

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

D29018
H/kmb

_____AD3d_____

Submitted - October 28, 2010

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-10399

DECISION & ORDER

In the Matter of Nathanal C. (Anonymous).
Administration for Children's Services, respondent;
Dimas C. (Anonymous), et al., appellants.
(Proceeding No. 1)

In the Matter of Lizette C. (Anonymous).
Administration for Children's Services, respondent;
Dimas C. (Anonymous), et al., appellants.
(Proceeding No. 2)

(Docket Nos. NN-12496-09, NN-12497-09)

Jeffrey C. Bluth, Brooklyn, N.Y., for appellant Dimas C.

Robert J. Marinelli, New York, N.Y., for appellant Mandy C.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Barry P. Schwartz and Scott Shorr of counsel), for respondent.

Robert Hausner, Garden City, N.Y., attorney for the children.

In two related child protective proceedings pursuant to Family Court Act article 10, Mandy C. and Dimas C. separately appeal from an order of the Family Court, Queens County (Tally, J.), dated October 8, 2009, which, after a hearing pursuant to Family Court Act § 1028, denied their separate motions for the return of the subject children to their custody during the pendency of the proceeding.

November 16, 2010

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MATTER OF C. (ANONYMOUS), NATHANAL
MATTER OF C. (ANONYMOUS), LIZETTE

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

Contrary to the appellants' contentions, the Family Court providently exercised its discretion in denying their separate motions pursuant to Family Ct Act § 1028 to return the subject children to their custody during the pendency of the proceeding. There was sufficient evidence presented at the hearing that the children's emotional, mental, and physical health would be at imminent risk if they were returned to the appellants' care (*see* Family Ct Act § 1028). Under the circumstances of this case, we agree with the Family Court's determination not to return the children to the appellants' custody until additional facts are adduced at a full fact-finding hearing (*see Matter of Xavier J.*, 47 AD3d 815; *Matter of Janih M.*, 8 AD3d 384; *see also Nicholson v Scoppetta*, 3 NY3d 357).

The appellants' remaining contentions are without merit.

RIVERA, J.P., ANGIOLILLO, ROMAN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court