

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

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Submitted - March 6, 2009

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2008-04260

DECISION & ORDER

In the Matter of Jamie R. (Anonymous).
Westchester County Department of Social Services,
respondent; Maria R. (Anonymous), appellant.

(Docket No. N-8730-06)

Teresa Stilo, Scarsdale, N.Y., for appellant.

Charlene M. Indelicato, County Attorney, White Plains, N.Y. (Stacey Dolgin-Kmetz and Justin R. Adin of counsel), for respondent.

Darren DeUrso, White Plains, N.Y., attorney for the child.

In a child protective proceeding pursuant to Family Court Act article 10, the mother appeals from an order of fact-finding and amended disposition of the Family Court, Westchester County (Duffy, J.), entered April 1, 2008, which, after a fact-finding and dispositional hearing, determined that she willfully and without just cause disobeyed a prior dispositional order of the same court dated June 25, 2007, in effect, revoked the prior dispositional order, and placed the child in the custody of the Westchester County Department of Social Services until the completion of the next permanency hearing.

ORDERED that the order of fact-finding and amended disposition is reversed, on the law, without costs or disbursements, the child is released to the custody of her mother, and the matter is remitted to the Family Court, Westchester County, for further proceedings.

The petitioner failed to sustain its burden of demonstrating, by competent proof, that the mother willfully and without just cause disobeyed a dispositional order dated June 25, 2007, which directed, inter alia, that she ensure the subject child's timely and regular attendance at school

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(see Family Ct Act § 1072). The evidence at the hearing demonstrated that the mother cooperated with the programs recommended by the Westchester County Department of Social Services to improve the child's school attendance. Further, the mother actively communicated with school officials about the child's fear of attending school, which stemmed from the allegedly threatening behavior of other students, and attempted to alleviate the child's concerns by arranging for her to eat lunch in the school office rather than in the cafeteria. Accordingly, the court should not have revoked the prior order of disposition and placed the child in the custody of the Westchester County Department of Social Services.

In light of our determination, we need not address the mother's remaining contentions.

SKELOS, J.P., SANTUCCI, DICKERSON and ENG, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court