conducted the hearing over the course of four days. The Division presented overwhelming evidence of defendant's failure to exercise a minimum degree of care over his children. It showed, by a preponderance of evidence, that Jay violated N.J.S.A. 9:6-8.21(c)(2) and (c)(4) when he violently struck the children's mother in front of them after slamming his son's head into a wall and destroying the panic alarm. The judge found Jay's actions created a substantial risk of ongoing physical injury to the minor children and that the children's emotional condition had become impaired as a result.

Our review of the trial court's decision is limited, and we defer to the Family Part's expertise. Cesare v. Cesare, 154 N.J. 394, 413 (1998). We are bound by the trial judge's factual findings in this Title 9 abuse or neglect proceeding, so long as they are supported by adequate, substantial, and credible evidence in the record. N.J. Div. of Child Prot. & Permanency v. K.N.S., 441 N.J. Super. 392, 397 (App. Div. 2015).

Applying these principles, we conclude the judge's factual findings are fully supported by the record. The "main focus" of Title 9, of which N.J.S.A.

9:6-8.21(c) is a part, is "the protection of children." Dep't of Child. & Fam., Div. of Child Prot. & Permanency v. E.D.-O., 223 N.J. 166, 178 (2015) (quoting G.S. v. Dep't of Hum. Servs., 157 N.J. 161, 177 (1999)). Pursuant to subsection (c)(4), abuse or neglect is established where a child's "physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result" of a parent or guardian's failure to exercise a minimum degree of care by, among other things, "unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment." N.J.S.A. 9:6-8.21(c)(4).

Regarding instances of domestic violence, "the act of allowing a child to witness domestic violence does not equate to abuse or neglect of the child in the absence of additional proofs." N.J. Div. of Youth & Fam. Servs. v. I.H.C., 415 N.J. Super. 551, 584 (App. Div. 2010) (emphasis added). A finding of abuse or neglect may not be based solely on the child's exposure to domestic violence; the physical or emotional harm to the child resulting from the domestic violence must be substantiated. Id. at 586.

Finally, the Division bears the burden of proving by a preponderance of the evidence that the child is an abused or neglected child within the meaning of this statute. See N.J.S.A. 9:6-8.46(b); N.J. Div. of Youth & Fam. Servs. v.

R.D., 207 N.J. 88, 113 (2011). But a "court[] need not wait until harm occurs before interceding to protect children." Div. of Child Prot. & Permanency v. R.W., 438 N.J. Super. 462, 471 (App. Div. 2014) (citing In re Guardianship of D.M.H., 161 N.J. 365, 383 (1999)); see also N.J. Dep't of Child. & Fam., Div. of Youth & Fam. Servs. v. A.L., 213 N.J. 1, 23 (2013) (quoting D.M.H., 161 N.J. at 383) ("[A] court 'need not wait to act until a child is actually irreparably impaired by parental inattention or neglect.>"). A showing of "imminent danger or a substantial risk of harm" will justify a finding of abuse or neglect under N.J.S.A. 9:6-8.21(c) in situations where there is no evidence of physical harm. Ibid. (emphasis added).

Judge D'Arcy had an ample factual record from which to conclude defendant violated N.J.S.A. 9:6-8.21(c), including: testimony from multiple witnesses; the Division's investigation report; two police reports; a video interview of Samantha; photographs of Samantha's injuries; and audio recordings of Jay's phone calls from jail. The judge gave significant weight to the officers' reports, the Division's report, Nina's interview, and Samantha's recorded interview, all of which corroborated Jay's violently slamming Adam's head into a wall. Relying in large part on the Division's report and statements

by the children, the court found that the children were "deeply emotionally impacted . . . by [Jay]'s egregious actions."

Based on our review of the record, we are satisfied there is more than sufficient credible evidence to support Judge D'Arcy's finding that: defendant intentionally created a substantial risk to the minor children of ongoing physical injury by other than accidental means; and impaired their emotional condition by failing to exercise a minimum degree of care when he slammed Adam's head against a wall, destroyed the panic alarm, and brutally beat Samantha in front of them. We discern no error in the judge's conclusion that the Division proved by a preponderance of the evidence that Nina, Adam, and Ava were abused or neglected children pursuant to N.J.S.A. 9:6-8.46(b).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION