

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

D18624
W/kmg

_____AD3d_____

Argued - February 19, 2008

PETER B. SKELOS, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2007-01136

DECISION & ORDER

In the Matter of Tajani B. (Anonymous).
Suffolk County Department of Social Services,
respondent; Fred S. (Anonymous), appellant.
(Proceeding No. 1)

In the Matter of Taliq B. (Anonymous).
Suffolk County Department of Social Services,
respondent; Fred S. (Anonymous), appellant.
(Proceeding No. 2)

In the Matter of Telis S. (Anonymous).
Suffolk County Department of Social Services,
respondent; Fred S. (Anonymous), appellant.
(Proceeding No. 3)

(Docket Nos. N-21487-06, N-21488-06, N-21490-06)

Steven Flaumenhaft, West Sayville, N.Y., for appellant.

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

Danielle I. Schwager, P.C., Central Islip, N.Y., attorney for the children.

In three related neglect proceedings pursuant to Family Court Act article 10, the father appeals, as limited by his brief, from so much of an order of fact-finding and disposition of the Family

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Court, Suffolk County (Freundlich, J.), dated January 12, 2007, as, after a fact-finding and dispositional hearing, found that he neglected the subject children, directed him to submit to a mental health evaluation, and ordered supervised visitation.

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

In a child protective proceeding, the party seeking to establish neglect must show, "first, that a child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired and second, that the actual or threatened harm to the child is a consequence of the failure of the parent or caretaker to exercise a minimum degree of care in providing the child with proper supervision or guardianship" (*Nicholson v Scoppetta*, 3 NY3d 357, 368; *see Matter of Dimitriy R.*, 39 AD3d 866; Family Ct Act § 1012[f]). A finding of neglect must be based on "competent, material and relevant evidence" (Family Ct Act § 1046[b][iii]). Accordingly, hearsay is inadmissible in a fact-finding hearing, unless permitted by a specific statutory provision or unless a recognized exception applies (*see Matter of Imani B.*, 27 AD3d 645, 646).

The petitioner proved by a preponderance of the evidence that the subject children were neglected by the father (*see* Family Ct Act § 1046[b][i]). Here, the nonhearsay evidence presented at the hearing was sufficient to prove that the father allowed a loaded gun to be placed on a bed accessible to the mother's then three-year-old son and next to his then five-month-old daughter who was in a crib, thereby creating an imminent danger that their physical, mental, and emotional health would be harmed (*see Matter of Aminat O.*, 20 AD3d 480, 481; Family Ct Act § 1012[f][i]). Additionally, the threatened harm of the loaded gun was a consequence of the father failing to exercise a minimum degree of care in providing the children with proper supervision.

The father's remaining contentions are without merit.

SKELOS, J.P., LIFSON, SANTUCCI and BALKIN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

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