

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

D33303
C/kmb

_____AD3d_____

Submitted - November 22, 2011

WILLIAM F. MASTRO, A.P.J.
L. PRISCILLA HALL
SANDRA L. SGROI
JEFFREY A. COHEN, JJ.

2011-01165

DECISION & ORDER

In the Matter of Zaire D. (Anonymous).
Administration for Children's Services,
petitioner-respondent; Benellie R. (Anonymous),
appellant, et al., respondent.

(Docket No. N-7366-09)

Michael A. Fiechter, Bellmore, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Stephen J. McGrath and Susan B. Eisner of counsel), for petitioner-respondent.

Steven Banks, New York, N.Y. (Tamara A. Steckler and Susan Clement of counsel), attorney for the child.

In a child protective proceeding pursuant to Family Court Act article 10, the mother appeals, as limited by her brief, from so much of an order of fact-finding and disposition (one paper) of the Family Court, Kings County (Danoff, J.), dated January 5, 2011, as, after fact-finding and dispositional hearings, found that she had neglected the subject child, and placed the child in the custody of the New York City Commissioner of Social Services.

ORDERED that the order of fact-finding and disposition is affirmed insofar as appealed from, without costs or disbursements.

Contrary to the mother's contention, the Family Court's determination that she regularly used marijuana, and committed acts of domestic violence against the father while the father was holding the child in his arms, is supported by a preponderance of the evidence (*see* Family Ct

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Act § 1046[b][i]). This evidence was sufficient to support the Family Court’s finding that the mother neglected the child (*see* Family Ct Act § 1012[f][i][B]; § 1046[a][iii]; *Matter of Ajay Sumert D. [Vijay Anand D.]*, 87 AD3d 637, 638, *lv denied* _____NY3d_____, 2011 NY Slip Op 90180 [2011]; *Matter of Ndeye D. [Benjamin D.]*, 85 AD3d 1026, 1027; *Matter of Kiara C. [David C.]*, 85 AD3d 1025, 1026; *Matter of Gregory S.*, 39 AD3d 552; *Matter of Michelle L.*, 24 AD3d 443, 444; *Matter of Ayana Jean L.*, 23 AD3d 472, 472-473; *Matter of Aminat O.*, 20 AD3d 480, 481; *Matter of Sade W.*, 286 AD2d 770, 771). Additionally, the Family Court providently exercised its discretion in drawing a negative inference against the mother for her failure to testify at the hearing (*see Matter of Tajani B.*, 49 AD3d 876, 877; *Matter of Karen Patricia G.*, 44 AD3d 658, 660; *Matter of Christopher L.*, 19 AD3d 597, 598).

There is no basis in the record to overturn the Family Court’s credibility determination regarding the father’s uncontroverted testimony, which is “entitled to considerable deference on appeal” (*Matter of Sadiq H. [Karl H.]*, 81 AD3d 647, 647; *see Matter of Andrew B. [Deborah B.]*, 73 AD3d 1036; *Matter of Samantha B.*, 5 AD3d 590, 591). The fact that the father was seeking custody of the child did not require wholesale rejection of his testimony, which implicated him, as well as the mother, in drug use (*see Matter of Angelyna G.*, 46 AD3d 304, 304).

The Family Court providently exercised its discretion regarding the “scope and manner” of cross-examination of the father (*Salm v Moses*, 13 NY3d 816, 817; *see Bernstein v Bodean*, 53 NY2d 520, 529; *Hoberg v Shree Granesh, LLC*, 85 AD3d 965, 967) by precluding certain questions that were “unnecessarily repetitive” or argumentative (*Feldsberg v Nitschke*, 49 NY2d 636, 643; *see Bernstein v Bodean*, 53 NY2d at 529; *People v Harrison*, 151 AD2d 778, 779).

While the mother is correct that the Family Court erred in admitting into evidence the Domestic Incident Report containing the father’s out-of-court statements made to the police concerning the domestic dispute (*see Matter of Imani B.*, 27 AD3d 645, 646), the Family Court possessed sufficient information to make its findings of fact without the statements, and it did not rely upon the statements in its fact-finding (*see Matter of Perez v Sepulveda*, 51 AD3d 673, 673-674; *Matter of Yolanda D.*, 218 AD2d 648, 651-652, *affd* 88 NY2d 790).

MASTRO, A.P.J., HALL, SGROI and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court