

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

D31441
W/nl

_____AD3d_____

Submitted - May 6, 2011

WILLIAM F. MASTRO, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2011-00161

DECISION & ORDER

In the Matter of Zeeyana B. (Anonymous).
Commissioner of Social Services/Administration for
Children's Services, petitioner-respondent;
Tameka G. (Anonymous), respondent, Darnell B.
(Anonymous), appellant.

(Docket No. NN-15969-08)

Larry S. Bachner, Jamaica, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Edward F. X. Hart and
Drake A. Colley of counsel), for petitioner-respondent.

John W. Casey, Long Island City, N.Y., attorney for the child.

In a neglect proceeding pursuant to Family Court Act article 10, the father appeals from an order of disposition of the Family Court, Queens County (Tally, J.), dated December 8, 2010, which, upon the denial of his motion to dismiss the amended petition for failure to state a cause of action insofar as asserted against him, upon a fact-finding order of the same court dated January 26, 2010, entered after an inquest upon his default in appearing at the fact-finding hearing finding, inter alia, that he neglected the subject child, upon the denial of his separate motion pursuant to Family Court Act § 1042 to vacate his default in appearing at the fact-finding hearing, and after a dispositional hearing, placed the child in the custody of the New York City Commissioner of Social Services pending completion of a permanency hearing.

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

May 24, 2011

MATTER OF B. (ANONYMOUS), ZEEYANA

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The Family Court providently exercised its discretion in denying the father's motion pursuant to Family Court Act § 1042 to vacate a fact-finding order entered upon his default in appearing at the fact-finding hearing (*see* Family Ct Act § 1042; *Matter of Jenna C. [Omisa C.]*, 81 AD3d 941). In moving to vacate his default, the father did not provide a reasonable excuse for his failure to appear at the fact-finding hearing, and did not sufficiently establish a potentially meritorious defense to the allegations in the amended petition (*see Matter of Jenna C. [Omisa C.]*, 81 AD3d 941; *Matter of Devon Defonte B.-S. [Christine B.]*, 73 AD3d 1037).

The father's remaining contentions are without merit.

MASTRO, J.P., LEVENTHAL, AUSTIN and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court