SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2016-22

NEW JERSEY DIVISION
OF CHILD PROTECTION
AND PERMANANCY,

Plaintiff-Respondent,

v.

A.A.,

Defendant-Appellant,

and

T.D. and L.G.,

Defendants.

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IN THE MATTER OF
X.D. and A.G., minors.

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Argued April 24, 2024 – Decided June 26, 2024

Before Judges Susswein and Vanek.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FN-07-0175-21.

Adrienne Marie Kalosiesh, Assistant Deputy Public Defender, argued the cause for appellant (Jennifer Nicole Sellitti, Public Defender, attorney; Adrienne Kalosiesh, of counsel and on the briefs).

Julie Beth Colonna, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Janet Greenberg Cohen, Assistant Attorney General, of counsel; Julie Beth Colonna, on the brief).

Noel Devlin, Assistant Deputy Public Defender, argued the cause for minor A.G. (Jennifer Nicole Sellitti, Public Defender, Law Guardian, attorney; Meredith Alexis Pollock, Deputy Public Defender, of counsel; Noel Devlin, of counsel and on the brief).

Cory Hadley Cassar, Designated Counsel, argued the cause for minor X.D. (Jennifer Nicole Sellitti, Public Defender, Law Guardian, attorney; Cory Hadley Cassar, on the brief).

PER CURIAM

Defendant A.A.[1] appeals from a March 2, 2022 Family Part order finding she committed abuse or neglect of her then fourteen-year-old child, A.G.[2] A.G.

[1] We use initials and pseudonyms to protect the identity of the parties and confidentiality of these proceedings. R. 1:38-3(d)(12).

[2] A.G. is non-binary and uses the pronouns they/them.

has a history of engaging in self-harming behavior, including a suicide attempt in December 2020. Around February 2021, A.G. told defendant that they were sexually abused when they were eight years old by defendant's live-in boyfriend, T.D., and others. Defendant did not report the claimed sexual abuse to police, the Division of Child Protection and Permanency (DCPP or Division), or A.G.'s therapist. In March 2021, A.G. disclosed the past sexual abuse to their therapist. DCPP was notified and initiated an investigation. Defendant then relocated A.G. to the grandparents' residence on the first floor of the house, allowing T.D. to remain in the third-floor residence.

After a fact-finding hearing, the trial judge determined defendant placed A.G. at substantial risk of harm by failing to report A.G.'s disclosure of past sexual abuse and by permitting T.D. to remain in the home with A.G. The judge also found that defendant placed A.G. at further risk of harm by arranging for A.G. to move to a different apartment so T.D. could remain in the home. The judge ruled DCPP had proven by a preponderance of the evidence that defendant committed child abuse or neglect in violation of N.J.S.A. 9:6-8.21.

After we heard oral argument in this matter, the New Jersey Supreme Court decided Div. of Child Prot. & Permanency v. B.P., 257 N.J. 361 (2024), providing guidance in interpreting the meaning of "imminent danger" as used in

N.J.S.A. 9:6-8.21(c)(4). The Court held that a determination of abuse or neglect must be based on specific findings of fact and stressed that "a mere possibility" of a child's impairment is not sufficient. Id. at 379-80. The Court further held that as per its plain meaning, the word imminent means "'threatening to occur immediately; dangerously impending . . . [or] about to take place."' Id. at 377 (quoting Black's Law Dictionary 898 (11th ed. 2019)).

After carefully reviewing the record, we affirm the Family Part judge's decision insofar as he found defendant failed to exercise a minimum degree of care as required under N.J.S.A. 9:6-8.21 when defendant did nothing after A.G. told her about the past sexual abuse by T.D. In contrast, we are not convinced that arranging for A.G. to live with their grandparents in the first-floor residence constitutes gross negligence.

Although we agree with the trial judge that defendant was grossly negligent in failing to take action when A.G. first disclosed the past sexual abuse to her, and defer to the trial judge's finding that such negligence created a substantial risk of physical, mental, or emotional impairment, we remand for the judge to make explicit findings as to whether that risk of harm was imminent within the meaning of B.P.

I.

We discern the following pertinent facts and procedural history from the record. At the time of the trial judge's oral opinion, A.G. was fifteen years old and raised by defendant.[3] In 2014, defendant and T.D. began a romantic relationship. A.G. lived with defendant, T.D., and T.D. and defendant's baby, X.D. The family lived on the top floor of a three-family home, with a tenant on the second floor, and the maternal grandparents and aunt living on the first floor.

Around February 2021, A.G. asked defendant to arrange for them to attend therapy. A.G. told defendant they were depressed and attempting to cut themselves. A.G. told defendant they were inappropriately touched by T.D. and others when they were younger. A.G. asked defendant not to report or do anything about the abuse.

At a March 3, 2021 therapy session, A.G. told the therapist that when they were in elementary school, T.D. touched them inappropriately. Defendant was working that night, so A.G. was home alone with T.D. A.G. reported that T.D. squeezed their thigh and touched their vaginal area. A.G. believed T.D. may have been drinking when this occurred because A.G. recalled seeing alcohol

[3] A.G.'s father, L.G., is not a party to this appeal.

bottles near the closet. A.G. relayed to the therapist they told defendant what happened, but defendant "never did anything about it."

A.G. stated the sexual abuse only happened once and that they did not understand what happened until they got older. They now have occasional nightmares about it. A.G. regretted telling the therapist because as a mandated reporter, the therapist had to notify DCPP. A.G. stated T.D. has anger problems and A.G. did not want T. D to be angry with them from DCPP involvement.

On March 4, 2021, DCPP investigator Jamila Austin was assigned to the case. Austin attempted to contact the family on several occasions but was unsuccessful.

On March 8, 2021, Austin "informed [defendant] that the Division has been making attempts to [contact her at] her home since the [fourth] and has been unsuccessful as no one answers the door or her phone." After ultimately making contact with defendant, Austin informed defendant that the Division would be requesting T.D. to leave the home until the investigation was complete. Defendant responded that would be "hard to do."

On March 9, 2021, defendant texted Austin advising her that she and her children would be moving to her parents' home. Defendant stated that "safety is her number one priority." Defendant reported she was out looking for a bed

and apologized for not being home and missing the appointment. Austin expressed concerns and stated she needed to meet with defendant and her children. Defendant said she would not be back until later.

On March 10, 2021, Austin texted defendant again expressing concerns and received no answer. On March 11, defendant finally responded and said A.G. had been relocated to a safe home. On March 16, 2021, defendant provided Austin with the address of the grandparents' home where A.G. was staying.

On March 16, 2021, Austin went to A.G.'s grandparents' home. Defendant reported that on December 15, 2020, A.G. had an intake evaluation for therapy. Defendant stated that during the intake, A.G. was referred to St. Claire's to be assessed for depression, self-harm, and suicidal ideations. A.G. stayed at St. Claire's for three days, then went to Clara Mass Medical Center, and then to St. Claire's in Denville, where A.G. stayed for about a week.

When A.G. was discharged from the hospital, their treatment plan recommended individualized therapy and later family therapy. Defendant reported A.G. was also connected with Care Management Organization (CMO) through PerformCare and referred to a psychiatrist.[4]

[4] PerformCare works with the Division "to help identify appropriate behavioral health treatment services for child welfare involved youth." See Division of

Defendant recalled around February 2021, A.G. disclosed they were sexually abused by people in the past, including their cousin and T.D. Defendant stated A.G. did not want her to do anything in response to the disclosure, so defendant did nothing. Austin reported defendant "didn't push [A.G.] due to [A.G.] not confiding in her and the fact that it took [A.G.] this long to say something about it." Defendant reported that during a subsequent discussion, A.G. told defendant that T.D. touched A.G.'s leg and the outside of their vagina when he was drunk.

Defendant did not ask T.D. to leave the home because T.D. cared for X.D. at night. Defendant was receiving food stamps and was unemployed during the pandemic. T.D. paid half of the rent.

When asked if she believed A.G., defendant replied "to an extent." Defendant believed "something happened" to A.G. but did not believe T.D. was the person who did it. She explained that after every therapy session, defendant

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Child Protection and Permanency (DCP&P) Staff Resources, N.J. Child.'s Sys. of Care, https://www.performcarenj.org/provider/dcpp/index.aspx. "'Care Management Organization (CMO)' means the community-based . . . contracted entity that is responsible for creating, coordinating, and implementing an individualized plan of care for children with emotional and behavioral disturbances that are in need of intensive care coordination services." N.J.A.C. 10:75-1.2.

learns "something new" about A.G. Defendant described the situation as being "a lot" to handle.

Austin told defendant she needed to choose between her child or her boyfriend. Defendant chose her child. Defendant wished A.G. disclosed the information to her before she had X.D. with T.D.

Austin spoke with A.G. privately. A.G. stated T.D. "used his hands and touched my private part" under their shorts and underwear once when they were eight years old. A.G. explained they did not report this to anyone until recently because "of the type of person [T.D.] is and the type of relationship he has with other kids is good and [they] felt that nobody would believe [them]." A.G. regretted disclosing what happened because "of what [they] caused." A.G. expressed feeling "some type of way that [they] had to move out the house like [they are] the issue or burden that has to get out." They explained their mother "doesn't listen."

In April, A.G. expressed feeling "triggered" by staying at the grandparents' house because "of past abuse happening where [they have] to sleep." A.G. reported they still see T.D. because A.G. watches X.D. A.G. reported they rode in the car with T.D. the day before. A.G. also reported their mother wanted to go back to being a family and to forget the allegations. A.G.

stated they did not feel "unsafe" around T.D., but they did feel "uncomfortable" being alone with him.

At the end of the investigation, the Division substantiated T.D. for sexual abuse/sexual molestation of A.G. The Division also substantiated sexual abuse/risk of harm against defendant concerning A.G. and X.D.

Pre-trial hearings occurred between May and September 2021. On May 7, 2021, the trial court granted the Division's application of care and supervision of the family. The trial court restricted T.D.'s contact with A.G.

A June 23, 2021 DCPP contact sheet shows A.G. was interviewed and reported having no contact with T.D. A.G. expressed feeling safe living at the grandparents' residence. A.G. reported they were still attending therapy.

The fact-finding hearing was held on February 25, and March 2, 2022. The Division presented testimony from Austin. The Division also presented expert testimony from psychologist Dr. Danielle Graddick, Psy.D., and Daisy Rimli, a licensed clinical social worker.

Austin testified regarding the Division's involvement. Austin acknowledged the Division did not offer defendant any services to address childcare services or housing assistance if T.D. were to leave the home.

Rimli testified she met with A.G. in May and June 2021 and conducted a psychosocial evaluation. Rimli also interviewed defendant. Defendant reported that A.G. attempted to commit suicide in October or November 2020 by ingesting medication. Defendant told Rimli she did not understand how A.G. had not made a disclosure earlier or would spend time around T.D. if he had abused them.

Rimli observed that defendant "was more concerned with her own well-being than [A.G.'s]." When asked why A.G. is not residing with her, defendant said having T.D. leave and A.G. stay "would've made the situation even worse" because she would have to take care of X.D. by herself.

Rimli was concerned by defendant's failure to protect and support A.G. because defendant failed to report the sexual abuse allegations, removed A.G. from the home instead of T.D. and allowed contact between T.D. and A.G. thereafter.

Rimli opined that A.G. experienced trauma and diagnosed A.G. with post-traumatic stress disorder. She testified A.G. could be experiencing trauma from a series of events, as opposed to just one event. Rimli recommended A.G. continue individual therapy to address their disclosure, the impact on the family,

their mother's lack of support, eating concerns, and to provide A.G. with psychoeducation on sexual abuse.

Graddick conducted a psychological evaluation of A.G on June 29, 2021. A.G. disclosed the sexual assault by T.D. and reported their relationship with defendant was improving and they did not "feel as rejected" by their mother. A.G. said they attempted to complete suicide "double digits of times." They did not have any recent active suicidal ideation but endorsed recent "passive" suicidal ideation. The last time A.G. cut themselves was a month or two prior to the evaluation.

The psychological testing revealed A.G. "endorsed an unusually high level" of problematic thoughts, feelings, and behaviors. Graddick testified she was unable to determine if A.G. genuinely has an unusual number of problematic thoughts and feelings, overreported their feelings as a "cry for help," or if A.G. deliberately faked unfavorable responses.

Graddick determined A.G. "may have internalized [their] trauma and [their] feeling[s] of rejection from [their] mother, which in turn has created a significant amount of emotional difficulties for [them]." Graddick testified, "in my experience, having to be the child—being the victim of an alleged abuse and having to move and being the one that's removed is a . . . traumatic event."

Graddick recommended defendant attend a psychological evaluation and A.G. continue with therapy "on a more frequent basis."

On cross-examination, Graddick acknowledged defendant enrolled A.G. in therapy, was an "active participant" in A.G.'s mental healthcare, and continued A.G.'s therapy after her suicide attempt.

On March 2, 2022, the trial court rendered an oral decision concluding defendant "failed to exercise a minimum degree of care in providing [A.G.] with proper supervision or guardianship by placing [A.G.] at substantial risk of harm." On January 26, 2023, the trial court issued an order dismissing the litigation, with A.G. continuing to reside with their grandparents pursuant to a family agreement.

This appeal follows. Defendant raises the following contentions for our consideration:

> POINT I
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> THE DETERMINATION THAT [DEFENDANT] VIOLATED N.J.S.A. 9:6-8.21(c) WAS NOT BASED ON EVIDENCE TO SUPPORT A CONCLUSION THAT SHE FAILED TO MEET A MINIMUM DEGREE OF CARE IN HER INEXPERT RESPONSE TO AN ALLEGATION OF PAST HARM.
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> I. The court erred to hold DCPP's evidence showed [defendant] acted with the "scant care" or disregard for A.G.'s wellbeing to

support a conclusion that [defendant's] conduct failed to meet the minimum degree of care.

II. DCPP did not show [defendant's] decision to relocate A.G. to a safe home with grandparents and continue to provide therapy caused A.G. to suffer emotional impairment or that [defendant's] decision was unreasonable such that it amounted to gross negligence.

Defendant raises the following contentions in her reply brief:

POINT I

After a parent ensures a child's physical and mental wellbeing, [r]espondents err to aver Title 9 is intended to penalize parents for "lack of support."

POINT II

Respondents err to claim that [defendant] was grossly negligent for not initiating DCPP/police action in this specific circumstance, where public outing of A.G.'s victimhood was against the suicidal [non-]binary teen's will.

Defendant raises the following contention in her supplemental letter submitted pursuant to Rule 2:6-11(d)(1) following the release of B.P.:

The court here jumped to the legal conclusion that [defendant] failed to meet the minimum standard of care without identifying the purported harm that was determined to have befallen A.G. by continuing to live in their own home with T.D. for the few weeks between when A.G. told the therapist a disclosure was made to

> [defendant] and when [defendant] relocated A.G. to the grandparents' home.

II.

We begin our analysis by acknowledging the legal principles governing this appeal. The appellate standard of review of a Family Part judge's factual finding is "strictly limited." N.J. Div. of Youth & Fam. Servs. v. I.H.C., 415 N.J. Super. 551, 577 (App. Div. 2010) (citing Cesare v. Cesare, 154 N.J. 394, 412-23 (1998)). "[W]e apply a deferential standard in reviewing the family court's findings of fact because of its superior position to judge the credibility of witnesses and weigh the evidence." N.J. Div. of Child Prot. & Permanency v. J.R.-R., 248 N.J. 353, 368 (2021). "This deferential standard of review is appropriate because the Family Part judges are presumed to have a 'specialized knowledge and experience in matters involving parental relationships and the best interests of children.'" N.J. Div. of Child Prot. & Permanency v. S.K., 456 N.J. Super. 245, 261 (App. Div. 2018) (quoting N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 427 (2012)). Thus, we are bound to accept the trial court's factual findings that are supported by "'adequate, substantial, and credible evidence' in the record." N.J. Div. of Child Prot. & Permanency v. A.D., 455 N.J. Super. 144, 155 (App. Div. 2018) (quoting N.J. Div. of Child Prot. & Permanency v. N.B., 452 N.J. Super. 513, 521 (App. Div. 2017)); see

also N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007) ("[D]eference will still be accorded the trial judge's findings unless it is determined that they went so wide of the mark that the judge was clearly mistaken."). However, we owe no deference to a judge's legal conclusions which are reviewed de novo. N.J. Div. of Child Prot. & Permanency v. A.B., 231 N.J. 354, 369 (2017).

"The prevailing concern in abuse and neglect cases is the best interests of the child." N.J. Div. of Child Prot. & Permanency v. S.G., 448 N.J. Super. 135, 146 (App. Div. 2016); see also N.J.S.A. 9:6-8.8(a) (providing that under Title 9, children's safety is "of paramount concern and the best interests of the child shall be a primary consideration"). "The purpose of a fact-finding hearing in an abuse or neglect proceeding is not to assign guilt to a defendant, but to determine whether a child is an abused or neglected child pursuant to N.J.S.A. 9:6-8.44." N.J. Div. of Youth & Fam. Servs. v. V.T., 423 N.J. Super. 320, 328 (App. Div. 2011). "An analysis of a parent's conduct must account for the surrounding circumstances." Dep't of Child. & Fams., Div. of Child Prot. & Permanency v. E.D.-O., 223 N.J. 166, 180 (2015).

Title 9 governs our review of the adjudication of abuse and neglect. See N.J.S.A. 9:6-8.21 to -8.73. Under N.J.S.A. 9:6-8.21(c)(4), an abused or neglected child is:

> [A] 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 or guardian, as herein defined, to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court.

"'[M]inimum degree of care' refers to conduct that is grossly or wantonly negligent, but not necessarily intentional." G.S. v. Dep't of Hum. Servs., 157 N.J. 161, 178 (1999). "[A] guardian 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.

"In the absence of actual harm, a finding of abuse and neglect can be based on proof of imminent danger and substantial risk of harm." N.J. Dep't of Child. & Fams., Div. of Youth & Fam. Servs. v. A.L., 213 N.J. 1, 23 (2013). "The

legislative history of Title 9, precedent and public policy support the conclusion that a Title 9 inquiry must focus on the circumstances leading up to the injury and on the harm to the child, and not on the [parent or] guardian's intent." N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 344 (2010) (quoting G.S., 157 N.J. at 176). "[W]hether the guardian intended to harm the child is irrelevant. If a parent or guardian commits an intentional act that has unintended consequences, that action is considered 'other than accidental' within the meaning of Title 9." Ibid.

In B.P., our Supreme Court recently summarized the basic elements of child abuse or neglect, holding:

> the Division must establish (1) that a child's "physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired," . . . and (2) the "impairment or imminent impairment results from the parent's failure to exercise a minimum degree of care."
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> [257 N.J. at 375-76 (citations omitted).]

The B.P. Court reversed a finding of abuse and neglect against a mother who left her newborn baby at the hospital and did not return. Id. at 365-66. Importantly for purposes of this appeal, the Court emphasized that a finding of abuse and neglect must be based on specific findings of fact establishing that a parent placed their child in imminent danger by reason of the parent's or

guardian's conduct constituting gross neglect. Id. at 380 n.7. The "mere possibility of the child being impaired" is insufficient. Id. at 370.

As we have noted, the Court offered new guidance in interpreting the meaning of the phrase "imminent danger" in N.J.S.A. 9:6-8.21(c)(4). See id. at 379-80. In doing so, the Court acknowledged that it had not previously defined the standard for determining when a child's well-being is in "imminent danger" of impairment or harm. Id. at 376. Per its plain meaning, the Court explained, "'imminent' means 'threatening to occur immediately; dangerously impending . . . [or] about to take place.'" Ibid. (quoting Black's Law Dictionary 898 (11th ed. 2019)). The Court added, "[i]t is unlikely that the Legislature would have chosen the word 'imminent' to describe an outside possibility of a child becoming impaired or the infinite number of scenarios that could transpire." Id. at 379-80.

III.

We next apply these legal principles to the matter before us. We first address defendant's contention the trial court erred in finding that she failed to exercise a minimum degree of supervision or guardianship when she did not report that A.G. told her they had been sexually abused by T.D. The trial judge found defendant "had some degree of knowledge" of A.G.'s mental health issues

"based on her involvement with the therapists, her involvement with the doctors at the hospital, and the actions she took to get this treatment." The judge then summarized his reasons for finding defendant was grossly negligent, explaining:

> So, the mother has this report from A.G. prior to A.G. telling the therapist. Now, the mother tells the Division, . . . that well, A.G. did tell me all this, but [they] told me not to tell anybody. So, if you have a child that is making suicide attempts, has suicidal ideations, had been psychiatrically hospitalized, and the child says, okay, now I have this on my mind and now I believe all this occurred but don't tell anybody, you say oh, okay.
>
> Now, maybe you don't pick up the phone and dial [9-1-1], but you do something. You don't do nothing. You do something.
>
> Now, what seems logical? What's common sense? What would be the first thing you do at a minimum? Well, when did [A.G.] tell you? Well, we don't know because we don't have anybody that looks for any details in this case, but [A.G.] told her sometime in January or February but before March [third]. So you maybe call the therapist, maybe go to the next therapy session. You maybe discuss with the therapist privately this is what my [child] told me, what's your advice, what do you think I should do? I don't want [them] to kill [themselves], because maybe the next attempt will be successful.
>
> Nobody knows what you do as a parent unless you're that parent in that set of circumstances. Now we're Monday morning quarter-backing, we're looking at what happened, what didn't happen. But, there's no dispute nothing happened. And in my view that's wrong.

The judge concluded:

> I find the evidence does support by a preponderance of the evidence, [defendant] failed to exercise a minimum degree of care in providing the child with proper supervision or guardianship by placing the child at substantial risk of harm.
>
> You don't have to prove harm. However, we heard the doctors, we read the doctor's report, we read the symptoms that are being reported by A.G., or being found by [] Graddick, or being found by [] Rimli. This is a serious case. And as I said before, okay, if the mother's first call was to the therapist, maybe not to the police, maybe not to the DCP[]P, okay, well, how does a parent—this is overwhelming to a parent. I understand that. This is a parent that's been living a nightmare, worrying, staying up at night, losing sleep, when my child goes to bed tonight when I wake up [are they] gonna be dead or alive, [are they] gonna have another suicide attempt. I appreciate that. I understand that.
>
> And so, it's not like well, you made this call first, this call second, so that's wrong. No, that's not what I'm saying. I'm saying when you got this information, you did nothing for some period of time. We don't know precisely what that period of time is because nobody seemed to get all these details, but we know it was a period of time. And every minute, if not every second, with someone with A.G.'s medical history, mental history, psychiatric history, mental health history, is wasted.
>
> And so I do find [DCPP] has proven that [defendant] failed to exercise that minimum degree of care as the statute requires.

The judge codified his conclusion in the written order, which reads in pertinent part:

> [Defendant] placed [A.G.] at substantial risk of harm by failing to report [A.G.'s] disclosure and by permitting [T.D.] to remain in the home with [A.G.] after [A.G.] disclosed that [T.D.] and others had sexually abused [them]. [Defendant] placed [A.G.] at further risk of harm by later making [A.G.] move out of the home so [T.D.] could remain in the home with her causing further emotional harm to [A.G.].

The law on reporting suspected sexual abuse of a child is clear. N.J.S.A. 9:6-8.10 provides:

> Any person having reasonable cause to believe that a child has been subjected to child abuse, including sexual abuse, or acts of child abuse shall report the same immediately to the [DCPP] by telephone or otherwise.
>
> Such reports, where possible, shall contain the names and addresses of the child and his parent, guardian, or other person having custody and control of the child and, if known, the child's age, the nature and possible extent of the child's injuries, abuse or maltreatment, including any evidence of previous injuries, abuse or maltreatment, and any other information that the person believes may be helpful with respect to the child abuse and the identity of the perpetrator.

It is undisputed defendant did not report the sexual abuse when A.G. reported it to her. Nor is it disputed that defendant continued to allow A.G. and T.D. to live in the same residence after learning about the sexual abuse allegations. Although A.G. asked defendant not to tell anyone, we agree with the trial judge that given A.G.'s mental health issues and emotional frailty,

defendant's failure to do anything was unreasonable. As the trial judge aptly notes, defendant could have "call[ed] the therapist," "go[ne] to the next therapy session," or "discuss[ed] with the therapist privately." The trial judge thus correctly concluded that defendant had failed "to exercise a minimum degree of care" regarding A.G.'s physical and emotional wellbeing.

IV.

In contrast, we are not convinced defendant's decision to relocate A.G. to the grandparents' residence on the first floor of the building rises to the level of gross negligence. The Division has not established the grandparents' residence was not a safe home. Also, when the relocation decision was made, the Division was involved with the family and A.G. was in therapy to address her mental health issues.

In reaching this conclusion, we acknowledge Graddick testified, "in my experience, having to be the child—being the victim of an alleged abuse and having to move and being the one that's removed is a . . . traumatic event." She continued, "I got the impression from A.G. that [they weren't] feeling a ton of support from [their] mom. And research shows that one of the most protective factors in resilience for children with trauma or alleged sexual abuse is support from the non-offending parent."

On cross-examination, however, Graddick acknowledged, "A.G. didn't specifically talk about the removal from [their] mom as being traumatic. [A.G.] did say that [they] missed [their] mom and missed living with [their] siblings. So I can't specifically say that that's a . . . a source of trauma for [A.G.]."

Although defendant may have placed her own interests ahead of her concern for A.G.'s mental well-being, considering all the evidence, and despite the substantial deference we afford to Family Part judges, we do not believe the Division proved by a preponderance of the evidence that defendant's decision to relocate A.G.—made while the Division was monitoring the situation—fell below the minimum degree of care as to constitute gross negligence.

V.

That brings us back to defendant's failure to take any action when A.G. alerted her to the sexual abuse that occurred six years earlier. We address whether defendant's gross negligence by failing to report the sexual abuse and by allowing T.D. and A.G. to continue to live in the same residence for one to two months caused an imminent risk of harm.

It bears emphasis the trial judge did not make an express finding that defendant's gross negligence caused actual harm. In his oral ruling, the judge correctly explained, "[t]he [c]ourt also must be concerned about protection of

the child. And the statute does not require the Division to prove actual harm, and the [c]ourt need not wait until the child is actually harmed before the [c]ourt acts." In his written order, he confirms he found that defendant "placed [A.G.] at substantial risk of harm by failing to report [A.G.'s] disclosure and by permitting [T.D.] to remain in the home with [A.G.] after [A.G.] disclosed that [T.D.] and others had sexually abused [them]." (emphasis added).

Here, the risk of harm was not of a recurrence of sexual abuse, but rather that A.G. would commit suicide or engage in other self-harming behavior. The fact that A.G. reported the past sexual abuse incident to defendant years later shows that it was presently on their mind and might contribute to suicidal thoughts. We now know with the benefit of hindsight that, thankfully, the risk of another suicide attempt did not come to fruition. But in view of the past suicide attempt, the risk of suicide or other self-harming behavior was real, not speculative. We therefore agree with the trial judge that the risk of harm attributable to defendant's gross negligence was substantial.

That leaves the question of whether the Division proved—and the trial judge found—that the risk of such harm was imminent. Our review of the record shows the trial judge did not make an explicit finding with regard to the

imminency of future harm, as now expressly required by B.P. See B.P., 257 N.J. at 376-77.

The B.P. Court noted that the trial judge in that case

> never specifically stated the facts that supported its finding that [the child] was in imminent danger of becoming impaired as a result of [the mother's] failure to exercise a minimum degree of care, as required by the statute. If a court substantiates an abuse or neglect finding based on a parent placing a child in imminent danger of being impaired, the court must make the specific findings of the facts underpinning that determination.
>
> [Id. at 380 n.7.]

We have essentially the same situation in the present matter. We decline to exercise what would essentially be a form of original jurisdiction to complete the statutory analysis with respect to the imminency of the risk of suicide or other impairment attributable to defendant's failure to exercise a minimum degree of care. See State v. Santos, 210 N.J. 129, 142 (2012) (original jurisdiction by an appellate court is disfavored where fact-finding is involved); see also State v. Micelli, 215 N.J. 284, 293 (2013) (original jurisdiction by an appellate court is disfavored if the evidence requires the subjective and intuitive evaluations of a trial court). It remains for the trial judge to make explicit findings, supported by credible evidence, on whether the substantial risk of harm

attributed to defendant's gross negligence was imminent within the meaning of B.P. We therefore remand for the trial judge to make the required additional findings needed to support its conclusion that defendant committed child abuse or neglect.

If the trial judge determines, based on the hearing record, that the State failed to prove that the risk of harm was imminent as defined in B.P., the judge shall vacate the order finding child abuse or neglect.

Affirmed in part and remanded for proceedings in accordance with this opinion. in part. We do not retain jurisdiction.