

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

D25740
H/hu

_____AD3d_____

Argued - November 9, 2009

REINALDO E. RIVERA, J.P.
HOWARD MILLER
THOMAS A. DICKERSON
SHERI S. ROMAN, JJ.

2008-11464

DECISION & ORDER

In the Matter of Aniyah Mc. (Anonymous).
Administration for Children's Services, respondent;
Ann Marie Mc. (Anonymous), appellant.

(Docket No. N-6245-08)

Robert D. Siano, White Plains, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Edward F.X. Hart and
Marta Ross of counsel), for respondent.

Steven Banks, New York, N.Y. (Tamara A. Steckler, Judith Stern, and Sara Reisberg
of counsel), attorney for the child.

In a child neglect proceeding pursuant to Family Court Act article 10, the mother
appeals, as limited by her brief, from so much of an order of the Family Court, Kings County (Danoff,
J.), dated November 20, 2008, as, after a permanency hearing, in effect, denied her application for
the immediate return of the subject child to her custody or, in the alternative, to modify visitation
from supervised to partial unsupervised.

ORDERED that the appeal from so much of the order as denied that branch of the
mother's application which was to modify visitation from supervised to partial unsupervised, is
dismissed, without costs or disbursements, as academic; and it is further,

ORDERED that the order is affirmed insofar as reviewed, without costs or
disbursements.

January 12, 2010

MATTER OF Mc. (ANONYMOUS), ANIYAH

Page 1.

That branch of the mother's application which was for the immediate return of the subject child was improperly made in the course of a permanency hearing held pursuant to Family Court Act § 1089 and while the neglect proceeding was still pending. Thus, having not been properly made pursuant to either section 1028 or section 1061 of the Family Court Act, the application was properly denied by the Family Court (*see* Family Ct Act §§ 1028, 1061).

That branch of the mother's application which was for partial unsupervised visitation has been rendered academic because the subject agency has modified the mother's visits with the child to permit unsupervised contact for half of each visit (*see Pollack v Pollack*, 56 AD3d 637; *Matter of Damian M.*, 41 AD3d 600).

RIVERA, J.P., MILLER, DICKERSON and ROMAN, 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