

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

D33244
C/prt

_____AD3d_____

Argued - November 29, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
RANDALL T. ENG
LEONARD B. AUSTIN, JJ.

2011-00048

DECISION & ORDER

In the Matter of Colton A. (Anonymous).
Suffolk County Department of Social Services,
respondent; Stephanie G. (Anonymous), appellant.
(Proceeding No. 1)

In the Matter of Giovanna G. (Anonymous).
Suffolk County Department of Social Services,
respondent; Stephanie G. (Anonymous), appellant.
(Proceeding No. 2)

In the Matter of Juliana G. (Anonymous).
Suffolk County Department of Social Services,
respondent; Stephanie G. (Anonymous), appellant.
(Proceeding No. 3)

In the Matter of Santo G. (Anonymous).
Suffolk County Department of Social Services,
respondent; Stephanie G. (Anonymous), appellant.
(Proceeding No. 4)

(Docket Nos. N-12238-10, N-12239-10, N-12240-10,
N-12241-10)

Tor Jacob Worsoe, Jr., Holtsville, N.Y., for appellant.

Christine Malafi, County Attorney, Central Islip, N.Y. (Gary Rosenthal of counsel),
for respondent.

December 13, 2011

Page 1.

MATTER OF A. (ANONYMOUS), COLTON
MATTER OF G. (ANONYMOUS), GIOVANNA
MATTER OF G. (ANONYMOUS), JULIANA
MATTER OF G. (ANONYMOUS), SANTO

Diane B. Groom, Central Islip, N.Y., attorney for the children.

In four related child abuse and neglect proceedings pursuant to Family Court Act article 10, the mother appeals, as limited by her notice of appeal and brief, from so much of a fact-finding order of the Family Court, Suffolk County (Freundlich, J.), dated November 22, 2010, made after a fact-finding hearing, as determined that she neglected the subject children.

ORDERED that the fact-finding order is reversed insofar as appealed from, on the law and the facts, without costs or disbursements, the petitions are denied, the proceedings are dismissed, and the matter is remitted to the Family Court, Suffolk County, to vacate the orders of disposition and orders of protection, if any, issued as a result thereof.

A “[n]eglected child” is defined as one whose “physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of [a] parent . . . to exercise a minimum degree of care . . . in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof” (Family Ct Act § 1012[f][i][B]; *see Matter of Amelia W. [Gloria D. W.]*, 77 AD3d 841, 842; *Matter of Andrew S.*, 43 AD3d 1170). As the mother correctly contends, the Family Court’s finding of neglect against her was not supported by a preponderance of the evidence (*see* Family Ct Act § 1046[b][i]). The evidence presented at the fact-finding hearing established that, inter alia, the mother had been prescribed pain medications. It also established that the mother’s doctor had not recommended that she refrain from driving while under the influence of the medications. Thus, the Family Court incorrectly determined that the mother neglected the subject children by driving with them while under the influence of the medications against her doctor’s recommendation.

Further, uncorroborated hearsay evidence is not permitted in a fact-finding hearing (*see* Family Ct Act § 1046[b][iii]; § 1046[c]; *Matter of Nicole V.*, 71 NY2d 112, 118-119; *Matter of Tristan R.*, 63 AD3d 1075, 1076). Thus, the evidence that the mother allowed one of the subject children to supervise his siblings while she slept was inadmissible. In any event, the mother established by a preponderance of the evidence that she did not fail to appropriately supervise the subject children (*see* Family Ct Act § 1012[f][i][B]; § 1046[b][I]).

The parties’ remaining contentions are without merit.

RIVERA, J.P., BALKIN, ENG and AUSTIN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

December 13, 2011

Page 2.

MATTER OF A. (ANONYMOUS), COLTON
MATTER OF G. (ANONYMOUS), GIOVANNA
MATTER OF G. (ANONYMOUS), JULIANA
MATTER OF G. (ANONYMOUS), SANTO