

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

D32356  
W/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - September 6, 2011

PETER B. SKELOS, J.P.  
RANDALL T. ENG  
LEONARD B. AUSTIN  
ROBERT J. MILLER, JJ.

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2010-08748

DECISION & ORDER

In the Matter of Madeline A. (Anonymous).  
Administration for Children's Services, respondent;  
Elizabeth M. (Anonymous), appellant.

(Docket No. N-3726-10)

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Christopher J. Robles, Brooklyn, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Pamela Seider Dolgow and Elizabeth S. Natrella of counsel), for respondent.

Angela Conti, Staten Island, N.Y., attorney for the child.

In a child protective proceeding pursuant to Family Court Act article 10, the mother appeals from an order of the Family Court, Richmond County (Wolff, J.), dated August 18, 2010, which, after a hearing, denied her application pursuant to Family Court Act § 1028(a) for the return of the subject child to her custody.

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

Contrary to the mother's contention, the Family Court properly denied her application pursuant to Family Court Act § 1028(a) to return the subject child to her custody. The evidence adduced at the hearing was sufficient to establish that the return of the child, whose older siblings remain in foster care as a consequence of a prior adjudication of neglect against the mother, would present an imminent risk to the child's emotional, mental, and physical health (*see* Family Ct Act § 1028[a]; *Matter of Nathanal C. [Dimas C.]*, 78 AD3d 939; *Matter of Elijah O. [Marilyn O.]*, 77

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AD3d 836, 837; *Matter of Gabriel James M.*, 59 AD3d 448; *Matter of Iouke H.*, 50 AD3d 904, 905; *Matter of Kimberly H.*, 242 AD2d 35, 39-40). Moreover, the imminent risk of harm to the child's emotional, mental, and physical health would not be alleviated by the issuance of a protective order against the child's father (*see Matter of Gabriel James M.*, 59 AD3d 448).

SKELOS, J.P., ENG, AUSTIN and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court