

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

D30541
H/prt

_____AD3d_____

Submitted - March 1, 2011

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

2010-05102

DECISION & ORDER

In the Matter of Jayann B. (Anonymous).
Dutchess County Department of Social Services,
appellant; David K. (Anonymous), respondent.

(Docket No. N-1388-10)

James Fedorchak, County Attorney, Poughkeepsie, N.Y. (Thomas P. Delpizzo of counsel), for appellant.

Theodore J. Stein, Woodstock, N.Y., for respondent.

Kelly S. Myers, Hyde Park, N.Y., attorney for the child.

In a child neglect proceeding pursuant to Family Court Act article 10, the petitioner appeals, as limited by its brief, from so much of an order of the Family Court, Dutchess County (Posner, J.), dated April 22, 2010, as, without a fact-finding hearing, granted the respondent's motion to dismiss the petition.

ORDERED that the order is reversed insofar as appealed from, on the law, without costs or disbursements, the respondent's motion to dismiss the petition is denied, and the matter is remitted to the Family Court, Dutchess County, for a fact-finding hearing.

The petitioner, Dutchess County Department of Social Services (hereinafter DSS), filed a petition alleging that the respondent, who is the paramour of the mother of the subject child, lives with and acts as a parent substitute of the child. DSS further alleged that, according to a 2004 "indicated" report of the Westchester Child Protective Services, the respondent allegedly, on several

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occasions, committed acts of sexual abuse and sodomy against his nephew, who was then eight years old. Further, DSS alleged that in March 2010, during the course of DSS's investigation, the respondent denied the allegations regarding sexual abuse of his nephew, denied knowledge of the 2004 report despite evidence to the contrary, and acknowledged that he had never attended or completed any treatment program related to sex crimes.

The respondent moved to dismiss the instant petition, contending, inter alia, that DSS failed to allege any danger to the subject child based upon the respondent's alleged activity in 2004. In the order appealed from, the Family Court, among other things, granted the motion to dismiss the petition without conducting a fact-finding hearing. We reverse the order insofar as appealed from.

Under the circumstances of this case, the allegations in the petition were sufficient to require the Family Court to hold a fact-finding hearing (*see* Family Ct Act § 1027[a][ii]; *Matter of Jonathan M.*, 306 AD2d 413, 414; *Matter of Dutchess County Dept. of Social Servs. v Peter B.*, 224 AD2d 617; *Matter of Rhonda T.*, 99 AD2d 758, 759). Accordingly, the Family Court erred in granting the respondent's motion to dismiss the petition without a fact-finding hearing, and the matter must be remitted to the Family Court, Dutchess County, for a fact-finding hearing.

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

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court