

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

D24761
C/kmg

_____AD3d_____

Submitted - September 21, 2009

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
ARIEL E. BELEN
L. PRISCILLA HALL, JJ.

2008-06756
2009-00140
2009-00141

DECISION & ORDER

In the Matter of Jahyalle F. (Anonymous).
Rockland County Department of Social Services,
respondent; Tiffany F. (Anonymous), appellant.
(Proceeding No. 1)

In the Matter of Tyrell F. (Anonymous).
Rockland County Department of Social Services,
respondent; Tiffany F. (Anonymous), appellant.
(Proceeding No. 2)

(Docket Nos. N-3350-07 and N-3351-07)

Zvi Ostrin, New York, N.Y., for appellant.

Patricia Zugibe, County Attorney, New City, N.Y. (Patrick J. Carle of counsel), for
respondent.

Christopher Widholm, New City, N.Y., attorney for the child.

In two related child protective proceedings pursuant to Family Court Act article 10, the mother appeals (1) from a decision of the Family Court, Rockland County (Christopher, J.), dated June 12, 2008, (2) from a permanency hearing order of the same court dated December 5, 2008, and (3), as limited by her brief, from so much of an order of fact-finding and disposition of the same court entered December 17, 2008, as, after fact-finding and dispositional hearings, found that she neglected the child Tyrell and derivatively neglected the child Jahyalle.

October 27, 2009

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MATTER OF F. (ANONYMOUS), TYRELL

ORDERED that the appeal from the decision is dismissed, without costs or disbursements, as no appeal lies from a decision (*see* Family Ct Act § 1112[a]; *Schicchi v Green Constr. Corp.*, 100 AD2d 509); and it is further,

ORDERED that the appeal from the permanency hearing order dated December 5, 2008, is dismissed, without costs or disbursements, as that order was superseded by the order of fact-finding and disposition entered December 17, 2008; and it is further,

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

The Family Court's finding of neglect based on the mother putting her son Tyrell in a hot oven as a form of punishment was supported by a preponderance of the evidence (*see* Family Ct Act § 1046[b][i]). Furthermore, because the mother's conduct toward Tyrell demonstrated a fundamental defect in her understanding of parental duties relating to the care of children, there was sufficient evidence to make a finding of derivative neglect with respect to Jahyalle (*see Matter of Daniella HH.*, 236 AD2d 715, 716).

SKELOS, J.P., SANTUCCI, BELEN and HALL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court