

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

D18849
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_____AD3d_____

Submitted - March 10, 2008

REINALDO E. RIVERA, J.P.
FRED T. SANTUCCI
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2007-03551
2007-03553
2007-03554

DECISION & ORDER

In the Matter of Justin P. (Anonymous).
Administration for Children's Services,
respondent; Nelinda M. (Anonymous), appellant.
(Proceeding No. 1)

In the Matter of Noel David M. (Anonymous).
Administration for Children's Services,
respondent; Nelinda M. (Anonymous), appellant.
(Proceeding No. 2)

In the Matter of Anastasia P. (Anonymous).
Administration for Children's Services,
respondent; Nelinda M. (Anonymous), appellant.
(Proceeding No. 3)

In the Matter of Natalie P. (Anonymous).
Administration for Children's Services,
respondent; Nelinda M. (Anonymous), appellant.
(Proceeding No. 4)

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In the Matter of Rogelia M. (Anonymous).
Administration for Children's Services,
respondent; Nelinda M. (Anonymous), appellant.
(Proceeding No. 5)

In the Matter of Sheila M. B. (Anonymous).
Administration for Children's Services,
respondent; Nelinda M. (Anonymous), appellant.
(Proceeding No. 6)

(Docket Nos. N-02041-05, N-02042-05, N-02043-05,
N-02044-05, N-2045-05, N-27715-05)

Mark Brandys, New York, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Barry P. Schwartz and
Julie Steiner of counsel), for respondent.

Steven Banks, New York, N.Y. (Tamara A. Steckler and Mitchell Katz of counsel),
attorney for the children.

In six related child protective proceedings pursuant to Family Court Act article 10,
the mother appeals from three orders of disposition of the Family Court, Kings County (Hamill, J.),
two dated March 27, 2007, and one dated March 28, 2007, which, upon an order of the same court
dated May 17, 2006, granting the petitioner's motion for summary judgment finding that she abused
and neglected the child Sheila M. B., and derivatively neglected the children Anastasia P., Justin P.,
Natalie P., Rogelia M., and Noel David M., and upon a fact-finding order of the same court also
dated May 17, 2006, placed the children Anastasia P., Natalie P., and Rogelia M. in the custody of
the petitioner, placed the child Sheila M. B. in the custody of her nonrespondent father, and released
the children Justin P. and Noel David M. to her custody under the petitioner's supervision.

ORDERED that the orders of disposition are affirmed, without costs or
disbursements.

Contrary to the mother's contention, the Family Court properly granted the motion
of the petitioner, Administration for Children's Services (hereinafter ACS), for summary judgment.
In support of its motion, ACS tendered the sworn testimony of the mother at a hearing held pursuant

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to Family Court Act § 1028 (hereinafter the 1028 hearing) (*see Matter of Christopher Anthony M.*, 46 AD3d 896, 897), and a medical examiner's report of the autopsy of a sibling of the subject children. Through these submissions, ACS made a prima facie showing that the mother had abused the child Sheila M. B. (*see Family Ct Act § 1012[e][ii]*; *Matter of Devina S.*, 24 AD3d 188, 189), neglected Sheila M. B. (*see Family Ct Act § 1012[f][i][B]*; *Nicholson v Scopetta*, 3 NY3d 357, 370), and derivatively neglected the children Anastasia P., Justin P., Natalie P., Rogelia M., and Noel David M. (*see Matter of Amber C.*, 38 AD3d 538, 540-541; *Matter of Alexis C.*, 27 AD3d 646, 648; *Matter of Ramsay M.*, 17 AD3d 678, 679). In opposition, the mother's submissions failed to demonstrate the existence of a triable issue of fact. Accordingly, the Family Court properly granted ACS's motion for summary judgment (*see Matter of Suffolk County Dept. of Social Servs. v James M.*, 83 NY2d 178, 182; *Matter of Christopher Anthony M.*, 46 AD3d at 899).

Contrary to the mother's contention, the court did not act as an advocate for ACS when it questioned her at the 1028 hearing (*see People v Arnold*, 98 NY2d 63, 67; *People v Nurse*, 8 AD3d 301).

The mother's remaining contentions are without merit.

RIVERA, J.P., SANTUCCI, DICKERSON and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

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