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

D16575
X/hu

_____AD3d_____ Submitted - September 27, 2007

STEPHEN G. CRANE, J.P.
ROBERT A. SPOLZINO
GABRIEL M. KRAUSMAN
WILLIAM E. McCARTHY, JJ.

2006-06006 DECISION & ORDER
2007-07480

In the Matter of Mary Donohue, respondent,
v Tara Ann Donohue, appellant
(and related proceedings).

(Docket Nos. V-9778-04/04A, V-9779-04/04A,
O-15479-04, V-9779-04/06E)

Izhak Ben-Meir, Rye, N.Y., for appellant.

Thomas F. Fanelli, Jr., White Plains, N.Y., Law Guardian for the child.

In related proceedings pursuant to Family Court Act articles 6 and 8, the mother appeals from (1) an order of the Family Court, Westchester County (Duffy, J.), entered June 16, 2006, which, after a hearing, inter alia, awarded custody of the subject child to the maternal grandmother and supervised visitation to her, and (2) an order of protection of the same court entered June 16, 2006, which, among other things, directed her to stay away from the child, except during court-ordered supervised visitation, for a period of one year.

ORDERED that the appeal from the order of protection is dismissed as academic, without costs or disbursements; and it is further,

ORDERED that the order is affirmed, without costs or disbursements.

The order of protection expired by its own terms on June 17, 2007, and the determination of the appeal from that order would have no direct effect upon the parties.

Accordingly, the appeal from the order of protection must be dismissed as academic (*see Matter of Beverly R.,* 38 AD3d 668, 669; *Matter of Q.-L. H.,* 27 AD3d 738; *Matter of Melikishvili v Grigolava,* 20 AD3d 569).

Contrary to the mother's contention, there was sufficient evidence before the Family Court to support its finding of extraordinary circumstances, including evidence of her chronic mental illness, unstable living situation, and a failure on her part to address the special needs of the subject child (*see Matter of Benjamin B.,* 234 AD2d 457, 458; *Matter of Michael G. B. v Angela L. B.,* 219 AD2d 289, 293; *Matter of Nellie R. v Betty S.,* 187 AD2d 597).

Moreover, there is sound support in the record for the court's determination that an award of sole custody to the grandmother was in the child's best interest. The court's determination was supported by the testimony and report of a psychologist certified as an expert in the field of forensic assessment and was consistent with the position of the Law Guardian (*see Nicholas T. v Christine T.,* 42 AD3d 526, 527; *Gorelik v Gorelik,* 303 AD2d 553, 554).

The mother's remaining contentions are unpreserved for appellate review or without merit.

CRANE, J.P., SPOLZINO, KRAUSMAN and McCARTHY, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court