

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

D33032  
N/nl

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Submitted - October 31, 2011

REINALDO E. RIVERA, J.P.  
THOMAS A. DICKERSON  
RANDALL T. ENG  
SHERI S. ROMAN, JJ.

2011-03039  
2011-03041

DECISION & ORDER

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

(Docket No. NN-05859-10)

Ulrich Fritsche, Staten Island, N.Y., for appellant.

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

Placidus Aguwa, Jamaica, N.Y., attorney for the child.

In a child neglect proceeding pursuant to Family Court Act article 10, the mother appeals (1), as limited by her brief, from so much of an order of fact-finding of the Family Court, Queens County (McGowan, J.), dated October 21, 2010, as, after a hearing, found that she had neglected the subject child, and (2) from an order of disposition of the same court dated January 20, 2011, which, inter alia, upon the order of fact-finding, and after a hearing, directed her to comply with the recommendation of the Administration for Children's Services that she complete domestic violence, parenting, individual counseling, anger management, and substance abuse programs.

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appeal from the order of fact-finding is dismissed, without costs or disbursements, as the order of fact-finding was superseded by the order of disposition and is brought up for review on the appeal from the order of disposition; and it is further,

November 29, 2011

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MATTER OF S. (ANONYMOUS), ARIELLA

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

“[A] party seeking to establish neglect must show, by a preponderance of the evidence (see Family Ct Act § 1046[b][i]), first, that a child’s physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired and second, that the actual or threatened harm to the child is a consequence of the failure of the parent or caretaker to exercise a minimum degree of care in providing the child with proper supervision or guardianship” (*Nicholson v Scoppetta*, 3 NY3d 357, 368; see *Matter of Tajani B.*, 49 AD3d 874, 875).

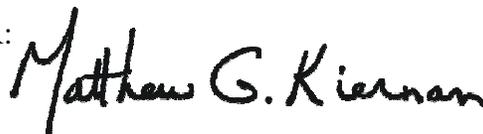
“While domestic violence may be a permissible basis upon which to make a finding of neglect, ‘[n]ot every child exposed to domestic violence is at risk of impairment.’ A finding of neglect is proper where a preponderance of the evidence establishes that the child’s physical, mental, or emotional condition was impaired or was in danger of becoming impaired by the parent’s commission of an act, or acts, of domestic violence in the child’s presence” (*Matter of Kiara C.*, 85 AD3d 1025, 1026, quoting *Nicholson v Scoppetta*, 3 NY3d at 375; see *Matter of Briana F.*, 69 AD3d 718, 719; *Matter of Jordan E.*, 57 AD3d 539, 540).

Here, a preponderance of the evidence established that the mother neglected the subject child by engaging in acts of domestic violence against the father in the child’s presence that created an imminent danger of impairing the child’s physical, mental, or emotional condition (see Family Ct Act § 1012[f][i][B]; *Matter of Kiara C.*, 85 AD3d at 1026; *Matter of Jordan E.*, 57 AD3d at 540; *Matter of Andrew Y.*, 44 AD3d 1063, 1064). The evidence adduced at the fact-finding hearing established that the mother walked past the father’s house with the child, who was then less than six months old, despite having an order of protection against the father. When the mother encountered the father on the street, the father removed the child from her stroller and carried her into his house. Instead of immediately contacting the police, the mother pursued the father into his home and engaged him in a struggle over the child. The mother engaged in a physical altercation with the father in the presence of the child, which she escalated by stabbing the father with a knife. At some point during the altercation, the child was left unattended outside a closed door about three feet away from the parties, which is when the stabbing occurred. Under the circumstances, the Family Court properly determined that, as a result of the mother’s conduct, the child’s physical, mental, or emotional condition was in imminent danger of becoming impaired (see Family Ct Act § 1012[f][i][B]).

The mother’s remaining contentions are without merit.

RIVERA, J.P., DICKERSON, ENG and ROMAN, JJ., concur.

ENTER:



Matthew G. Kiernan  
Clerk of the Court