

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

D34041
O/kmb

_____AD3d_____

Argued - January 26, 2012

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2011-05417

DECISION & ORDER

In the Matter of DeAndre S. (Anonymous).
Administration for Children's Services, petitioner-
respondent; Cleon W. (Anonymous), appellant;
Latoya F. S. (Anonymous), nonparty-respondent.

(Docket No. N-10373/11)

Philip L. Kamaras, Brooklyn, N.Y., for appellant.

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

Joel Borenstein, Brooklyn, N.Y., for nonparty-respondent.

Karen P. Simmons, Brooklyn, N.Y. (Janet Neustaetter and Barbara H. Dildine of
counsel), attorney for the child.

In a child protective proceeding pursuant to Family Court Act article 10, the father
appeals, as limited by his brief, from so much of an order of the Family Court, Kings County
(Olshansky, J.), dated May 10, 2011, as, after a hearing, denied his application for the return of the
child to his custody pursuant to Family Court Act § 1028 and continued the temporary release of the
child to the custody of the mother.

ORDERED that the order is affirmed insofar as appealed from, without costs or
disbursements.

February 21, 2012

MATTER OF S. (ANONYMOUS), DeANDRE

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Pursuant to Family Court Act § 1028, an application for return of a child “shall” be granted unless the court finds that “the return presents an imminent risk to the child’s life or health” (Family Ct Act § 1028[a]). In order to justify a finding of imminent risk to life or health for removal of a child, an agency need not prove that the child has suffered actual injury. Rather, a court engages in a fact-intensive inquiry to determine whether the child’s physical or emotional health is at risk (*see Matter of Martha A. [Diana C.]*, 75 AD3d 476, 477, citing *Nicholson v Scoppetta*, 3 NY3d 357). In reaching its determination, the “court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal; [i]t must balance that risk against the harm removal might bring, and it must determine factually which course is in the child’s best interests” (*Nicholson v Scoppetta*, 3 NY3d at 378).

The record provides a sound and substantial basis for the Family Court’s decision to deny the father’s application for the return of the child to his custody pursuant to Family Ct Act § 1028, and to continue the temporary release of the child to the custody of the mother (*see* Family Ct Act §§ 1028, 1046).

RIVERA, J.P., ENG, HALL and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court