

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

D55802
M/htr

_____AD3d_____

Argued - May 25, 2018

WILLIAM F. MASTRO, J.P.
SANDRA L. SGROI
SYLVIA O. HINDS-RADIX
VALERIE BRATHWAITE NELSON, JJ.

2017-07704

DECISION & ORDER

In the Matter of Suffolk County Department of
Social Services, on behalf of Donna B. (Anonymous),
appellant, v Dominick C. (Anonymous), respondent.

(Docket No. P-873-17)

Dennis M. Brown, County Attorney, Central Islip, NY (Danielle N. Razzouk of
counsel), for appellant.

Darla A. Filiberto, Hauppauge, NY, for respondent.

Arza Rayches Feldman, Uniondale, NY, attorney for the child.

In a proceeding pursuant to Family Court Act article 5, the petitioner appeals from
an order of the Family Court, Suffolk County (Jeffrey Arlen Spinner, J.), dated June 30, 2017. The
order dismissed, without a hearing, the petition to adjudicate the respondent to be the father of the
subject child.

ORDERED that the order is reversed, on the law, without costs or disbursements, the
petition is reinstated, and the matter is remitted to the Family Court, Suffolk County, for further
proceedings in accordance herewith.

The petitioner commenced this paternity proceeding pursuant to Family Court Act
article 5 to adjudicate the respondent to be the father of the subject child. During a court appearance,
the attorney for the child asserted that the child considered another individual—the son of the woman
with whom the child resided—to be his father. The respondent then sought dismissal of the petition
on the basis of equitable estoppel. Without holding a hearing, the Family Court dismissed the

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petition against the respondent on that basis. The petitioner appeals.

The paramount concern in applying equitable estoppel in paternity cases is the best interests of the subject child (*see Matter of Juanita A. v Kenneth Mark N.*, 15 NY3d 1, 5; *Matter of Shondel J. v Mark D.*, 7 NY3d 320, 326). “The issue of the best interests of the child normally should be determined after a hearing joining all necessary parties including the person considered to be the child’s father figure” (*Matter of Isaiah A. C. v Faith T.*, 43 AD3d 1048, 1048-1049; *see Matter of Charles v Charles*, 296 AD2d 547, 549-550).

Here, the individual whom the child is said to consider his father was not joined in this proceeding, and there was insufficient evidence of the child’s relationship with that individual to permit a determination as to the child’s best interests (*see Matter of Isaiah A. C. v Faith T.*, 43 AD3d at 1048-1049; *Matter of Charles v Charles*, 296 AD2d at 549-550). Under these circumstances, the Family Court erred in dismissing the petition, and we remit the matter to the Family Court, Suffolk County, so that the petitioner may make all reasonable efforts to join, as a necessary party, the individual whom the child is said to consider his father, and thereafter, for a hearing on the issue of equitable estoppel.

MASTRO, J.P., SGROI, HINDS-RADIX and BRATHWAITE NELSON, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court