

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

D15501
Y/cb

_____AD3d_____

Argued - April 13, 2007

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
PETER B. SKELOS
THOMAS A. DICKERSON, JJ.

2006-05643

DECISION & ORDER

In the Matter of Damian M. (Anonymous).
Suffolk County Department of Social Services,
respondent; Sherri M. (Anonymous), appellant.

(Docket No. N-20366/05)

Thomas H. Sartain, Central Islip, N.Y., for appellant.

Christine Malafi, County Attorney, Central Islip, N.Y. (Brian B. Mulholland and Gary Rosenthal of counsel), for respondent.

Marjorie E. Zuckerman, Bay Shore, N.Y., Law Guardian for the child.

In a neglect proceeding 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 (one paper) of the Family Court, Suffolk County (Freundlich, J.), entered June 7, 2006, as, after a hearing, and upon an order dated May 4, 2006, found that she derivatively neglected her son, Damian M., continued placement of the child in foster care, and awarded her supervised visitation of only one hour per week. The notice of appeal from the order dated May 4, 2006, is deemed a premature notice of appeal from the order of fact-finding and disposition entered June 7, 2006 (*see* CPLR 5512[a]).

ORDERED that the appeal from so much of the order of fact-finding and disposition entered June 7, 2006, as awarded the mother supervised visitation for only one hour is dismissed as academic, without costs or disbursements, in light of a subsequent order of the Family Court, Suffolk County, awarding expanded visitation; and it is further,

ORDERED that the order of fact-finding and disposition entered June 7, 2006, is affirmed insofar as reviewed, without costs or disbursements.

June 12, 2007

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MATTER OF M. (ANONYMOUS), DAMIAN

The mother and the Law Guardian contend that the Family Court improperly took judicial notice of prior proceedings and orders in this and related matters involving her other children. However, neither the mother nor the Law Guardian objected to this action taken by the Family Court. Consequently, the claim is not preserved for appellate review (*see Matter of James E.*, 17 AD3d 871; *Matter of Gerrod BB.*, 284 AD2d 584; *Matter of Amanda R.*, 215 AD2d 220).

Contrary to the contention of the mother and Law Guardian, the finding of derivative neglect was supported by a preponderance of the evidence (*see Family Ct Act § 1046[b][i]*; *Matter of Amber C.*, 38 AD3d 538; *Matter of Alexis C.*, 27 AD3d 646; *Matter of Cadejah AA.*, 25 AD3d 1027).

The remaining contentions of the mother and the Law Guardian are without merit.

MASTRO, J.P., SANTUCCI, SKELOS and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court