

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

D32434
Y/kmb

_____AD3d_____

Submitted - September 16, 2011

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2010-04981
2011-06844

DECISION & ORDER

In the Matter of Jessie Skyler D. (Anonymous).
Suffolk County Department of Social Services,
petitioner-respondent; Donna S. (Anonymous),
appellant, et al., respondent.
(Proceeding No. 1)

In the Matter of Kyle John Thomas D. (Anonymous).
Suffolk County Department of Social Services,
petitioner-respondent; Donna S. (Anonymous),
appellant, et al., respondent.
(Proceeding No. 2)

(Docket Nos. B-12073-09, B-12074-09)

Robert C. Mitchell, Central Islip, N.Y. (Timothy V. Sorell of counsel), for appellant.

Christine Malafi, County Attorney, Central Islip, N.Y. (Mary Ann Filosa of counsel),
for petitioner-respondent.

Debra A. Byrnes, Centereach, N.Y., attorney for the children.

In related proceedings pursuant to Social Services Law § 384-b to terminate parental rights on the ground of abandonment, the mother appeals (1), as limited by her brief, from so much of a fact-finding order of the Family Court, Suffolk County (Hoffmann, J.), dated April 20, 2010, as, after a fact-finding hearing, found that she abandoned the subject children, and (2) from an order of disposition of the same court dated May 7, 2010, as, upon the fact-finding order, terminated her

October 4, 2011

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parental rights and transferred custody and guardianship of the subject children to the Suffolk County Department of Social Services.

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the appeal from the fact-finding order is dismissed, without costs or disbursements, as the fact-finding order was superseded by the order of disposition and is brought up for review on the appeal from the order of disposition; and it is further,

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

The petitioner established by clear and convincing evidence that the mother abandoned the subject children by failing to visit or maintain contact with the petitioner or the subject children for a six-month period preceding the filing of the petition to terminate her parental rights (*see* Social Services Law § 384-b; *Matter of I.R.*, 153 AD2d 559, 559-560). To the extent that there was any evidence that the mother was in contact with either the children or the petitioner during the relevant time period, such contact was too minimal, sporadic, and insubstantial to overcome the showing of abandonment (*see Matter of Destiny Aaliyah K.*, 62 AD3d 708, 708; *Matter of Jeremiah Kwimea T.*, 10 AD3d 691, 692; *Matter of Kerry J.*, 288 AD2d 221, 221; *see also Matter of Xtacys Nayarie M. [Jose Ruben M.]*, 74 AD3d 970, 971; *Matter of Peteress Reighly B.*, 62 AD3d 695, 696). Moreover, the mother's contention that she was prevented or discouraged from visiting or contacting the children during the six months preceding the filing of the petition is without merit.

The mother's remaining contentions are without merit.

Under the circumstances, the Family Court properly concluded that it was in the best interests of the children to terminate the mother's parental rights (*see Matter of Destiny Aaliyah K.*, 62 AD3d at 709; *Matter of Jeremiah Kwimea T.*, 10 AD3d at 692).

SKELOS, J.P., DICKERSON, LEVENTHAL and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court