

Argument

D.C. did not commit abuse and neglect by failing to protect her daughter because D.C. didn't see her daughter get pinched and had no warning it was about to occur.

This Court should reverse the abuse and neglect finding because the trial court did not find that D.C. had witnessed the pinching or knew it was about to occur. Without that required knowledge, D.C.'s failure to protect her daughter lacked the culpability—the blameworthiness—required by the abuse and neglect statute. The abuse and neglect finding cannot stand as a matter of law, therefore. N.J. Div. of Youth & Family Servs. v. J.Y., 352 N.J. Super. 245, 264 (App. Div. 2002).

Title 9's purpose is to protect children from serious injury inflicted by “other than” accidental means. Thus, the statute proscribes mostly affirmative acts of wrongdoing that have an inherent blameworthiness to them, such as hitting, abusing, abandoning, or excessively restraining a child. N.J.S.A. 9:6-8.21(c)(1)-(3),(5)-(7).

While a parent can also abuse or neglect by failing to protect her child from harm, or by failing to provide a minimum degree of care or supervision, the failure to act satisfies the statute only where the parent

knows of impending danger to her child yet fails to protect her from it.

N.J.S.A. 9:6-8.21(c)(1)-(3),(4).

The Supreme Court confirmed this culpability requirement in G.S. v. Department of Human Services, Div. of Youth and Family Services, 157 N.J. 161, 171 (1999). There, the Court held that a parent or guardian can commit abuse or neglect by failing to exercise a minimum degree of care even where the injury is caused accidentally. But the parent or guardian fails to exercise a minimum degree of care only when 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 the child.” *Id.* at 181. The parent’s conduct must be willful or wanton, with “knowledge that injury is likely to, or probably will, result[,]” or with “reckless disregard for the consequences.” *Id.* at 178.

The guardian in *G.S.* failed to exercise a minimum degree of care in giving too much medicine to the child, and therefore violated the statute, the Court held, because the guardian had ample warning that her conduct might harm the child. And had she used caution and investigated more before dispensing the medicine, the harm could have been prevented:

When *G.S.* opened the bottle of medicine, she was unsure how much she was supposed to administer. She did not call *N.D.*'s mother to seek clarification; she did not call a pharmacy to find out how large one pill was. She did absolutely nothing to ensure

that she was administering the correct dosage. Instead, she recklessly gave N.D. the entire bottle of medication.

157 N.J. at 182-83.

Courts in other jurisdictions have followed this same logic, finding abuse and neglect for failure to act only where the parent knew of the danger posed to the child and yet failed to protect her, such as where the parent

- “knew that Cornell had beaten Kamesha and heard her complain of pain, but rather than contact the police or seek medical treatment for her child, . . . sent Kamesha to school and told her not to tell anyone what happened,” In re Kamesha J., 847 N.E.2d 621 (Ill. App. 2006);
- “knew that P.M. had been convicted of child abuse, yet still allowed him to come into contact with the children,” In re G.F.M., 169 S.W.3d 109 (Mo. App. 2005);
- “failed to take appropriate action to protect the child from further abuse” after the “child reported the abuse to the mother,” A.B. v. Florida Dept. of Children & Family Services, 901 So.2d 324 (Fla. App. 2005);
- “knew about the use of excessive corporal punishment” by the stepfather yet “fail[ed] to protect the children,” In re Jonathan W., 17 A.D.3d 374, 792 N.Y.S.2d 560 (A.D. 2 Dept. 2005).

The trial court did not make any such finding in this case, never concluding that D.C. knew the pinching would occur or had warning that it might. And DYFS’ proofs did not establish that D.C. had such knowledge. Therefore, the Court should reverse the abuse and neglect determination against D.C. as a matter of law.