

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

D25665
G/kmg

_____AD3d_____

Submitted - December 11, 2009

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
PLUMMER E. LOTT
SHERI S. ROMAN, JJ.

2009-01286
2009-02284

DECISION & ORDER

In the Matter of Briana F. (Anonymous).
Suffolk County Department of Social Services,
respondent; Oswaldo F. (Anonymous), appellant.
(Proceeding No. 1)

In the Matter of Matthew F. (Anonymous).
Suffolk County Department of Social Services,
respondent; Oswaldo F. (Anonymous), appellant.
(Proceeding No. 2)

(Docket Nos. N-13564-07, N-13565-07)

Salvatore C. Adamo, Patchogue, N.Y., for appellant.

Christine Malafi, County Attorney, Central Islip, N.Y. (Randall J. Ratje of counsel),
for respondent.

In two related child protective proceedings pursuant to Family Court Act article 10, the father appeals (1) from a decision of the Family Court, Suffolk County (Whelan, J.), dated December 23, 2008, and (2), as limited by his brief, from so much of an order of fact-finding and disposition of the same court dated March 17, 2009, as, upon the decision, made after fact-finding and dispositional hearings, found that he neglected the child Matthew F. and derivatively neglected the child Briana F., and directed that he undergo mental health and substance abuse evaluations.

ORDERED that the appeal from the decision is dismissed, without costs or

January 12, 2010

Page 1.

MATTER OF F. (ANONYMOUS), BRIANA
MATTER OF F. (ANONYMOUS), MATTHEW

disbursements, as no appeal lies from a decision (*see* Family Ct Act § 1112[a]; *Schicchi v J.A. Green Constr. Corp.*, 100 AD2d 509); and it is further,

ORDERED that the order of fact-finding and disposition 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’” (*Matter of Tajani B.*, 49 AD3d 876, 876, quoting *Nicholson v Scoppetta*, 3 NY3d 357, 368).

Here, the petitioner proved by a preponderance of the evidence that the father neglected the child Matthew F. The evidence presented at the fact-finding hearing was sufficient to show that the father committed an act of domestic violence during which he demanded that Matthew get him a knife and then held the knife to the mother’s throat in Matthew’s presence, thereby impairing, or creating an imminent danger of impairing, Matthew’s physical, emotional, and mental conditions (*see Matter of Jordan E.*, 57 AD3d 539, 540; *Matter of Andrew Y.*, 44 AD3d 1063, 1064; *Matter of Tami G.*, 209 AD2d 869, 870). The evidence also supports a finding of derivative neglect with respect to the child Briana F. (*see Matter of Cybill V.*, 279 AD2d 582, 583; *Matter of Deandre T.*, 253 AD2d 497, 498).

Contrary to the father’s contention, the Family Court properly directed that he undergo mental health and substance abuse evaluations (*see Matter of Joseph S.*, 63 AD3d 850, 850).

The father’s remaining contentions are without merit.

SKELOS, J.P., DICKERSON, LOTT and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court