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ANNUAL FAMILY LAW DIGEST

*Summary of 2017 New Jersey Family Law Published Opinions,
New and Amended Court Rules*

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CIVIL PROCEDURE

K.A. v. J.L., 450 N.J. Super. 247 (Ch. Div. 2016). Opinion by Judge Hansbury.

Issue: Can a court can assert personal jurisdiction over an out-of-state defendant by serving an order to show cause and complaint for injunctive relief via Facebook?

Holding: Yes, a court can assert personal jurisdiction if certain procedural requirements are met.

The plaintiffs in the case are the child's adoptive parents. Plaintiffs filed an application requesting an order to enjoin the defendant from contacting the plaintiffs' son and sought leave to effectuate substituted service via Facebook after certified mail was unsuccessful. The plaintiffs claimed that the defendant reached out to their adopted son, Z.A., via Facebook and Instagram stating that he was in fact Z.A.'s biological father. The plaintiffs also alleged that the defendant posted a picture of Z.A. on the defendant's Facebook account, stating Z.A. was the defendant's son. After two cease and desist letters went unclaimed to the defendant's last two known addresses in Pennsylvania, the plaintiffs sought leave to effectuate substituted service via Facebook.

To obtain personal jurisdiction over an out-of-state defendant, the plaintiff must serve the defendant personally in New Jersey. However, if the plaintiff has made a reasonable, good-faith attempt to effectuate personal service process and is unsuccessful, the plaintiff may serve the defendant by secondary methods prescribed in the court rules provided the defendant is engaged in contact with the forum state. Because the plaintiffs had difficulty serving the defendant personally, plaintiffs requested to serve via a secondary method through Facebook.

In analyzing whether service of process via Facebook is proper, three factors are considered: (1) whether a defendant can be served by conventional means, those specifically

permitted by court rule; (2) whether the relief sought is appropriate for service by publication; and (3) whether service via Facebook still protects a defendant's due process rights.

In applying the factors, the court found service by Facebook was proper. First, Plaintiffs attempted to serve the defendant by certified mail to the defendant's two last known addresses. The certified mailings were not claimed, but the regular mail had not been returned. Additionally, no forwarding address was available. Second, the court determined actual service was necessary because the plaintiffs sought to enjoin the defendant from contacting their son via social media websites and wanted the conduct to stop. The court also considered that Facebook was the purported vehicle used to harm Z.A. Lastly, the defendant's Facebook account had been active. The court further indicated that Facebook messenger has a read-receipt feature, which alerts the sender when the recipient has opened the message. The defendant also appeared by telephone for the court hearing, which establishes that he was served. Therefore, the court found that due process was satisfied in serving the defendant and thereby granted the plaintiffs' request for an injunction.

CONSTITUTIONAL ISSUE

E.S. v. H.A., 451 N.J. Super. 374 (App. Div. 2017). Opinion by Judge Messano.

Issue: Did the provisions in an order requiring Defendant to admit to sexually abusing his son, prior to making an application for parenting time, violate Defendant's constitutional right against self-incrimination?

Holding: Yes.

Facts: The court found that Defendant sexually abused his son. The order granted Plaintiff sole legal and physical custody of R.A. and denied Defendant parenting time. The order required Defendant to comply with the following: 1) admission of wrongdoing; 2) a psycho-sexual evaluation by a professional specializing in same; and 3) individual therapy.

Holding: The court violated Defendant’s constitutional right under the Fifth Amendment and the State Constitution. The orders did not allow Defendant to petition the Family Part for modification unless Defendant admitted to the wrongdoing. This constituted a compelled waiver of Defendant’s constitutional right against self-incrimination.. The order also violated Defendant’s right “to invoke the equitable powers of the Family Part to modify its order denying him parenting time.” The order inhibited Defendant from requesting review of the order and the court should not have reached that conclusion in advance of a request. Therefore, the Appellate Division vacated these provisions of the order.

COLLEGE CONTRIBUTION

Ricci v. Ricci, 448 N.J. Super. 546 (App. Div. 2017). Opinion by Judge Lihotz.

Issue 1: Can a child intervene in a post-divorce matter to compel the parents to pay for her education when the parents executed a consent order that declared the child as emancipated?

Holding 1: Yes, the Court held that the child had an interest in the matter, and thus had the ability to intervene. However, the Appellate Division remanded the case to the lower court to make the proper factual findings consistent with the court’s opinion to determine whether Caitlyn should be emancipated.

Caitlyn’s parents had been divorced since she was four years old. When Caitlyn was approximately nineteen, she decided to move in with her paternal grandparents. Caitlyn’s mother stated that Caitlyn had struggled with marijuana and alcohol, and failed to follow the rules in her mother’s home leading her to decide to move in with her grandparents. At that time both parents agreed to emancipate their daughter and entered into a consent order terminating child support and for her emancipation. However, Caitlyn intervened in court and requested that the emancipation order be vacated and that her parents be ordered to provide her with the

necessary funds to attend college. The Court permitted Caitlyn to intervene and proceed as a party in the matter.

The Appellate Division held that determining whether or not a child is emancipated is a fact sensitive analysis which can be boiled down to “whether the child moved beyond the sphere of influence and responsibility exercised by a parent and obtains an independent status of his own.” Once a child has reached the age eighteen, there is *prima facie* proof of emancipation. However, this may be rebutted upon a showing that the child is enrolled in full-time education. In addition, the Appellate Division instructs that there should be a strong analysis of the relationship between the parent and the child and there must be evidence that the parent is guiding the child.

In this case, the court held that there is a genuine dispute of material fact regarding whether or not Caitlyn has left the sphere of influence of her parents. Caitlyn insisted that her behavior is typical of that of a teenager but her parents state she voluntarily left the home and refused to accept any guidance from her parents. Therefore, the court remanded the case to the trial court to determine these facts and ultimately whether or not Caitlyn should be emancipated. The Court held that the determination of whether or not a child is emancipated must be decided by the Court before an analysis under Newburgh is held as to whether or not parents have an obligation to contribute to the costs of the child’s higher education.

Issue 2: To what extent are parents required to contribute to their nineteen year old child’s college education?

Holding 2: The court held that to determine whether parents are required to contribute to college tuition requires the court to analyze the factors under Newburgh v. Arrigo. However, this

analysis must be done, only after a determination is made, as to whether or not the child is deemed emancipated. If the child is deemed emancipated, the analysis ends.

Originally, Caitlyn had been accepted to Montclair State University and both parents had stated they were willing to pay \$5,000 towards her education. However, it was then decided that Caitlyn was not ready to attend college away from home and that she should attend community college instead. Caitlyn's father paid for her tuition during the summer and fall of 2012. Then, Caitlyn was accepted into the Disney college program in Florida. Caitlyn's parents decided to allow her to attend in hopes that she was ready to live away from home now. However, in less than a month Caitlyn was expelled for underage drinking and hosting a party in the dorms. During trial Caitlyn was attending community college, earning approximately \$400 a week as a waitress. The trial court ordered Caitlyn's parents to pay the costs of community college for one year. However, shortly thereafter Caitlyn enrolled in an out-of-state four-year public university and insisted that her parents contribute towards her tuition.

The Appellate Division stated that if the trial court found that Caitlyn was not emancipated, then the trial court needed to engage in the two-part analysis to determine to what extent Caitlyn's parents should contribute to her college education; 1) whether equitable or other considerations militate against parents paying colleges costs and 2) whether the parents are financially capable of contributing. The Appellate Division explained that the court should review whether the child was involving his or her parents in the selection of the school, the extent of the child's relationship with the parents, the financial obligations of the parents, and any other contributions from financial aid or scholarships the child was eligible for.

CUSTODY

B.G. v. L.H., 450 N.J. Super. 438 (Ch. Div. 2017). Opinion by Judge Passamano.

Issue: Does New Jersey have jurisdiction over custody and parenting time issues when New Jersey entered the initial custody order but the mother and children now reside in another state?

Holding: Yes. The MSA provided that New Jersey would retain jurisdiction if a parenting dispute arose as long as one party resided in New Jersey. The parties agreed to joint legal custody and the father enjoyed parenting time with the children in New Jersey. New Jersey has jurisdiction over the custody and parenting time issues based upon New Jersey's Uniform Child Custody Jurisdiction and Enforcement Act (N.J.S.A. 2A:34-53 to -95). Because New Jersey entered the initial order, only New Jersey can determine whether New Jersey has lost jurisdiction. The court found it had jurisdiction and found it appropriate to retain rather than relinquish jurisdiction to Massachusetts.

In the three step analysis, the court considers: (1) whether it has continuing exclusive jurisdiction; (2) whether circumstances have changed to divest this state of jurisdiction; and (3) whether New Jersey is an inconvenient forum and, if so, whether the foreign state is the appropriate forum.

Step 1: New Jersey acquires "exclusive, continuing jurisdiction" when the state makes an initial custody determination pursuant to N.J.S.A. 2A:34-65 or modifies a custody determination by another state pursuant to N.J.S.A. 2A:34-67. Here, the court acquired "exclusive, continuing jurisdiction" because New Jersey made the initial custody determination.

Step 2: Under N.J.S.A. 2A:34-66a(1), exclusive and continuing jurisdiction remains, until (1) "neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this State and substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships" or (2) a court of

this State or a Court of another state determines that neither the child, nor a parent, nor any person acting as a parent presently resides in this State.

In this matter, it was undisputed that Defendant currently resided in New Jersey and thus the Court determined only an analysis of step (1) is relevant. The Court outlined what constituted as significant connection and substantial evidence. The Court determined there was a significant connection to New Jersey; the Court considered that the parties lived in New Jersey until Plaintiff and the children relocated in 2014; Defendant exercised his parenting time in New Jersey, as the parties had anticipated; and the parties shared legal custody of their children. There was also substantial evidence based upon Defendant's certification stating that the experts and examination would occur in New Jersey. Although Plaintiff stated there would be a similar amount of evidence in Massachusetts, the Court determined there only needs to be substantial evidence in New Jersey, as the Act does not require that New Jersey be the sole location of the evidence.

Step 3: Once the Court determines that it has continuing exclusive jurisdiction, the court must consider whether New Jersey is an inconvenient forum and whether the foreign court is a more convenient forum, pursuant to N.J.S.A. 2A:34-71. Both elements must be satisfied in order for New Jersey to decline jurisdiction. Here, New Jersey was not found to be an inconvenient forum and Massachusetts was not a more convenient forum. Therefore, New Jersey retained jurisdiction of the custody and parenting time issues. Eight (8) factors were considered in making this decision:

- (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) the length of time the child has resided outside this State;
- (3) the distance between the court in this State and the court in the state that would assume jurisdiction;
- (4) the relative financial circumstances of the parties;
- (5) any agreement of the parties as to which state should assume jurisdiction;
- (6) the nature and location of the evidence

required to resolve the pending litigation, including the testimony of the child; (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and (8) the familiarity of the court of each state with the facts and issues of the pending litigation. N.J.S.A. 2A:34-71(b).

After a fact-specific inquiry into all the factors, New Jersey was found to have a longer history with the parties' matrimonial proceeding and Massachusetts had no prior involvement until the pending action. The Court gave great weight to the fact that the parties consented to jurisdiction in New Jersey, but it was not dispositive. Therefore, Plaintiff's request for New Jersey to relinquish jurisdiction was denied and New Jersey retained jurisdiction. The court further held that a plenary hearing was not necessary because material facts were not in dispute.

Bisbing v. Bisbing, 230 N.J. 309 (2017). Opinion by Justice Patterson.

Issue: What showing is necessary to establish "cause" under N.J.S.A. 9:2-2 for the entry of an order authorizing a parent to permanently relocate out of state with his or her child, despite the other parent's opposition to the child's interstate move?

Facts: Plaintiff and Defendant agreed in a Marital Settlement Agreement that Plaintiff would have primary residential custody of the parties' two daughters. The MSA also included a relocation provision which stated "[n]either party shall permanently relocate with the Children from the State of New Jersey without the prior written consent of the other." Following the entry of the final judgment of divorce, Plaintiff requested to move to Utah with their daughters, as she was engaged to be married to a resident of Utah. Defendant did not consent to Plaintiff's relocation. Plaintiff filed a motion pursuant to N.J.S.A. 9:2-2, seeking an order allowing her to relocate with the children. Plaintiff's motion was granted without a plenary hearing. Defendant appealed and the Appellate Division reversed and remanded, reasoning that a plenary hearing was necessary to determine whether the MSA, was negotiated in bad faith, especially with regards to Plaintiff being named Parent of Primary Residence. If it was negotiated in bad faith,

the court would utilize a best interests standard and not the Baures standard, as the Court reasoned that a higher standard should be imposed in such a circumstance. However, if bad faith was not demonstrated, and Plaintiff could “prove a substantial unanticipated change in circumstances,” warranting avoidance of the agreed-upon non-relocation provision, then a Baures analysis would be used.

Holding: The court overruled the Baures standard, 167 N.J. 91 (2001), which required that a parent seeking to move out of state with a child must demonstrate a good-faith reason for the move and that the relocation will not be inimical to the child’s interests. The Court therefore, recognized a “special justification” to abandon the standard established in Baures and held that courts should instead conduct a best interests analysis to determine cause under N.J.S.A. 9:2-2 . The Court found that the social science research that Baures relied upon in its holding was no longer a sufficient basis to serve as precedent. The social science research, in fact, demonstrates that there is no consensus about the impact of relocation on children and may affect children in different ways. The Court acknowledged that “in general, ‘what is good for the custodial parent is good for the child’ is no doubt correct with regard to some families following a divorce. . . . however, that statement is not universally true; a relocation far away from a parent may have a significant adverse effect on the child.” Additionally, the court looked to other states’ relocation standards and found that most states used the best interests test.

Holding 2: The party seeking to relocate has the burden to demonstrate changed circumstances to modify the custody arrangement.

DOMESTIC VIOLENCE

L.C. v. M.A.J., 451 N.J. Super. 408 (App. Div. 2017). Opinion by Judge Fisher.

Issue: Did the trial court err by considering Defendant’s in limine motion to dismiss Plaintiff’s domestic violence complaint on the day of the final hearing?

Holding: Yes, the trial court erred in considering Defendant's in limine motion. By considering Defendant's improper in limine motion on the day of a final hearing, the Court deprived the alleged domestic violence victim of due process. Moreover, as Defendant's application was effectively a summary judgment motion, the Court failed to provide Plaintiff with all benefits and reasonable inferences required. Reversed and remanded before a different judge.

Plaintiff filed a domestic violence complaint based upon harassment, which alleged a history of domestic violence that included past physical abuse and other controlling conduct. At the final hearing and before any testimony, Defendant sought to dismiss Plaintiff's domestic violence complaint via an in limine motion. Without hearing any testimony, the court granted Defendant's motion and dismissed Plaintiff's complaint.

The Appellate Division found Defendant did not seek a "resolution of a preliminary or evidentiary issue," which is the basis of a proper in limine motion, but instead sought dismissal of Plaintiff's complaint. The judge erred by considering the motion, instead of rejecting it outright. In the context of a domestic violence matter, the Appellate Division condemns the use of an in limine motion, "where the alleged victim's safety and well-being are the suit's prime considerations." By considering the in limine application, the court deprived Plaintiff the opportunity to respond or oppose the motion. The Appellate Division noted that if Defendant had grounds to dismiss, the proper procedure would have been for Defendant to present such an application after Plaintiff presented her case, or after the close of evidence.

Additionally, the motion in limine was treated by both Defendant and the court as a motion for summary judgment, as Defendant's arguments were not that Plaintiff failed to set forth a claim for which relief may be granted, but that the predicate act did not constitute harassment. As this was effectively a summary judgment application, the court was bound to

view the facts in the light most favorable to the non-moving party. Here, the trial court erred because it accepted the bona fides of Defendant's communications that were without support, and failed to provide Plaintiff with the benefits and inferences she was entitled in connection with a summary judgment application. Based upon the foregoing, the Appellate Division reversed the dismissal order, reinstated the temporary restraining order, and remanded for a final hearing before a different judge.

R.G. v. R.G., 449 N.J. Super. 208 (App. Div. 2017). Opinion by Judge Lihotz.

Issue: Did the trial court err in imposing a restraining order where defendant argues that the Family Part lacked jurisdiction to enter a FRO, and where the predicate act/facts were insufficient to warrant the entry of a FRO, especially in light of various evidentiary rulings?

Holding: Based upon the amended jurisdictional provision of N.J.S.A. 2C:25-19(d), the Appellate Division held that the court had jurisdiction over defendant as they were previously household members. However, based upon the court's improper consideration of character evidence and hearsay, and the other reasons set forth, there was no basis to conclude that the conflict between the parties constituted domestic violence, or that there was any need for a final restraining order for plaintiff's immediate protection or to prevent further abuse. Reversed.

This case involved an argument between older brothers, who had not lived together in over 30 years, regarding how to care for their parents. The parties exchanged heated emails, text messages and conversations which ultimately resulted in a physical altercation outside a nursing home, where Defendant admitted to pushing Plaintiff. As noted by the Appellate Division, many of these messages were "juvenile, uncouth, foulmouthed, insulting, and belligerent" contained "coarse, gutter language and name calling" and were made in a "prickly and foulmouthed way."

After the physical altercation, the defendant was charged with simple assault. The plaintiff stated during the initial hearing, upon leading questions from his counsel, that he

believed a restraining order was necessary to ensure his safety and well-being. Plaintiff failed to provide the court with any further insight or explanation as to these beliefs. There was no history of violence between the brothers, as admitted by Plaintiff, yet the court allowed Plaintiff to testify, without any foundation, as to the existence of an order of protection against defendant obtained by defendant's son, the existence of which was relayed to Plaintiff by others. Based upon the foregoing, the trial court entered a FRO and the defendant appealed.

Defendant claimed that the plaintiff did not meet the statutory definition of a victim of domestic violence and that the evidence considered during the trial was improperly admitted as it was overtly prejudicial. The Appellate Division quickly rejected defendant's first challenge noting that the definition of a victim of domestic violence under the state had been amended to include "any other person who is a present household member or was at any time a household member." N.J.S.A. 2C:25-19(d). Therefore, the fact that the plaintiff and the defendant were not household members at the time of the dispute was immaterial.

The Appellate Division acknowledged that the evidence the trial court considered, namely the existence of an order of protection obtained by Defendant's son against Defendant, was improper. First, the court noted that while trial courts may consider history of domestic violence, it should be limited to the domestic violence incidents between the present plaintiff and defendant. Moreover, if the court were to consider prior bad acts, there needs to be a specific review of the relevancy and admissibility of such proffered bad acts evidence. As such testimony constituted inadmissible hearsay based upon the lack of foundation (Plaintiff failed to testify he was present and witnessed the events between defendant and his son), and the court failed to apply the applicable evidentiary standards of admissibility of such prior bad acts, the court's consideration of same was in error.

Lastly, defendant claimed that the evidence presented did not meet the burden required for a FRO under Silver. Although the Appellate Division found that the defendant had committed simple assault, there was no evidence which would support a prior history of domestic violence, a need for a final restraining, or for plaintiff's immediate protection or to prevent further abuse under Silver. Reversed.

T.M.S. v. W.C.P., 450 N.J. Super. 499 (App. Div. 2017). Opinion by Judge Mawla.

Issue: May a court reinstate a final restraining order on its own motion?

Holding: No, the Appellate Division held that a court may not *sua sponte* reinstate a final restraining order and vacated the final restraining here concluding that the trial court abused its discretion.

Plaintiff had obtained a temporary restraining order against the defendant. The defendant had admitted to the alleged act of domestic violence and a final restraining order had been entered against the defendant in November 2006. Defendant then moved to vacate the FRO pursuant to Carfagno and N.J.S.A. 2C:25-29(d), which was denied on May 13, 2008. The Defendant subsequently moved to again vacate the FRO, and a dismissal order was entered on December 8, 2014. At the dismissal hearing, the Plaintiff did not appear, but the trial court determined that the plaintiff was properly served and therefore, granted Defendant's application making several findings of fact. The Defendant then moved for relief from the weapons forfeiture requirement under the Prevention of Domestic Violence Act. During the weapons forfeiture hearing, the question of whether the plaintiff was ever notified of the dismissal of the FRO was raised. Ultimately, the trial court reversed the dismissal of the FRO and reinstated the FRO resulting in the dismissal of the defendant's weapons forfeiture matter. The court's

decision to reverse the dismissal of the FRO was reached as a result of the questionable nature of whether the plaintiff had in fact been served.

The Appellate Division held that the trial court's decision to *sua sponte* reinstate the FRO during the weapons forfeiture matter overlooked fundamental due process principles. To properly consider whether the Plaintiff had been served, Plaintiff should have filed a motion for relief in the domestic violence matter – not at the ancillary weapons forfeiture proceeding.

DIVISION OF CHILD PROTECTION & PERMANENCY

N.J. Div. of Child Protection & Permanency v. A.B., 2017 WL 6546381. Opinion by Justice Timpone.

Issue:

- 1) Whether the trial court erred in determining that the Division met its burden of proof in finding that A.B. abused or neglected her child, A.F.
- 2) Whether the Division provided sufficient proof that A.B. willfully abandoned her minor daughter, A.F.
- 3) Did the trial court properly suppress the hearsay evidence at issue?

Holding:

- 1) The Court found there was sufficient evidence that A.F. was neglected. According to the plain language of the statute, the Division needs to show that “by a preponderance of the evidence that a child faces imminent danger of impairment,” even if there is no “actual impairment.” Therefore, the Supreme Court affirmed the Appellate Division’s finding that A.B. abused or neglected A.F. pursuant to N.J.S.A. 9:6-8.21(c)(4).
- 2) Under N.J.S.A. 9:6-8.21(c)(5), “[a]bandonment of a child shall consist in any of the following acts by anyone having the custody or control of the child: (a) willfully forsaking a child. . . .” To prove abandonment, it must be shown that “any conduct on the part of the parent which evinces a

settled purpose to forego all parental duties and relinquish all parental claims to the child.” Such a standard is considered to be an extremely high bar to meet. According to the Supreme Court, the trial court needed to make specific findings of A.B.’s conduct in order to determine whether A.B. abandoned her child under the statute. The Supreme Court did not find such evidence to support the abandonment claim because A.B.’s conduct did not “forego her parental rights.” Therefore, the Supreme Court reversed the Appellate Division’s finding and found that the State did not meet its burden in showing that A.B. abandoned her child, A.F.

3) The judge properly excluded the hearsay evidence in the trial. The hearsay evidence was excluded pursuant to both A.B. and the Division’s objections to the use of the embedded hearsay. Because A.B. succeeded in excluding the evidence at trial, A.B. “cannot now condemn the very determination for which she advocated merely because the consequences of that determination have proved unfavorable.” Therefore, absent invited error, the Supreme Court affirmed the Appellate Division’s determination that the trial court did not abuse its discretion in excluding the hearsay statements.

N.J. Div. of Child Protection & Permanency v. C.J.R., 2017 WL 6272719 (App. Div. 2017).
Opinion by Judge Whipple.

Issue: Did the trial court err in giving preclusive effect to a prior finding of abuse of neglect based upon the burden shifting provisions of Title 9 in a Title 30 guardianship proceeding?

Holding: Yes, the trial court impermissibly gave preclusive effect of the Title 9 proceeding when it imposed the Title 9 evidentiary standards in the Title 30 guardianship proceeding. Such evidentiary standards do not extend to Title 30 proceedings and the Appellate Division reversed and remanded.

Before giving preclusive effect of a Title 9 proceeding in a guardianship proceeding, three elements must be satisfied.

First, the Title 9 court must provide to the parties advance notice that the court will make findings, if supported by proofs, using the higher Title 30 “clear and convincing evidence” standard. Additionally, the court will notify the parties that any findings made under the higher evidentiary standard will have preclusive effect in the Title 30 proceeding. Therefore, the parties have one opportunity to litigate whether the parent is causing harm to the child.

Second, the Title 9 court must make clear that “the determinations made in respect of that interim relief – particularly those concerning harm to the child – may have a preclusive effect on the final, permanent relief arising out of the Title 30 proceeding.”

Third, the Title 9 court must “relax the time deadlines and, to the extent necessary, use in the Title 9 proceedings the admissibility of evidence standards applicable to Title 30 proceedings.”

Here, the defendants were on notice that the higher evidentiary standard would be applied. The Division sent a letter to the defendants three weeks before the fact-finding hearing stating its intent to use the “clear and convincing” standard. Thus, the Appellate Division found the letter satisfied the notice requirement under prong 1. Next, the Division restated the request to use the higher standard at the fact-finding hearing, as well. The trial judge made a finding that the Division had “proven its case by clear and convincing evidence” as to both the defendants. The Appellate Division found this, along with the letter, satisfied prong 2. However, the Appellate Division found the third prong was not satisfied because the trial court implemented the burden shifting standards that are specific to Title 9 proceedings in the defendant’s Title 30 proceeding.

In Title 9 proceedings, once the Division has made a *prima facie* case of abuse or neglect, the burden shifts to the defendant to rebut the presumption that the defendant was not culpable.