

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

D36650
C/kmb

_____AD3d_____

Submitted - November 9, 2012

WILLIAM F. MASTRO, J.P.
DANIEL D. ANGIOLILLO
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-01929
2011-01931
2011-01932

DECISION & ORDER

In the Matter of Shamika K. L. N. (Anonymous).
Community Counseling and Mediation, petitioner-
respondent; Melvin S. L. (Anonymous), appellant,
et al., respondent.
(Proceeding No. 1)

In the Matter of Sh'Kenya C. L. N. (Anonymous).
Community Counseling and Mediation, petitioner-
respondent; Melvin S. L. (Anonymous), appellant,
et al., respondent.
(Proceeding No. 2)

In the Matter of Shalaun D. L. N. (Anonymous).
Community Counseling and Mediation, petitioner-
respondent; Melvin S. L. (Anonymous), appellant,
et al., respondent.
(Proceeding No. 3)

(Docket Nos. B-18017/08, B-18019/08, B-18020/08)

Elliot Green, Brooklyn, N.Y., for appellant.

Law Offices of James M. Abramson, PLLC, New York, N.Y. (Dawn M. Orsatti of
counsel), for petitioner-respondent.

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MATTER OF N. (ANONYMOUS), SHAMIKA K. L.
MATTER OF N. (ANONYMOUS), SH'KENYA C. L.
MATTER OF N. (ANONYMOUS), SHALAUN D. L.

The Law Offices of Kraus, Diamond & Fee, PLLC, New York, N.Y. (Elizabeth J. Fee of counsel), attorney for the children.

In three related proceedings pursuant to Social Services Law § 384-b to terminate parental rights on the ground of permanent neglect, Melvin S. L. appeals from three orders of fact-finding and disposition of the Family Court, Kings County (Beckoff, J.) (one as to each child), all dated February 3, 2011, which, after fact-finding and dispositional hearings, found that he permanently neglected the subject children, terminated his parental rights, and committed custody and guardianship of the subject children to the petitioner, Community Counseling and Mediation, and to the Commissioner of Social Services of the City of New York for the purposes of adoption.

ORDERED that the appeals from so much of the two orders of fact-finding and disposition dated February 3, 2011, as terminated the father's parental rights pertaining to the children Sh'Kenya C. L. N. and Shalaun D. L. N., respectively, are dismissed as academic, without costs or disbursements; and it is further,

ORDERED that the two orders of fact-finding and disposition dated February 3, 2011, as to Sh'Kenya C. L. N. and Shalaun D. L. N., respectively, are affirmed insofar as reviewed, without costs or disbursements; and it is further,

ORDERED that the order of fact-finding and disposition dated February 3, 2011, as to Shamika K. L. N. is affirmed, without costs or disbursements.

The petitioner filed three petitions against the father in August 2008, one for each child, alleging, inter alia, that he had permanently neglected the subject children: Shamika K. L. N., born in 1995 (now 17 years old); Sh'Kenya C. L. N., born in 1994 (now 18 years old); and Shalaun D. L. N., born in 1993 (now 19 years old). The appeal from so much of the two orders of fact-finding and disposition dated February 3, 2011, as terminated the father's parental rights as to Sh'Kenya C. L. N. and Shalaun D. L. N., respectively, must be dismissed as academic since those children have reached the age of 18 (*see Matter of Teshana Tracey T. [Janet T.]*, 71 AD3d 1032, 1033; *Matter of Francisco Anthony C.F.*, 305 AD2d 410, 411). Nevertheless, the neglect findings against the father regarding these children are not academic, since an adjudication of neglect and/or derivative neglect constitutes "a permanent and significant stigma which might indirectly affect the appellant's status in future proceedings" (*Matter of Najad D. [Anonymous]*, 99 AD3d 707, quoting *Matter of Ifeiyi O.*, 53 AD3d 501, 501-502).

Contrary to the father's contentions, the Family Court properly found that he permanently neglected the children. The petitioner established by clear and convincing evidence that it made diligent efforts to assist the father in planning for the children's future by, among other things, repeatedly referring the father to individual counseling and anger management programs, advising him of the need to attend and complete the programs, and assisting him with housing (*see Matter of Star Leslie W.*, 63 NY2d 136, 142-143; *Matter of Dileina M.F. [Rosa F.]*, 88 AD3d 998, 999; *Matter of Beyonce H. [Baranaca H.]*, 85 AD3d 1168; *Matter of Teshana Tracey T. [Janet T.]*,

71 AD3d at 1033).

Notwithstanding the petitioner's efforts, the father failed to plan for the future of the children (*see* Social Services Law § 384-b[7][c]). "At a minimum, parents must take steps to correct the conditions that led to the removal of the child from their home" (*Matter of Zechariah J. [Valrick J.]*, 84 AD3d 1087, 1087-1088, *cert denied sub nom. Valrick J. v Orange County Dept. of Social Servs.*, ____ US ____, 2012 WL 235 8678, 2012 US LEXIS 6915 [US] [internal quotation marks omitted]). Here, although the father completed some of the service programs offered to him, he failed to gain insight into the problems that were preventing the children's return to his care. The testimony and evidence showed that the father was uncooperative, hostile, and unaware of how his actions affected his relationship with the children. Moreover, he never acknowledged his responsibility for the removal of the children from his care and for their reluctance to have contact with him. Nor did the father obtain adequate housing for the children. Under these circumstances, the Family Court correctly found that, despite the petitioner's diligent efforts, the father failed to adequately plan for the children's future, and, therefore, they were permanently neglected (*see Matter of Zechariah J. [Valrick J.]*, 84 AD3d at 1087-1088; *Matter of Nicholas R. [Jason S.]*, 82 AD3d 1526, 1528; *Matter of Jennifer R.*, 29 AD3d 1005, 1006). Furthermore, under the circumstances of this case, the Family Court properly determined that it was in the best interest of the child Shamika K. L. N. for the court to terminate the father's parental rights with respect to her (*see Matter of Zechariah J. [Valnick J.]*, 84 AD3d at 1087-1088).

While the father's contention that the Family Court improperly admitted into evidence certain records from the foster care agency is correct, since there was clear and convincing evidence without consideration of these records to support the Family Court's determination, any error in their admission was harmless (*see* CPLR 2002; *Matter of Lameek L.*, 226 AD2d 464, 465; *Matter of John F.*, 221 AD2d 858, 861-862; *see also Matter of Lane v Lane*, 68 AD3d 995, 998).

The father's remaining contentions are without merit.

MASTRO, J.P., ANGIOLILLO, SGROI and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

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