

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

D18375
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_____AD3d_____

Argued - February 4, 2008

ROBERT A. SPOLZINO, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2006-10315
2007-05568
2007-05570
2007-05571
2007-05572

DECISION & ORDER

In the Matter of Andrew B. (Anonymous).
Suffolk County Department of Social Services,
respondent; Gregory B. (Anonymous), et al.,
appellants.
(Proceeding No. 1)

In the Matter of Lauren B. (Anonymous).
Suffolk County Department of Social Services,
respondent; Gregory B. (Anonymous), et al.,
appellants.
(Proceeding No. 2)

(Docket Nos. N-10149-06, N-10150-06,
N-10152-06, N-10153-06)

Salvatore C. Adamo, New York, N.Y., for appellant Gregory B.

Lansner & Kubitschek, New York, N.Y. (Carolyn A. Kubitschek of counsel), for
appellant Cynthia B.

March 11, 2008

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MATTER OF B. (ANONYMOUS), ANDREW
MATTER OF B. (ANONYMOUS), LAUREN

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

Robert C. Mitchell, Central Islip, N.Y. (Diane B. Groom of counsel), Law Guardian for the children.

In two related child neglect and abuse proceedings pursuant to Family Court Act article 10, the father, Gregory B., appeals, as limited by his brief, from so much of a fact-finding order of the Family Court, Suffolk County (Freundlich, J.), dated September 27, 2006, as, after a hearing, found that he neglected Andrew B. and derivatively neglected Lauren B., and the mother, Cynthia B., separately appeals (a), as limited by her brief, from so much of the same fact-finding order as, after a hearing, found that she abused Andrew B. and derivatively neglected Lauren B., (b) from an order of disposition of the same court (Hoffman, J.), dated May 17, 2007, (c) from an order of protection of the same court dated May 18, 2007, which prohibited all unsupervised contact between her and Andrew B. up to and including May 17, 2008, (d) from an order of protection of the same court, also dated May 18, 2007, which prohibited all unsupervised contact between her and Lauren B. up to and including May 17, 2008, and (e) from a resettled order of disposition of the same court dated May 30, 2007, which, after a hearing, inter alia, released the children to the custody of the father, limited the mother's contact with the children to supervised visitation, and prohibited her from any involvement in any decision regarding the children's medical needs.

ORDERED that the mother's appeal from the fact-finding order dated September 27, 2006, and the order of disposition dated May 17, 2007, are dismissed, without costs or disbursements, as so much of the order dated September 27, 2006, as, after a hearing, found that she abused Andrew B. and derivatively neglected Lauren B., and the order of disposition dated May 17, 2007, were superseded by the resettled order of disposition dated May 30, 2007; and it is further,

ORDERED that the fact-finding order dated September 27, 2006, is affirmed insofar as reviewed, without costs or disbursements; and it is further,

ORDERED that the orders of protection dated May 18, 2007, and the resettled order of disposition dated May 30, 2007, are affirmed, without costs or disbursements.

The Family Court's determination that the mother abused Andrew B. by repeatedly subjecting him to unnecessary medical treatment, either as a result of Munchausen Syndrome by Proxy or otherwise, and derivatively neglected his sibling Lauren B., is supported by legally sufficient evidence and the preponderance of the credible evidence (*see Matter of Patrick GG.*, 286 AD2d 540; *Matter of Suffolk County Dep. of Social Servs. [Ellen S.]*, 215 AD2d 395, 396). The evidence established a history of repeated fabrication as to Andrew's medical conditions, including her assertions for approximately one year that Andrew B. suffered from recurring fevers, which required his withdrawal from school for the 2005-2006 academic year. Her conduct demonstrated fundamental flaws in her understanding of the duties of parenthood, warranting a finding of derivative neglect with respect to Lauren B. (*see Matter of Amber C.*, 38 AD3d 538).

Further, the father's failure to question his wife's judgment, although he was present in the household and accompanied the mother and Andrew B. on some visits to medical professionals, justified a finding of neglect with respect to him.

The parents' remaining contentions are without merit.

SPOLZINO, J.P., ANGIOLILLO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court