

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

D18602
G/hu

_____AD3d_____

Submitted - February 29, 2008

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2007-02592

DECISION & ORDER

In the Matter of Imman H. (Anonymous).
Administration for Children's Services, petitioner-
respondent; Diane H.-A. (Anonymous), appellant,
et al., respondent.

(Docket No. N-18985-05)

Elliot Green, Brooklyn, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Ronald E. Sternberg
and Julie Steiner of counsel), for petitioner-respondent.

Steven Banks, New York, N.Y. (Tamara A. Steckler and Claire V. Merkin of
counsel), attorney for the child.

In a proceeding pursuant to Family Court Act article 10, the mother appeals from
stated portions of an order of disposition of the Family Court, Kings County (Lim, J.), dated February
21, 2007, which, after a hearing, and upon an order of fact-finding of the same court dated September
20, 2006, finding that the subject child was neglected by the mother, inter alia, placed the child in the
care of the Commissioner of the Kings County Department of Social Services.

ORDERED that the order is affirmed insofar as appealed from, without costs or
disbursements.

On July 7, 2005, a petition was filed alleging that the subject child was emotionally
neglected by her parents, in that they made her witness the abuse of her uncle and participate in the

March 25, 2008

Page 1.

MATTER OF H. (ANONYMOUS), IMMAN

disposal of the uncle's dismembered corpse. At the fact-finding hearing, the petitioner's evidence included the child's out-of-court statements to a detective, the detective's testimony that the uncle's remains were found at the location identified by the child, and a psychologist's testimony that the child exhibited symptoms of post-traumatic stress disorder. The court found that the child was emotionally neglected and, inter alia, placed her in the care and custody of the Commissioner of the Kings County Department of Social Services. On appeal, the mother argues that the court erred in granting the motion of the attorney for the child to quash her subpoena to have the child testify at the fact-finding hearing and in denying her motions to have the child's mental health records entered into evidence.

Family Court Act § 1046(a)(vi) specifically provides that "[t]he testimony of the child shall not be necessary to make a fact-finding of abuse or neglect." A child's out-of-court statements relating to an allegation of neglect may, if adequately corroborated by evidence tending to establish their reliability, support a finding of neglect (*see* Family Ct Act § 1046[a][vi]; *Matter of Christopher L.*, 19 AD3d 597; *Matter of Khadryah H.*, 295 AD2d 607, 608). "Family Court Judges . . . have considerable discretion to decide whether the child's out-of-court statements describing incidents of abuse or neglect have, in fact, been reliably corroborated and whether the record as a whole supports a finding of[neglect]" (*Matter of Nicole V.*, 71 NY2d 112, 119; *see Matter of Candace S.*, 38 AD3d 786, 787; *Matter of Khadryah H.*, 295 AD2d at 608).

Here, the child's out-of-court statements were corroborated by the testimony of a detective and the testimony and report of the child's treating psychologist. That evidence, together with a negative inference drawn from the appellant's failure to testify, was sufficient to support the court's finding of neglect. Under the circumstances, and based on the evidence of the potential psychological harm that testifying would cause to the child, the court providently exercised its discretion in granting the motion of the attorney for the child to quash the mother's subpoena to compel the child to testify (*see Matter of Christopher L.*, 19 AD3d 597; *see also Matter of Karen Patricia G.*, 44 AD3d 658).

After an in camera inspection, the court providently exercised its discretion in denying the mother's motions for production of the child's psychiatric and social work treatment records from various institutions because the mother failed to demonstrate that the records were needed for the preparation of her case (*see* Family Ct Act § 1038[d]).

MASTRO, J.P., COVELLO, DICKERSON and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court