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

D36614
O/kmb

_____AD3d_____ Argued - October 12, 2012

MARK C. DILLON, J.P.
LEONARD B. AUSTIN
SANDRA L. SGROI
JEFFREY A. COHEN, JJ.

2010-09556 DECISION & ORDER
2011-07546
2011-07552
2011-08373
2011-08375

In the Matter of Forrest S.-R. (Anonymous).
Administration for Children's Services,
petitioner-respondent; Shirley X. S. (Anonymous),
appellant; Forrest R. (Anonymous), nonparty-respondent.

(Index No. NN-19849-10)

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

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Larry A. Sonnenshein and Diana Lawless of counsel), for petitioner-respondent.

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

In a neglect proceeding pursuant to Family Court Act article 10, the mother appeals from (1) an order of the Family Court, Kings County (Beckoff, J.), dated August 24, 2010, which, after a hearing, inter alia, denied her application pursuant to Family Court Act § 1028 for the return of the subject child to her, and extended the award of temporary custody to the father, which was initially awarded in an order dated July 2, 2010, (2) an order of the same court (Danoff, J.), dated July 19, 2011, which denied her motion pursuant to CPLR 5015 to vacate the order dated July 2,

2010, (3) an order of the same court (Danoff, J.), also dated July 19, 2011, which, inter alia, precluded her from filing motions without prior court approval, (4) an order of the same court (Danoff, J.) dated August 11, 2011, which limited her visitation to supervised visitation for four hours per week and prohibited her "from being alone with the child or taking the child to the restroom or photographing the child," and (5) an order of the same court (Danoff, J.), dated August 12, 2011, which prohibited her from being accompanied by any friends or relatives during supervised visits.

ORDERED that the appeal from the second order dated July 19, 2011, which precluded the mother from filing motions without prior court approval, is dismissed as abandoned, without costs or disbursements; and it is further,

ORDERED that the first order dated July 19, 2011, which denied the mother's motion to vacate the order dated July 2, 2010, the order dated August 24, 2010, and the order dated August 11, 2011, are affirmed, without costs or disbursements; and it is further,

ORDERED that the order dated August 12, 2011, is reversed, on the law, without costs or disbursements.

Since the mother raises no issues on appeal with respect to the second order dated July 19, 2011, which precluded her from filing motions without prior court approval, the appeal from that order must be dismissed as abandoned (*see Seaway Capital Corp. v 500 Sterling Realty Corp.*, 94 AD3d 856, 857).

There is no merit to the mother's contention that she was deprived of notice and an opportunity to be heard pursuant to Family Court Act § 1027 when the subject child was removed from her custody and transferred to the temporary custody of the father by order of the Family Court, Kings County, dated July 2, 2010. Due process is afforded to a parent by the procedure set forth in Family Court Act § 1028 for the return of a child temporarily removed (*see Nicholson v Scoppetta*, 3 NY3d 357, 376 n 8; *Matter of Cory M.*, 307 AD2d 1035; *Matter of Michael Z.*, 40 AD2d 1034). Here, the Family Court fully afforded the mother that relief and, after a hearing pursuant to Family Court Act § 1028, properly denied her application for the return of the child and properly extended the award of temporary custody to the father. The determination in the order dated August 24, 2010, was supported by evidence adduced at the hearing which established that the mother interfered with the father's visitation with false allegations of abuse (*see Matter of Ramazam U.*, 303 AD2d 516, 517), and subjected the child to unnecessary examinations by both a doctor and by the police in an effort to sustain her false allegations (*see Matter of Morgan P.*, 60 AD3d 1362).

The mother's motion to vacate the order dated July 2, 2010, was properly denied, on the ground that that order was superseded by the order dated August 24, 2010 (*see Matter of Anthony TT.*, 61 AD3d 1137).

However, the order dated August 12, 2012, must be reversed. That order granted relief requested when the mother's counsel was not present and could not respond, in violation of the mother's right to counsel (*see* Family Ct Act § 262; *Matter of Casey N.*, 59 AD3d 625).

The mother's remaining contentions either are without merit or need not be addressed in light of our determination.

DILLON, J.P., AUSTIN, SGROI and COHEN, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court