

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

D32978
O/kmb

_____AD3d_____

Submitted - November 3, 2011

DANIEL D. ANGIOLILLO, J.P.
L. PRISCILLA HALL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2011-04298

DECISION & ORDER

In the Matter of Niviya K. (Anonymous).
Administration for Children's Services, respondent;
Alfonzo M. (Anonymous), appellant.

(Docket No. N-4094-08)

Robert Hausner, Mineola, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Edward F.X. Hart and
Marta Ross of counsel), for respondent.

Steven Banks, New York, N.Y. (Tamara Steckler and Judith Stern of counsel),
attorney for the child.

In a child protective proceeding pursuant to Family Court Act article 10, the father appeals from an order of disposition of the Family Court, Queens County (Richroath, J.), dated March 21, 2011, which, upon a fact-finding order of the same court dated February 4, 2011, made after a hearing, finding that he neglected the subject child, placed the subject child in the custody of the Commissioner of Social Services until the completion of the first subsequent permanency hearing, held on July 18, 2011. The appeal from the order of disposition brings up for review the fact-finding order.

ORDERED that the appeal from so much of the order of disposition as placed the subject child in the custody of the Commissioner of Social Services until the completion of the first subsequent permanency hearing, held on July 18, 2011, is dismissed as academic, without costs or disbursements; and it is further,

November 22, 2011

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MATTER OF K. (ANONYMOUS), NIVIYA

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

The appeal from so much of the order of disposition as placed the subject child in the custody of the Commissioner of Social Services until the completion of the first subsequent permanency hearing, held on July 18, 2011, must be dismissed as academic, as the period of placement has already expired (*see Matter of Ifeiyi O.*, 53 AD3d 501). However, the adjudication of neglect constitutes a permanent and significant stigma which might indirectly affect the father's status in future proceedings. Therefore, the appeal from the portion of the order of disposition which brings up for review the finding of neglect is not academic (*id.*).

The Family Court's determination that the father neglected his infant daughter was supported by a preponderance of the evidence (*see* Family Ct Act § 1012[f][i][B]; § 1046[b][i]). The evidence established, inter alia, that the father knew of the mother's drug use and failed to exercise a minimum degree of care to ensure that the mother did not abuse drugs during her pregnancy (*see Matter of Carlina B.*, 61 AD3d 752; *Matter of K. Children*, 253 AD2d 764; *cf. Matter of Cantina B.*, 26 AD3d 327). Accordingly, the Family Court properly determined that the father neglected the child.

ANGIOLILLO, J.P., HALL, AUSTIN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court