

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

D18625  
W/kmg

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Submitted - February 19, 2008

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

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2007-01499

DECISION & ORDER

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

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

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

(Docket Nos. N-21473-06, N-21474-06, N-21476-06)

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Karl E. Bonheim, Riverhead, 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 mother appeals, as limited by her brief, from so much of an order of fact-finding and disposition of

March 25, 2008

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MATTER OF B. (ANONYMOUS), TAJANI  
MATTER OF B. (ANONYMOUS), TALIQ  
MATTER OF S. (ANONYMOUS), TELIS

the Family Court, Suffolk County (Freundlich, J.), entered January 4, 2007, as, after a fact-finding and dispositional hearing, found that she neglected the subject children, and directed her to submit to a mental health evaluation and a domestic violence program.

ORDERED that the order of fact-finding and disposition is affirmed insofar as appealed from, without costs and 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]).

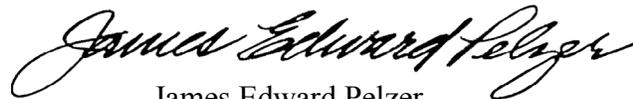
The petitioner proved by a preponderance of the evidence that the subject children were neglected by the mother (*see* Family Ct Act § 1046[b][i]). Here, the evidence presented at the hearing was sufficient to prove that the mother left a loaded gun on a bed accessible to her then three-year-old son and next to her 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).

Additionally, the Family Court providently exercised its discretion in drawing a negative inference against the mother upon her failure to testify at the hearing (*see Matter of Karen Patricia G.*, 44 AD3d 658, 660; *Matter of Christopher L.*, 19 AD3d 597, 598).

Contrary to the mother's contention, the Family Court did not err in failing to appoint new counsel to represent her (*see Matter of Moore v McClenos*, 259 AD2d 752, 753; *Matter of Mooney v Mooney*, 243 AD2d 840, 841).

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

ENTER:



James Edward Pelzer  
Clerk of the Court