

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

D33401
O/kmb

_____AD3d_____

Argued - December 5, 2011

PETER B. SKELOS, J.P.
ARIEL E. BELEN
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2011-01936
2011-01937

DECISION & ORDER

In the Matter of Seth P. (Anonymous), petitioner-respondent,
v Margaret D. (Anonymous), respondent-appellant;
Terrance D. (Anonymous), nonparty-appellant;
Karen P. Simmons, nonparty-respondent.

(Docket Nos. P-12540-08, P-12541-08)

Mark Diamond, New York, N.Y., for appellants.

Karen P. Simmons, Brooklyn, N.Y. (Janet Neustaetter of counsel), attorney for the children.

In two paternity proceedings pursuant to Family Court Act article 5, the mother and nonparty Terrance D. appeal (1), as limited by their brief, from so much of an order of the Family Court, Kings County (Krauss, J.), dated January 19, 2011, as, without a hearing, granted that branch of the cross motion of the attorney for the children which was to equitably estop the mother from denying that the petitioner is the father of the subject children, denied their motion to suspend or modify the petitioner's visitation with the subject children, granted the petition, and adjudicated the petitioner to be the father of the subject children, and (2) from an order of filiation of the same court, also dated January 19, 2011, adjudging the petitioner to be the father of Kevin P.D., one of the subject children.

ORDERED that on the Court's own motion, the notice of appeal from the order and the order of filiation is deemed an application for leave to appeal from both orders, and leave to appeal is granted (*see* Family Ct Act § 1112[a]); and it is further,

December 27, 2011

MATTER OF P. (ANONYMOUS) v D. (ANONYMOUS)

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ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements; and it is further,

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

In 1998, the petitioner and the appellant Margaret D. (hereinafter the mother), who was married to the nonparty-appellant Terrance D., were engaged in a sexual relationship. On May 21, 1999, the mother gave birth to twins. From the time the twins were born to approximately 2007 or 2008, the mother permitted the petitioner to hold himself out as the children's biological father and permitted them to develop a parent-child relationship. She also allowed the children to develop a relationship with the paternal grandmother. In May 2008, after the mother began to keep the children away from the petitioner, the petitioner commenced these two paternity proceedings (one as to each child). The Family Court applied the doctrine of equitable estoppel in adjudicating that the petitioner was the father of the children.

“The paramount concern in applying equitable estoppel in paternity cases is the best interests of the subject child[ren]” (*Matter of Leonardo Antonio V. v Estate of Joanna B.*, 82 AD3d 1253, 1254; see *Matter of Shondel J. v Mark D.*, 7 NY3d 320, 326; *Matter of Juan A. v Rosemarie N.*, 55 AD3d 827, 827-828). “Since the Family Court was presented with sufficient information to make a determination as to the subject child[ren]'s best interests, the Family Court properly granted the . . . petition on the ground of equitable estoppel without conducting a hearing” (*Matter of Leonardo Antonio V. v Estate of Joanna B.*, 82 AD3d at 1254; see *Matter of Maurice T. v Mark P.*, 23 AD3d 567; *Matter of Griffin v Marshall*, 294 AD2d 438, 439). Furthermore, the Family Court possessed sufficient information to render, without a hearing, an informed visitation determination consistent with the best interests of the children (see *Matter of Perez v Sepulveda*, 60 AD3d 1072, 1073; *Matter of Perez v Sepulveda*, 51 AD3d 673, 673-674; *Matter of Hom v Zullo*, 6 AD3d 536).

SKELOS, J.P., BELEN, LOTT and COHEN, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court