

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

D30595
H/kmb

_____AD3d_____

Submitted - March 3, 2011

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2010-08620

DECISION & ORDER

In the Matter of Robert B.- H. (Anonymous).
Mercyfirst, appellant, et al., petitioner;
Robert H. (Anonymous), respondent.
(Proceeding No. 1)

In the Matter of Nyema B.- H. (Anonymous).
Mercyfirst, appellant, et al., petitioner;
Robert H. (Anonymous), respondent.
(Proceeding No. 2)

In the Matter of Latisha B.- H. (Anonymous).
Mercyfirst, appellant, et al., petitioner;
Robert H. (Anonymous), respondent.
(Proceeding No. 3)

In the Matter of Shameika B.- H. (Anonymous).
Mercyfirst, appellant, et al., petitioner;
Robert H. (Anonymous), respondent.
(Proceeding No. 4)

(Docket Nos. NA-28087-98, NA-28088-98,
NA-28089-98, NA-28090-98)

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Warren & Warren, P.C., Brooklyn, N.Y. (Ira L. Eras and Richard Jay Warren of counsel), for appellant.

Rhonda R. Weir, Brooklyn, N.Y., for respondent.

In four related child protective proceedings pursuant to Family Court Act article 10, Mercyfirst appeals from an amended order of the Family Court, Kings County (Beckoff, J.), dated July 27, 2010, which vacated, nunc pro tunc, a temporary order of protection of the same court dated May 19, 2010, issued against the father, and denied, as academic, its motion to hold the father in contempt for his willful violation of the temporary order of protection.

ORDERED that amended order dated July 27, 2010, is affirmed, with costs.

“Family Court Act § 1056 does not authorize the issuance of an order of protection on behalf of a foster care agency’s employees” (*Matter of Robert B.-H. [Robert H.]*, _____AD3d_____, 2011 NY Slip Op 01464, *2 [2d Dept 2011]). “Mercyfirst’s caseworkers do not fit within any of the classes of persons in whose favor an order of protection may be issued” (*id.*; see Family Ct Act § 1056). Accordingly, the Family Court properly vacated the temporary order of protection (see *Matter of Robert B.-H. [Robert H.]*, _____AD3d_____, 2011 NY Slip Op 01464, *2 [2d Dept 2011]).

Further, since the Family Court had no power to issue the temporary order of protection initially, it was void ab initio for all purposes, including the power to hold the father in contempt (see *Matter of Fish v Horn*, 14 NY2d 905, 906; *Matter of Jillana C.*, 309 AD2d 1170, 1171; see also *Matter of Bickwid v Deutsch*, 229 AD2d 533, 534-535).

Mercyfirst’s remaining contention is without merit.

DILLON, J.P., LEVENTHAL, CHAMBERS and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court

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