

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

D30481
Y/prt

_____AD3d_____

Submitted - March 1, 2011

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
ROBERT J. MILLER, JJ.

2010-03075
2010-03077

DECISION & ORDER

In the Matter of John M. (Anonymous).
Suffolk County Department of Social Services,
respondent; Raymond K. (Anonymous), appellant.

(Docket No. B-16903-09)

Stephen R. Hellman, Esq., P.C., West Sayville, N.Y., for appellant.

Christine Malafi, County Attorney, Central Islip, N.Y. (Gary Rosenthal of counsel),
for respondent.

Miriam Solon Weintraub, Greenlawn, N.Y., attorney for the child.

In a proceeding pursuant to Social Services Law § 384-b and Family Court Act article 6 to terminate parental rights, the father appeals from (1) a fact-finding order of the Family Court, Suffolk County (Freundlich, J.), dated January 21, 2010, which, after a hearing, found that he had permanently neglected the subject child, and (2) an order of disposition of the same court entered January 22, 2010, which, after a dispositional hearing, terminated his parental rights and transferred custody and guardianship of the child to the Suffolk County Department of Social Services for the purpose of adoption.

ORDERED that the appeal from the fact-finding order is dismissed, without costs or disbursements, as that order was superseded by the order of disposition and is brought up for review on the appeal from the order of disposition; and it is further,

March 22, 2011

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

The Suffolk County Department of Social Services (hereinafter DSS) established by clear and convincing evidence that it made diligent efforts to encourage and strengthen the parental relationship by, among other things, scheduling visitation between the father and the subject child, providing referrals for substance abuse treatment programs, and warning the father of the consequences of noncompliance (*see* Social Services Law § 384-b[7][f]; *Matter of Star Leslie W.*, 63 NY2d 136, 142; *Matter of Austin C. [Alicia Y.]*, 77 AD3d 938; *Matter of Deajah Shabri T.*, 44 AD3d 1060).

The father missed approximately half of the scheduled visits, failed to participate in a substance abuse treatment program, and continued using illegal drugs. An agency that has exercised diligent efforts but is faced with an uncooperative parent is deemed to have fulfilled its statutory obligations (*see Matter of Star Leslie W.*, 63 NY2d at 144; *Matter of Tynell S.*, 43 AD3d 1171; *Matter of Kahori Emmanuel A.*, 287 AD2d 452). Further, DSS established by clear and convincing evidence that the father permanently neglected the child by failing to plan for the child's future during the relevant statutory period, notwithstanding DSS's diligent efforts (*see generally Matter of Ariel Kadajah S. [Ryszard B.]* _____AD3d _____, 2011 NY Slip Op 01287 [2d Dept 2011]).

After the finding of permanent neglect, the Family Court correctly determined that it was in the child's best interest to be freed for adoption.

ANGIOLILLO, J.P., FLORIO, BELEN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court