

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

D33399  
H/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - November 28, 2011

PETER B. SKELOS, J.P.  
JOHN M. LEVENTHAL  
ARIEL E. BELEN  
SHERI S. ROMAN, JJ.

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2010-08583  
2010-08589  
2011-11347  
2011-11348

DECISION & ORDER ON MOTION

In the Matter of Max F. (Anonymous), Jr.  
Nassau County Department of Social Services,  
respondent; Emma F.-G. (Anonymous), appellant.  
(Proceeding No. 1)

In the Matter of Andrea L. H. (Anonymous).  
Nassau County Department of Social Services,  
respondent; Emma F. (Anonymous), appellant.  
(Proceeding No. 2)

In the Matter of Elijah-Khalil H. (Anonymous).  
Nassau County Department of Social Services,  
respondent; Emma F. (Anonymous), appellant.  
(Proceeding No. 3)

In the Matter of Kai Ariyian H. (Anonymous).  
Nassau County Department of Social Services,  
respondent; Emma F. (Anonymous), appellant.  
(Proceeding No. 4)

In the Matter of Kennard C. R. (Anonymous), Jr.

December 27, 2011

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MATTER OF F. (ANONYMOUS), MAX, JR.  
MATTER OF H. (ANONYMOUS), ANDREA L.  
MATTER OF H. (ANONYMOUS), ELIJAH-KHALIL  
MATTER OF H. (ANONYMOUS), KAI ARIYIAN  
MATTER OF R. (ANONYMOUS), KENNARD C., JR.

Nassau County Department of Social Services,  
respondent; Emma F. (Anonymous), appellant.  
(Proceeding No. 5)

(Docket Nos. NN-11260-08, NN-11264-08,  
NN-11265-08, NN-11266-08, NN-11267-08)

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Lisa Siano, Bellmore, N.Y., for appellant.

In a child protective proceeding pursuant to Family Court Act article 10, the appeal is from (1) an order of fact-finding of the Family Court, Nassau County (Dane, J.), dated July 20, 2010, which, after a fact-finding hearing, found that the appellant had neglected the child Max F., Jr., (2) an order of fact-finding of the same court, also dated July 20, 2010, which, after the fact-finding hearing, found that the appellant had neglected the children Andrea L. H., Elijah-Khalil H., Kai Ariyian H., and Kennard C. R., Jr., and (3) two orders of protection of the same court, also dated July 20, 2010. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738), in which she moves to be relieved of her assignment to prosecute these appeals.

ORDERED that the motion is granted, assigned counsel is relieved as counsel for the appellant, and she is directed to turn over all papers in her possession to new counsel assigned herein; and it is further,

ORDERED that Arza Feldman, 626 Reckson Plaza, West Tower, 6th floor, Uniondale, N.Y. 11556, is assigned as counsel to perfect the appeals; and it is further,

ORDERED that new counsel shall serve and file a brief on behalf of the appellant within 90 days of the date of this decision and order and the respondent shall serve and file its brief within 120 days of the date of this decision and order. By prior order on certification of this Court dated December 6, 2010, the appellant was granted leave to prosecute the appeal as a poor person, with the appeal to be heard on the original papers (including a certified transcript of the proceedings) and on the briefs of the parties, who were directed to file nine copies of their respective briefs and to serve one copy on each other.

The brief submitted by the appellant's counsel pursuant to *Anders v California* (386 US 738) was deficient in that counsel failed to analyze any possible appellate issues or highlight anything in the record that might arguably support the appeal (*id.* at 744; *see Matter of Giovanni S. [Jasmin A.]*, \_\_\_\_\_AD3d\_\_\_\_\_ 2011 NY Slip Op 07846 [2d Dept 2011]; *People v Stokes*, 95 NY2d 633, 637; *People v Saunders*, 52 AD2d 833). To the contrary, the "argument" section of counsel's brief merely states in conclusory fashion: "The undersigned has fully analyzed the record, performed the necessary legal research, spoke to Appellant, the Attorneys for the Children and trial

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MATTER OF F. (ANONYMOUS), MAX, JR.  
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counsel for Appellant, and discussed the analysis with Appellant following review of the transcript and completion of legal research, and it is the opinion of the undersigned that there are no non-frivolous issues to raise on appeal.” Accordingly, the appellant is entitled to new counsel (*see People v Barger*, 72 AD3d 696; *People v Henry*, 143 AD2d 277, 278).

Moreover, upon this Court’s independent review of the record, we conclude that nonfrivolous issues exist, including, but not necessarily limited to, whether the finding of neglect was supported by a preponderance of the evidence (*see* Family Ct Act §§ 1012[f][i], 1046[b][i]), whether the Family Court improvidently exercised its discretion in denying the appellant’s request for substitution of counsel, and whether the appellant was afforded the effective assistance of counsel.

SKELOS, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court