

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Submitted - September 15, 2006

ANITA R. FLORIO, J.P.
ROBERT W. SCHMIDT
GABRIEL M. KRAUSMAN
ROBERT A. LIFSON, JJ.

2005-01846

DECISION & ORDER

In the Matter of Shawndel M. (Anonymous).
Suffolk County Department of Social Services,
respondent; Korisha S. (Anonymous), appellant.
(Proceeding No. 1)

In the Matter of Shaquay S-M. (Anonymous).
Suffolk County Department of Social Services,
respondent; Korisha S. (Anonymous), appellant.
(Proceeding No. 2)

(Docket Nos. N-14459-04, N-14460-04)

Joseph A. Hanshe, Sayville, N.Y. (Gerard E. Hanshe of counsel), for appellant.

Christine Malafi, County Attorney, Central Islip, N.Y. (Jeffrey Tavel of counsel), for respondent.

Philip Castellano, Jr., P.C., Nesconset, N.Y., Law Guardian for the children.

In two related child protective proceedings pursuant to Family Court Act article 10, the mother appeals, as limited by her brief, from so much of an order of fact-finding and disposition of Family Court, Suffolk County (MacKenzie, J.), dated February 4, 2005, as, after fact-finding and dispositional hearings, in effect, found that she neglected Shaquay S.-M., and derivatively neglected Shawndel M.

October 31, 2006

Page 1.

MATTER OF M. (ANONYMOUS), SHAWNDEL
MATTER OF S-M. (ANONYMOUS), SHAQUAY

ORDERED that the order of fact-finding and disposition is modified, on the law, by deleting the provision thereof, in effect, finding that the mother derivatively neglected Shawndel M.; as so modified, the order of fact-finding and disposition is affirmed insofar as appealed from, without costs or disbursements.

Contrary to the mother's contention, the Family Court correctly found, by a preponderance of the evidence, that she neglected her child Shaquay S.-M. (a diagnosed diabetic), by failing to provide her with adequate medical care (*see* Family Court Act § 1012[f][i][A]; § 1046[b][i]). To find medical neglect, there must be a determination that the parent did not seek or accept medical care, and that such failure placed the child in imminent danger of becoming impaired (*see Matter of Faridah W.*, 180 AD2d 451, 452). “[T]he court’s inquiry should be whether the parents, once having sought accredited medical assistance and having been made aware of the seriousness of their child’s affliction and the possibility of cure if a certain mode of treatment is undertaken, have provided for their child a treatment which is recommended by their physician and which has not been totally rejected by all responsible medical authority” (*Matter of Hofbauer*, 47 NY2d 648, 655). The mother was aware of the seriousness of Shaquay S.-M.’s diabetic condition, which, according to medical authorities during emergency hospitalization at Center Suffolk Hospital, required transfer to the pediatric intensive care unit at Stonybrook University Hospital. The mother’s refusal to consent to the recommended transfer was contrary to medical authority. In addition, the mother’s conduct in encouraging Shaquay S.-M. to pull the IV needle out of her arm, and to leave the hospital, placed the child in imminent danger of impairment (*see Matter of Junaro C.*, 145 AD2d 558, 559; *see also Matter of William AA.*, 24 AD3d 1125, 1126)

Although Family Court Act § 1046(a)(i) allows evidence of abuse or neglect of one sibling to be considered in determining whether other children in the household were abused or neglected (*see Matter of Christina Maria C.*, 89 AD2d 855), the statute does not mandate a finding of derivative neglect (*see Matter of Rasheda S.*, 183 AD2d 770). Under the circumstances of this case, the finding of derivative neglect with respect to the sibling Shawndel M., whose medical need was not established, was not supported by a preponderance of the credible evidence (*see Matter of Ijeoma O.*, 271 AD2d 691; *Matter of Daniella HH*, 236 AD2d 715).

FLORIO, J.P., SCHMIDT, KRAUSMAN and LIFSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court