

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

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_____AD3d_____

Argued - February 28, 2011

JOSEPH COVELLO, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2010-03219
2011-00326

DECISION & ORDER

In the Matter of Charlie S. (Anonymous).
Administration for Children's Services, petitioner-
respondent; Rong S. (Anonymous), appellant; et al.,
respondent.

(Docket No. N-12230-07)

Carol Kahn, New York, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and
Karen M. Griffin of counsel), for petitioner-respondent.

Steven Banks, New York, N.Y. (Tamara A. Steckler and Diane Pazar of counsel),
attorney for the child.

In a child protective proceeding pursuant to Family Court Act article 10, the father appeals, as limited by his brief, from so much of (1) a fact-finding order of the Family Court, Queens County (Richardson-Mendelson, J.), dated May 21, 2009, as, after a fact-finding hearing, found that he neglected the child by failing to address the child's mental health needs and that he inappropriately touched the child's buttocks, and (2) an order of disposition of the same court (McGowan, J.), dated March 4, 2010, as, upon the fact-finding order, placed the child in the custody of the Commissioner of Social Services until the completion of the next permanency hearing.

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that the appeal from the fact-finding order is dismissed, without costs or disbursements, as the fact-finding order was superseded by the order of disposition and is brought up for review on the appeal from the order of disposition; and it is further,

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MATTER OF S. (ANONYMOUS), CHARLIE

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ORDERED that the order of disposition is affirmed insofar as appealed from, without costs or disbursements.

The father does not challenge the Family Court's finding of neglect based on the use of excessive corporal punishment. He instead contends that the Family Court's findings that he neglected the subject child by failing to address the child's mental health needs and that he inappropriately touched the child's buttocks were not supported by sufficient evidence.

Although the father was aware of the child's behavioral problems in elementary school, which included inappropriate sexual behavior towards other boys, he failed to follow the recommendations of the school principal, school guidance counselor, and caseworker for the Administration for Children's Services that he obtain psychological counseling for the child. As a result, a preponderance of the evidence supports a finding that the father failed to address the child's mental health needs (*see Matter of Stephen GG.*, 279 AD2d 651; *Matter of Ijeoma O.*, 271 AD2d 691).

Further, contrary to the father's contention, the child's out-of-court statements alleging that the father inappropriately touched his buttocks were sufficiently corroborated by testimony from the child's case worker and from his high school principal, both of whom stated that the child related to them that such activity occurred (*see Family Ct. Act § 1046[a][vi]*; *Matter of Nicole V.*, 71 NY2d 112, 117-118; *Matter of Dave D. [Mary E.S.]*, 78 AD3d 829; *Matter of Rachel H.*, 60 AD3d 1060, 1061; *Matter of Erich J.*, 22 AD3d 849, 850; *Matter of James A.*, 217 AD2d 961). This evidence, together with a negative inference drawn from the father's failure to testify, was sufficient to support the Family Court's finding (*see Matter of Imman H.*, 49 AD3d 879), and the child's testimony recanting his prior allegations does not mandate that the finding be set aside (*see Matter of Tristan R.*, 63 AD3d 1075; *Matter of Kayla N.*, 41 AD3d 920, 922; *Matter of Allison B.*, 41 AD3d 842).

The father's remaining contentions are unpreserved for appellate review.

COVELLO, J.P., DICKERSON, ENG and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court