

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

1692

CAF 08-02192

PRESENT: SMITH, J.P., FAHEY, CARNI, AND GREEN, JJ.

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IN THE MATTER OF BARBARA A. BRAULT,  
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

DEBORAH K. SMUGORZEWSKI, RESPONDENT-APPELLANT,  
ET AL., RESPONDENT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (WILLIAM CLAUSS OF  
COUNSEL), FOR RESPONDENT-APPELLANT.

JAMES S. HINMAN, ROCHESTER, FOR PETITIONER-RESPONDENT.

LORI ROBB MONAGHAN, LAW GUARDIAN, ROCHESTER, FOR NATHAN D.H.

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Appeal from an order of the Family Court, Monroe County (Julie Anne Gordon, R.), entered September 19, 2008 in a proceeding pursuant to Family Court Act article 6. The order, among other things, awarded custody of the subject child to petitioner.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner, the child's paternal grandmother, commenced this proceeding pursuant to Family Court Act article 6 seeking custody of her grandson. Respondent mother appeals from an order that, inter alia, awarded custody of the child to the grandmother. We reject the mother's sole contention on appeal that the Referee erred in determining that there were extraordinary circumstances, thus warranting a hearing to determine whether the best interests of the child would be served by an award of custody to a nonparent. Contrary to the contention of the mother, "there was sufficient evidence before the [Referee] to support [the] finding of extraordinary circumstances, including evidence of her chronic mental illness, unstable living situation, and a failure on her part to address the special needs of the subject child" (*Matter of Donohue v Donohue*, 44 AD3d 1042, 1043; see *Matter of Katherine D. v Lawrence D.*, 32 AD3d 1350, 1351, lv denied 7 NY3d 717; cf. *Matter of Gale v Gray*, 39 AD3d 903).

Entered: December 30, 2009

Patricia L. Morgan  
Clerk of the Court