

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

D27102
C/kmg

_____AD3d_____

Submitted - March 19, 2010

PETER B. SKELOS, J.P.
LEONARD B. AUSTIN
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-03454

DECISION & ORDER

In the Matter of Tylasia B. (Anonymous).
Suffolk County Department of Social Services,
respondent; Wayne B. (Anonymous), appellant.
(Proceeding No. 1)

In the Matter of Wayne B. (Anonymous), Jr.
Suffolk County Department of Social Services,
respondent; Wayne B. (Anonymous), appellant.
(Proceeding No. 2)

(Docket Nos. N-600-09, N-601-09)

Del Atwell, East Hampton, N.Y., for appellant.

Christine Malafi, County Attorney, Central Islip, N.Y. (Brian B. Mulholland of
counsel), for respondent.

Stephen R. Hellman, Esq., P.C., West Sayville, N.Y., attorney for the children.

In two related child protective proceedings pursuant to Family Court Act article 10, Wayne B. appeals from an order of fact-finding and disposition of the Family Court, Suffolk County (Tarantino, Jr., J.), dated April 8, 2009, which, after, inter alia, a fact-finding hearing, found that he neglected Tylasia B. and, in effect, derivatively neglected Wayne B., Jr., and, among other things, directed him to enter a substance abuse program and undergo drug testing.

April 27, 2010

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MATTER OF B. (ANONYMOUS), TYLASIA
MATTER OF B. (ANONYMOUS), WAYNE, JR.

ORDERED that the order is affirmed, without costs or distributions.

To establish neglect in a child protective proceeding, the petitioner 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 Tajana B.*, 49 AD3d 874, 875 [internal quotation marks omitted]; see *Nicholson v Scoppetta*, 3 NY3d 357, 368; *Matter of Lester M.*, 44 AD3d 944; *Matter of Dimitriy R.*, 39 AD3d 866; Family Ct Act § 1012[f]). In the instant case, the Family Court’s finding that the father neglected his eight-year-old daughter, Tylasia B., was supported by a preponderance of the evidence (see Family Ct Act § 1012[f][i][B]; § 1046[b],[i]). The nonhearsay evidence presented at the fact-finding hearing was sufficient to establish that the father allowed Tylasia B. to ride in a car driven by her mother when he knew or should have known that the mother was intoxicated (see e.g. *Matter of Carlena B.*, 61 AD3d 752; *Matter of Lester M.*, 44 AD3d 944; *Matter of Miyani M. [George T.]*, 4 AD3d 430; *Matter of Kanika M.*, 270 AD2d 490; *Matter of K. Children*, 253 AD2d 764; *Matter of R.W. Children*, 240 AD2d 207. In addition, following the fact-finding hearing, the father admitted to ongoing substance abuse (see *Matter of Issiah C.*, 24 AD3d 438).

Since the evidence of neglect as to Tylasia B. demonstrated such an impaired level of parental judgment as to create a substantial risk of harm for other children in the father’s care, the Family Court properly, in effect, found that the other child, Wayne B., Jr., was derivatively neglected (see Family Ct Act § 1046[a][I]; *Matter of Carlena B.*, 61 AD3d at 752; *Matter of Dutchess County Dept. of Social Servs. [Noreen K.]*, 242 AD2d 533, 534). The requirement that the father enter a substance abuse program and undergo drug testing was in the best interests of the children (see *Matter of Carlena B.*, 61 AD3d at 752; *Matter of Commissioner of Social Servs. of City of N.Y. v Leona W.*, 192 AD2d 602, 603).

The father’s remaining contention is without merit (see *Matter of James HH*, 234 AD2d 783, 785).

SKELOS, J.P., AUSTIN, ROMAN and SGROI, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court