

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

D30415  
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Submitted - February 14, 2011

WILLIAM F. MASTRO, J.P.  
PETER B. SKELOS  
JOHN M. LEVENTHAL  
SHERI S. ROMAN, JJ.

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2010-00715

DECISION & JUDGMENT

In the Matter of Kimberly Esteva, petitioner,  
v New York State Central Register of Child  
Abuse and Maltreatment, et al., respondents.

(Index No. 18028/09)

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David Bliven, White Plains, N.Y., for petitioner.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Michael S. Belohlavek and Sudarsana Srinivasan of counsel), for respondent New York State Central Register of Child Abuse & Maltreatment.

Proceeding pursuant to CPLR article 78 to review a determination of the Commissioner of the New York State Office of Children and Family Services dated March 27, 2009, which, after a hearing, denied the petitioner's application to amend and seal a report maintained in the New York State Central Register of Child Abuse and Maltreatment.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

At an administrative expungement hearing to determine whether a report of child abuse or maltreatment is substantiated, the allegations in the report must be established by a preponderance of the evidence (*see Matter of Lee TT. v Dowling*, 87 NY2d 699, 703; *Matter of Blythe v Carrion*, 63 AD3d 1059). "It is the function of the administrative agency, not the reviewing court, to weigh the evidence or assess the credibility of the witnesses" (*Matter of Bullock v State of N.Y. Dept. of Social Servs.*, 248 AD2d 380, 382).

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REGISTER OF CHILD ABUSE AND MALTREATMENT

Judicial review of a determination that a report of maltreatment has been substantiated is limited to whether the determination is supported by substantial evidence in the record (*see Matter of Valentine v New York State Cent. Register of Child Abusers & Maltreatment*, 37 AD3d 249, 249-250). Substantial evidence “means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact” (*300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 180; *see Matter of Lynnann P. v Suffolk County Dept. of Social Servs.*, 28 AD3d 484, 485).

Here, the New York State Office of Children and Family Services determined that it was established by a preponderance of the evidence that the subject child’s physical, mental, or emotional condition has been impaired, or is in imminent danger of becoming impaired, as a result of the petitioner’s failure to exercise a minimum degree of care in providing proper supervision or guardianship (*see Social Services Law § 412[2][a][i]*; *Family Ct Act § 1012[f][i][B]*; 18 NYCRR 432.1[b][1]; *Matter of Benjamin v Carrion*, 79 AD3d 744; *Matter of Barnes v New York State Off. of Children & Family Servs.*, 67 AD3d 787, 788). That determination is supported by substantial evidence. Accordingly, this CPLR article 78 proceeding must be dismissed on the merits.

MASTRO, J.P., SKELOS, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court