

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

D14730
X/gts

_____AD3d_____

Argued - March 5, 2007

ROBERT W. SCHMIDT, J.P.
ROBERT A. SPOLZINO
ANITA R. FLORIO
PETER B. SKELOS, JJ.

2006-01250

DECISION & ORDER

In the Matter of Ryan L. (Anonymous).
Orange County Department of Social Services, respondent;
Debbie L.-T. (Anonymous), appellant.
(Proceeding No. 1)

In the Matter of Stephanie C. (Anonymous).
Orange County Department of Social Services, respondent;
Debbie L.-T. (Anonymous), appellant.
(Proceeding No. 2)

(Docket Nos. B-6034-04, B-6035-04)

Joseph J. Artrip, Orangeburg, N.Y., for appellant.

David L. Darwin, County Attorney, Goshen, N.Y. (Christine Foy Stage of counsel),
for respondent.

Richard S. Birnbaum, White Plains, N.Y., Law Guardian for the children.

In related proceedings pursuant to Social Services Law § 384-b to terminate parental rights on the ground of permanent neglect, the mother appeals from an order of disposition of the Family Court, Orange County (Klein, J.), dated December 27, 2005, which, after fact-finding and dispositional hearings, found that she permanently neglected the subject children, terminated her parental rights, and transferred custody and guardianship of the children to the Orange County Department of Social Services for the purpose of adoption.

April 10, 2007

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MATTER OF L. (ANONYMOUS), RYAN
MATTER OF C. (ANONYMOUS), STEPHANIE

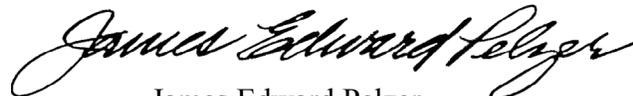
ORDERED that the order is reversed, on the law, without costs or disbursements, and the matter is remitted to the Family Court, Orange County, for a new fact-finding hearing and, if necessary, a new dispositional hearing in accordance herewith.

The mother's consent to the admission of the caseworker's file into evidence was predicated upon the representation, made at a prior hearing date, that the caseworker would later testify on behalf of the petitioner and, therefore, be available for cross-examination by the mother. When it became apparent that the caseworker would not testify, the Family Court should have permitted the mother to withdraw her consent to the admission of the caseworker's file. Since the Family Court failed to do so, a new fact-finding hearing is required (*cf. Matter of Leon RR*, 48 NY2d 117, 123-124).

In light of the foregoing, we need not reach the mother's remaining contentions.

SCHMIDT, J.P., SPOLZINO, FLORIO and SKELOS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court