

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

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Submitted - September 11, 2012

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

2012-01481

DECISION & ORDER

In the Matter of Chavah T. (Anonymous).
Rockland County Department of Social Services,
Child Protective Services, appellant, v Moishe T.
(Anonymous), respondent.

(Docket No. N-2949-11)

Jeffrey Fortunato, New City, N.Y. (Barbara M. Wilmit of counsel; E. Lewis Jefferies on the brief), for appellant.

Gribetz & Loewenberg, PLLC, New City, N.Y. (Richard S. Pakola, Jr., of counsel), for respondent.

Francesca D. G. Eugene, New City, N.Y., attorney for the child.

In a child protective proceeding pursuant to Family Court Act article 10, the petitioner appeals, as limited by its brief, from stated portions of an order of the Family Court, Rockland County (Eisenpress, J.), dated February 9, 2012, which, inter alia, modified a temporary order of protection dated January 23, 2012, by awarding the father daily visitation with the subject child at the family home, for five hours a day, and directing the mother to supervise visitation pending final determination of the proceeding. By decision and order dated February 27, 2012, this Court stayed enforcement of so much of the order dated February 9, 2012, as directed the mother to supervise visitation between the subject child and the father, and directed the petitioner to supervise the visitation pending hearing and determination of the appeal.

October 17, 2012

MATTER OF T. (ANONYMOUS), CHAVAH

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ORDERED that the order dated February 9, 2012, is reversed insofar as appealed from, on the law, without costs or disbursements, and the temporary order of protection dated January 23, 2012, is reinstated pending final determination of the proceeding.

This proceeding was commenced by the Rockland County Department of Social Services, Child Protective Services (hereinafter the petitioner), to protect the subject child from the father based upon allegations that he had sexually abused an unrelated teenage boy. A temporary order of protection was issued on November 2, 2011, which excluded the father from the family home and directed him to stay at least 500 feet away from the child. The temporary order of protection was modified by order dated January 23, 2012, by awarding the father visitation with the child at the petitioner's offices under the supervision of either the petitioner or certain court-approved supervisors, if the father was able to pay for their services. The temporary order of protection was modified again, by order dated February 9, 2012, which, inter alia, awarded the father daily visitation with the child at the family home, for five hours a day, and directed the mother to supervise the visitation. The petitioner appeals from stated portions of the order dated February 9, 2012, and we reverse the order insofar as appealed from.

The allegations against the father raise concern for the safety of the child because the father's alleged conduct demonstrates "such an impaired level of parental judgment as to create a substantial risk of harm for any child in [his] care" (*Matter of Ramsay M.*, 17 AD3d 678, 679, quoting *Matter of Dutchess County Dept. of Soc. Servs. [Brittney C.]*, 242 AD2d 533, 534; see *Matter of Kennedy M.*, 89 AD3d 1544, 1545; *Matter of Jasmine A.*, 18 AD3d 546; *Matter of Rasheda S.*, 183 AD2d 770). Moreover, the record raises concern that the mother would not provide proper supervision because she does not believe the allegations of sexual abuse that had been made against the father (*cf. Matter of Naomi R.*, 296 AD2d 503, 504). Under these circumstances, "the safer course is to maintain the status quo until after a full fact-finding hearing" (*id.* at 504).

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

ENTER:


Aprilanne Agostino
Clerk of the Court