

CASELAW ON SUSPENDED JUDGEMENTS ON TPRs

By Margaret A. Burt, Esq. 3/10

If the parties do not agree to a suspended judgment, should the court order one?

NO

- not where parent in jail for more than 3 years -, **Matter of Joseph Jerome H.**, 224 AD2d 224, 637 NYS2d 401 (1<sup>st</sup> Dept. 1996)
- not where not as able as foster parents to care for child's special needs - **Matter of Tiffany A.**, 242 AD2d 709 , 662 NYS2d 796 (2<sup>nd</sup> Dept. 1997)
- not where parent continued to deny problems and was sporadic in visits -**Matter of Sonny HB.**, 249 AD2d 940, 672 NYS2d 579 (4<sup>th</sup> Dept. 1998)
- not where children had been in care since birth and were bonded to foster parent, no meaningful relationship with parent -**In Re Albert E.**, 259 AD2d 315, 686 NYS2d 421 (1<sup>st</sup> Dept. 1999), **Matter of Marie J.**, 307 AD2d 265, 762 NYS2d 263 (2<sup>nd</sup> Dept. 2003), **In Re Martin PJS.**, 2 AD3d 106, 767 NYS2d 607 (1<sup>st</sup> Dept. 2003), **In Re Alfonso D.**, \_\_AD3d\_\_, 785 NYS2d 59 (1<sup>st</sup> Dept. 2004), **In Re Christopher Jamar V.**, \_\_AD3d\_\_, 785 NYS2d 80 (1<sup>st</sup> Dept. 2004)
- recent efforts not good enough if long time in care -**Matter of Rodney D.**, 276 AD2d 333, 714 NYS2d 52 (1<sup>st</sup> Dept. 2000), **Matter of Ada MR.**, 306 AD2d 920, 760 NYS2d 802 (4<sup>th</sup> Dept. 2003), **In Re Shania Tatiara A.**, 309 AD2d 1310, 767 NYS2d 65 (1<sup>st</sup> Dept. 2003) **Matter of Donovan R.**, 10AD3d 398, 781 NYS2d 658 (2<sup>nd</sup> Dept. 2004),**In Re Andre Thomas M.**, 11 Ad3d 325, 782 NYS2d 735 (1<sup>st</sup> Dept. 2004),**In Re Charles Curbelo C.**, 12 AD3d 270, 784 NYS2d 541 (1<sup>st</sup> Dept. 2004), **Matter of Rochon Lela D.**, 37 AD3d 311, 830 NYS2d 125 (1<sup>st</sup> Dept. 2007), **Mattre of Jada Serenity H.**, 60 AD3d 469, 874 NYS2d 113 (1<sup>st</sup> Dept. 2009)
- not where mother had long history of drug use that would take even longer to resolve and children bonded to foster family who wished to adopt - **Matter of Atiba Andrew B.**, 275 AD2d 320, 712 NYS2d 560 (2<sup>nd</sup> Dept. 2000)
- not where parent still did not admit child had been abused, where it may take 2-3 years before child could safely be returned - **Matter of Kimberly B.**, 285 AD2d 982, 726 NYS2d 829 (4<sup>th</sup> Dept. 2001)
- not where mother had over 3 years left to serve in jail, no relative, foster parent who wanted to adopt had child for over 5 years - **In Re Andres Efrain C.**, 290 AD2d 257, 736 NYS2d 23 (1<sup>st</sup> Dept. 2002)

- not where mother had failed consistently to attend counseling - **In Re Yvonne Cecilea Y.**, 293 AD2d 423, 740 NYS2d 860 (1st Dept. 2002)
- not where mother had no realistic plan to find a job or housing; no presumption that a return is in child's best interests **In Re Travis Devon B.**, 295 Ad2d 205, 743 NYS2d 498 (1st Dept. 2002); no realistic plan **In Re Darzell Levar D.**, 6AD3d 239, 774 NYS2d 332 (1st Dept. 2004), **In Re Tyreese H.**, 4 AD3d 208, 772 NYS2d 51 (1st Dept. 2004) **Matter of Brendan S.** 39 AD3d 1189, 834 NYS2d 602 (4th Dept. 2007)
- mere enrollment in a drug program does not require court to grant a suspended judgement **In Re Chanelle H.**, 297 Ad2d 610, 747 NYS2d 363 (1st Dept. 2002), **Matter of Fatima G.**, 64 AD3d 652 (2nd Dept. 2009) ; no longer using drugs is not enough **In Re Rutherford Roderick T.**, 4 AD3d 213, 772 NYS2d 49 (1st Dept. 2004); completing drug program after termination filed is not enough **Matter of Alexis SD.**, 7AD3d 359, 776 NYS2d 287 (1st Dept. 2004), e
- not where mother had long history of drug use and mental illness **Matter of Yusef P.**, 298 AD2d 968, 748 NYS2d 120 (4th Dept. 2002), **Matter of Donovan W.**, 56 AD3d 1279, 868 NYS2d 451 (4th Dept. 2008)
- not where parent will be in jail for more than a year - **In Re Caresse Solonge E.**, 298 AD2d 173, 749 NYS2d 215 (1st Dept. 2002)
- not where parent unlikely to change behavior - **Matter of Susan C.**, 299 AD2d 943, 749 NYS2d 761 (4th Dept. 2002)
- not where parent failed over a lengthy time to fix problems - **In Re Jennifer R.**, 300 AD2d 13, 749 NYS2d 880 (1st Dept. 2002); **Matter of Thelonius B.**, 299 AD2d 775, 751 NYS2d 99 (3rd Dept. 2002)
  - not even where there was positive visitation where father failed to complete treatment for over 2 years and the child had spent whole life with foster parents who wished to adopt- **Matter of Brandon OO.**, 302 AD2d 803, 754 NYS2d 593 (3rd Dept. 2003)
  - not where mother had been largely noncompliant with service plan and child wants to be adopted **Matter of Arianna OO.**, 29 AD3d 1117, 814 NYS2d 779 (3rd Dept. 2006)
  - not where mother had been inconsistent in visitation and did not participate meaningfully in children's counseling even though mother had financial and transportation problems **Matter of Danielle N.**, 817 NYS2d 841 (4th Dept. 2006)

- not where court wanted to give mother a “final chance” – supposed to be only if in child’s best interests and not where mother had long history of drug abuse and relapses, child’s visits not good, child in care since birth with foster parents who want to adopt. **Matter of Brian C.**, 32 AD3d 1226, 820 NYS2d 838 (4<sup>th</sup> Dept. 2006)
- not even where mother had made “exemplary efforts” and completed her service programs, went to children’s medical and counseling sessions and went to every visits where mother was still “incapable of properly caring” for children’s special needs – **Matter of Kenneth D. Jr.** 32 AD3d 1231, 821 NYS2d 698 (4<sup>th</sup> Dept. 2006)
- no where mother always relapsed when she got unsupervised visits even though currently now sober and even though no adoptive home for child at present – **Matter of Raine QQ.**, 51 AD3d 1106, 857 NYS2d 333 (3<sup>rd</sup> Dept. 2008)
- not where child has no meaningful relationship with the mother and does not want to be reunited with her - **Matter of Anthony E.**, 59 AD3d 929, 872 NYS2d 762 (4<sup>th</sup> Dept. 2009)
- no where mother still lives in abusive relationship with father, fails to do services, does not visit - **Matter of Chandel B.**, 61 AD3d 546, 877 NYS2d 63 (1<sup>st</sup> Dept. 2009)

## YES

- court should consider where mother was making progress, good frequent visits and no one to adopt children **Matter of Jelissa Ninette**, 233 AD2d 874, 649 NYS2d 613 (4<sup>th</sup> Dept. 1996)
- although “close call”, court should grant suspended judgment where parent making efforts, involved in services, no problems since the perm neglect, foster parents not interested in adopting, court ordered terms to require parent to resolve issues **Matter of Zachary CC.**, 301 AD2d 714, 753 NYS2d 561 (3<sup>rd</sup> Dept. 2003)
- court should consider where mother had sought treatment and actively participated and therapist testified that she had made progress in insight and skills and child was bonded to mother and had good interaction **In Re Christian Lee R.**, 779 AD3d 483 (1<sup>st</sup> Dept. 2004)
- court should have ordered one where mother had made great progress in completing service plan even though she was often late and missed visits, had income, housing, completed parenting sand was cooperative **Mattre of Shaquill Dywon M.**, 50 AD3d

1142, 856 NYS2d 670 (2<sup>nd</sup> Dept. 2008)

- court should have ordered one where mother had been recently making progress, ended relationship with bad father, very remorseful, recently cooperative, good quality visits, no adoptive home
- court should have done a suspended judgment for the father where he had made recent efforts and children are older and do not want to be adopted

### **What happens when there is a violation? DO NOT WAIT FOR THE END HEARING**

If respondent fails to comply with the terms of the suspended judgment, an order to show cause or a motion must be filed alleging the violation – if you wait until the final report date, it will be too late to seek a TPR!!! . There should be clear statements of the acts or omissions alleged. The court holds the hearing and may then modify, revise or revoke the order of suspended judgement. The court can only grant one extension of a suspended judgement for another year if it finds there are “exceptional circumstances”.

### **Standard of Proof? Preponderance of evidence that one or more terms has been violated**

**Matter of Gerald M.**, 112 AD2d 6, 490 NYS2d 398 (4<sup>th</sup> Dept. 1985)

**Matter of Jennifer T.**, 224 Ad2d 843, 638 NYS2d 219 (3<sup>rd</sup> Dept. 1996)

**Matter of Ericka LL**, 256 AD2d 1037, 683 NYS2d 323 (3<sup>rd</sup> Dept. 1998)

**Matter of Robert T.**, 270 AD2d 318, 704 NYS2d 436 (4<sup>th</sup> Dept. 2000)

**Matter of Alka H.**, 278 AD2d 326, 718 NYS2d 598 (2<sup>nd</sup> Dept. 2000)

**Matter of Rebecca F.**, 286 AD2d 985, 730 NYS2d 918 (4<sup>th</sup> Dept. 2001)

**Matter of Caitlin H.**, 287 AD2d 715, 732 NYS2d 84 (2<sup>nd</sup> Dept. 2001)

**Matter of Veronica W.**, 289 Ad2d 1055, 735 NYS2d 848 (4<sup>th</sup> Dept. 2001)

**Matter of Francisco Anthony CF.**, 305 NY2d 410, 758 NYS2d 501 (2<sup>nd</sup> Dept.

2003)

**Matter of Michael C.**, 4 AD3d 423, 771 NYS2d 397 (2<sup>nd</sup> Dept. 2004)

**In Re Onelio Olvein Elijah Onalis Santiago C.**, 13 AD3d 95, 785 NYS2d 453

(1<sup>st</sup> Dept. 2004)

**Matter of Gracie YY.**, 34 AD3d 1053, 825 NYS3d 303 (3<sup>rd</sup> Dept. 2006)

**Matter of Crystallyn L.**, 6/5/2007 (2<sup>nd</sup> Dept. 2007)

**Matter of Michael Phillip T.**, 44 AD3d 1062, 845 NYS2d 790 (2<sup>nd</sup> Dept. 2007)

**Matter of Jessica J.**, 44 AD3d 1132, 843 NYS2d 708 (3<sup>rd</sup> Dept. 2007)

**Matter of Darren V.**, 61 AD3d 986, 878 NYS2d 171 (2<sup>nd</sup> Dept. 2009)

**Matter of Dennis A.**, 7/2/09 (4<sup>th</sup> Dept. 2009)

### **Hearsay is admissible**

**Matter of Robert T.**, 270 AD2d 318, 704 NYS2d 436 (4<sup>th</sup> Dept. 2000)

**In Re Ferdinand V.**, 277 AD2d 715, 717 NYS2d 59 (1<sup>st</sup> Dept. 2000)

**Matter of Veronica W.**, 289 AD2d 1055, 735 NYS2d 848 (4<sup>th</sup> Dept. 2001)

Order does not lapse while violation litigated – this is by statute now – old cases on it:

**Matter of Edward Earl A.**, 224 AD2d 701, 638 NYS2d 969 (2<sup>nd</sup> Dept. 1996)  
**SS v Rufelle B.**, 156 Misc2d 410, 593 NYS2d 401 (Kings County Family Court  
1992)

Suspended Judgment order does not automatically contain same prior dispo orders – should specifically include those prior terms if needed in the suspended judgment order

- **Matter of Melissa G.**, 306 AD2d 919, 762 NYS2d 316 (4<sup>th</sup> Dept. 2003)

Suspended Judgment MUST contain actual and specific terms – can not violate if no terms!

- **Matter of Lavante Nytara Ashanti M.**, 6 AD3d 617, 775 NYS2d 80 (2<sup>nd</sup> Dept. 2004)

Court can consider continued violations of the suspended judgment alleged to have occurred after the end of the suspended judgment period - **Matter of Craig L.**, 2 AD3d 1461, 769 NYS2d 770 (4<sup>th</sup> Dept. 2003)

Court should not consider violations that occurred after the filing of the petition in the fact finding on the violation but could if in the separate dispo - **Matter of Christian Lee R.**, 38 AD3d 235, 831 NYS2d 153 (1<sup>st</sup> Dept. 2007)

**“Diligent Efforts” by agency during suspended judgment need not be proven in a violation**

**Matter of Fard Saleem G.**, 297 AD2d 677, 747 NYS2d 107 (2<sup>nd</sup> Dept. 2002)

**Matter of Bryan W.**, 299 AD2d 929, 749 NYS2d 347 (4<sup>th</sup> Dept. 2002)

**Matter of Ronald O.**, 43 AD3d 1352, 842 NYS2d 801 (4<sup>th</sup> Dept. 2007)

**Matter of Carolyn F.**, 55 AD3d 832, 866 NYS2d 298 (2<sup>nd</sup> Dept. 2008)

Where perm neglect finding was on consent, appeal of violation of suspended judgment does not bring up issue of diligent efforts - **Matter of Bryan W.**, 299 Ad2d 929, 749 NYS2d 347 (4<sup>th</sup> Dept. 2002)

Court can condition the suspended judgment on parent returning case and proving compliance- **Matter of Wendy F.**, 273 AD2d 927, 708 NYS2d 793 (4<sup>th</sup> Dept. 2000)

**Separate dispo hearing not required - court decides dispo in the violation hearing itself – AS LONG AS “BEST INTERESTS” is considered**

**Matter of Melinda B.**, 258 AD 2d 927, 685 NYS2d 526 (4<sup>th</sup> Dept. 1999)

**Matter of Brendan A.**, 278 AD2d 784, 722 NYS2d 929 (4<sup>th</sup> Dept. 2000)

**Matter of Shavira P.**, 283 AD2d 1027, 723 NYS2d 919 (4<sup>th</sup> Dept. 2001)

**Matter of Caitlin H.**, 287 AD2d 715, 732 NYS2d 84 (2<sup>nd</sup> Dept. 2001)

**Matter of Christyn Ann D.**, 26 AD3d 481, 811 NYS2d 94 (2<sup>nd</sup> Dept. 2006)

**Matter of Melissa M.**, 36 AD3d 919, 827 NYS2d 676 (2<sup>nd</sup> Dept. 2007)

**Matter of Seandell L.**, S 57 AD3d 1511, 870 NYS2d 662 (4<sup>th</sup> Dept. 2008)

Can bring the violation even though the order not yet written or served - **Matter of W. Children** 226 AD2d 385, 640 NYS2d 235 (2<sup>nd</sup> Dept. 1996)

Compliance after violation filed may not be enough – can still TPR if in child’s best interests- **Matter of Katarina B.**, 284 Ad2d 1016, 727 NYS2d 671 (4<sup>th</sup> Dept. 2001)

Even compliance with the suspended judgment may not be enough if TPR is still in child’s best interest - **Matter of Saboor C.**, 303 Ad2d 1022, 757 NYS2d 192 (4<sup>th</sup> Dept. 2003)

Parent would not allow worker to enter home for random testing for alcohol use – violation of suspended judgment – **Matter of Dessa F.**, 12/28/06 (3<sup>rd</sup> Dept.), would not submit to random drug testing – **Matter of Tyshawn Jaraind C.**, 36 AD3d 564, 828 NYS2d 387 (1<sup>st</sup> Dept. 2007), **matter of Eric Jule C.**, 39 AD3d 346, 834 NYS2d 525 (1<sup>st</sup> Dept. 2007)

Even though not adoptive home for the child, freeing for adoption opens up the child’s chances of being adopted and therefore should be freed where father violated terms of the suspended judgment – **Matter of Valentino G.**, 36 AD3d 439, 827 NYS3d 54 (1<sup>st</sup> Dept. 2007)

Violation of the “spirit” of the order, or simple compliance but with not demonstrable change can mean TPR

**Matter of Kenneth A.**, 206 AD2d 602, 614 NYS 2d 472 (3<sup>rd</sup> Dept. 1994)  
**Matter of Jennifer VV.**, 241 AD2d 622, 659 NYS2d 940 (3<sup>rd</sup> Dept. 1997)  
**Matter of Ryan V.**, 243 Ad2d 865, 662 NYS 2d 861 (3<sup>rd</sup> Dept. 1997)  
**Matter of Jonathan P.**, 283 AD2d 675, 724 NYS2d 213 (3<sup>rd</sup> Dept. 2001)  
**Matter of Sklar NN.**, 284 AD2d 595, 725 NYS2d 473 (3<sup>rd</sup> Dept. 2001)  
**Matter of Travis A.**, 4 Ad3d 632, 772 NYS2d 393 (3<sup>rd</sup> Dept. 2004)  
**Matter of Mercedes L.**, 12 AD3d 1184, 785 NYS2d 267 (4<sup>th</sup> Dept. 2004)  
**Matter of Giovanni K.**, 12/30/2009 (4<sup>th</sup> Dept. 2009)

If not strict compliance to terms, a violation will usually result in TPR

**Matter of Lisa Sue C.**, 220 AD2d 477, 632 NYS2d 2d 197 (2<sup>nd</sup> Dept. 1995)  
**Matter of Jeremy P.**, 213 Ad2d 1034, 624 NYS2d 325 (4<sup>th</sup> Dept. 1995)  
**Matter of Willie W.**, 206 AD2d 868, 614 NYS2d 854 (4<sup>th</sup> Dept. 1994)  
**Matter of Nicole OO** 262 AD2d 808, 691 NYS2d 676 (3<sup>rd</sup> Dept. 1999)  
**Matter of Ericka LL**, 256 AD2d 1037, 683 NYS2d 323 (3<sup>rd</sup> Dept. 1998)  
**Matter of Daryl H.**, 272 AD2d 935, 708 NYS2d 662 (4<sup>th</sup> Dept. 2000)  
**Matter of Angela LL.**, 287 AD2d 823, 731 NYS2d 288 (3<sup>rd</sup> Dept. 2001)  
**Matter of Nikkas T.**, 42 AD3d 1226, 820 NYS2d 838 (4<sup>th</sup> Dept. 2006)  
**Matter of Crystallyn L.**, 6/5/2007 (2<sup>nd</sup> Dept. 2007) –would not tell agency his

address

**Matter of Dennis A.**, 7/2/09 (4<sup>th</sup> Dept. 2009) – each violation separate is trivial but as a whole is a lack of commitment and inability to make progress

Where parent did not strictly comply, court can still decide to give another chance, extend the time period and not TPR - **Matter of Amber AA** 301 AD2d 694, 754 NYS2d 387 (3<sup>rd</sup> Dept. 2003), **Matter of Shdell Shakell L.**, 51 AD3d 1027, 858 NYS2d 779 (2<sup>nd</sup> Dept. 2008)

Where parent incapable of adequate care, court can decide to TPR - **Matter of Diedre S.**, 169 AD2d 578, 564 NYS2d 432 (1<sup>st</sup> Dept, 1991)

Parent must show extraordinary circumstances to extend the suspended judgment period – **Matter of Jonathan J.**, 47 AD3d 992 (3<sup>rd</sup> Dept. 2008)

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