

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

D32394  
G/kmb

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

Argued - September 13, 2011

MARK C. DILLON, J.P.  
RANDALL T. ENG  
SANDRA L. SGROI  
ROBERT J. MILLER, JJ.

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2010-08618

DECISION & ORDER

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

(Docket No. N-32930-08)

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Peter Dailey, New York, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Larry A. Sonnenshein and Andrew S. Wellin of counsel), for petitioner-respondent.

Karen P. Simmons, Brooklyn, N.Y. (Janet Neustaetter of counsel; Tammy E. Linn on the brief), 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 an order of disposition of the Family Court, Kings County (Danoff, J.), dated August 9, 2010, as, after an inquest following his default in appearing at a fact-finding hearing, upon the denial of his request for an adjournment, and upon a fact-finding order of the same court dated April 26, 2010, in effect, granting the petitioner's unopposed motion for summary judgment, and finding that he derivatively abused the child Duane S., Jr., placed the child under the supervision of the Commissioner of Social Services of Kings County until the completion of the next permanency hearing.

ORDERED that the appeal from the order of disposition is dismissed except insofar as it brings up for review the denial of the father's request for an adjournment; and it is further,

ORDERED that the order of disposition is affirmed insofar as reviewed, without costs

October 4, 2011

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or disbursements.

On the father's appeal from the order of disposition dated August 9, 2010, he seeks to challenge so much of the Family Court's fact-finding order dated April 26, 2010, as, in effect, granted the petitioner's unopposed motion for summary judgment and found that he derivatively abused the child Duane S., Jr. Since the fact-finding order was entered upon the father's default, "review is limited to matters which were the subject of contest below," namely, the denial of the request made by the father's counsel for an adjournment (*Matter of Paulino v Camacho*, 36 AD3d 821, 822, quoting *Matter of Constance P. v Avraam G.*, 27 AD3d 754, 755; see *Atwater v Mace*, 39 AD3d 573, 574; *Tun v Aw*, 10 AD3d 651, 652; *Matter of Vidal v Mintzer*, 309 AD2d 756, 758; *Conner v Conner*, 240 AD2d 614, 615).

The granting of an adjournment for any purpose rests in the sound discretion of the trial court upon a balanced consideration of all relevant factors (see *Matter of Anthony M.*, 63 NY2d 270, 283; *Matter of Latrell S. [Christine K.]*, 80 AD3d 618, 619; *Matter of Venditto v Davis*, 39 AD3d 555, 555; *Matter of Paulino v Camacho*, 36 AD3d at 822). The determination to grant or deny an adjournment will not be overturned absent an improvident exercise of discretion (see *Matter of Anthony M.*, 63 NY2d at 283-284; *Atwater v Mace*, 39 AD3d at 574; *York v York*, 250 AD2d 841). Under the circumstances here, the Family Court providently exercised its discretion in denying the father's counsel's request for an adjournment.

DILLON, J.P., ENG, SGROI and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court