

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

D57646
G/htr

_____AD3d_____

Submitted - October 22, 2018

MARK C. DILLON, J.P.
RUTH C. BALKIN
ROBERT J. MILLER
ANGELA G. IANNACCI, JJ.

2017-12528

DECISION & ORDER

In the Matter of Oliver A. (Anonymous).
Suffolk County Department of Social
Services, appellant; Oguis A.-D. (Anonymous),
respondent.
(Proceeding No. 1)

In the Matter of Walgely A. (Anonymous).
Suffolk County Department of Social
Services, appellant; Oguis A.-D. (Anonymous),
respondent.
(Proceeding No. 2)

(Docket Nos. N-10172-15, N-10175-16)

Dennis M. Brown, County Attorney, Central Islip, NY (Jennifer L. Basile of
counsel), for appellant.

Gina M. Scelta, Huntington, NY, for respondent.

Michael M. McClellan, Central Islip, NY, attorney for the children.

In two related proceedings pursuant to Family Court Act article 10, the petitioner
appeals from an order of fact-finding and disposition of the Family Court, Suffolk County (Bernard
Cheng, J.), dated October 13, 2017. The order, insofar as appealed from, after a fact-finding hearing,
dismissed those branches of the neglect petitions alleging that the father had inflicted excessive
corporal punishment on the child Walgely A. on June 18, 2016, and, upon finding that the father,
inter alia, neglected Walgely A. by inflicting excessive corporal punishment on her in November

December 19, 2018

Page 1.

MATTER OF A. (ANONYMOUS), OLIVER
MATTER OF A. (ANONYMOUS), WALGELY

2015, failed to direct the father to participate in a domestic violence program.

ORDERED that the order of fact-finding and disposition is affirmed insofar as appealed from, without costs or disbursements.

On June 27, 2016, the petitioner filed petitions pursuant to Family Court Act article 10 alleging that the father had neglected the child Walgely A., and derivatively neglected the child Oliver A., by perpetrating two acts of excessive corporal punishment on Walgely. After a fact-finding hearing, the Family Court found that the petitioner failed to establish, by a preponderance of the evidence, that the father had inflicted excessive corporal punishment on Walgely on June 18, 2016, and dismissed those branches of the petitions alleging the infliction of excessive corporal punishment on that date. The court based its conclusion, in part, upon Walgely's recantation, at the fact-finding hearing, of her previous claim that she was abused on June 18, 2016. However, the court found that the father neglected Walgely and derivatively neglected Oliver, as the petitioner had established, by a preponderance of the evidence, that the father had inflicted excessive corporal punishment on Walgely in November 2015. After a dispositional hearing, the court, inter alia, failed to direct the father to participate in a domestic violence program.


In a child protective proceeding, the petitioner has the burden of proving neglect by a preponderance of the evidence (*see* Family Ct Act § 1046[b][i]; *Nicholson v Scoppetta*, 3 NY3d 357, 368). Great deference is given to the Family Court's credibility determinations, as it is in the best position to assess the credibility of the witnesses having had the opportunity to view the witnesses, hear the testimony, and observe their demeanor (*see Matter of Ferrer v Brown*, 165 AD3d 929; *Matter of Maximus G.*, 165 AD3d 660). Here, the court's credibility determination is supported by the record and will not be disturbed on appeal.

Further, the Family Court did not improvidently exercise its discretion in failing to appoint separate attorneys for the children during the fact-finding hearing after Walgely requested to return to the father's home (*see Matter of Smith v Anderson*, 137 AD3d 1505, 1509; *Barbara ZZ. v Daniel A.*, 64 AD3d 929, 934; *cf. Matter of Brian S. [Tanya S.]*, 141 AD3d 1145, 1148; *Matter of James I. [Jennifer I.]*, 128 AD3d 1285, 1286; *Corigliano v Corigliano*, 297 AD2d 328, 329).

Under the circumstances of this case, the Family Court did not improvidently exercise its discretion in not directing the father to participate in a domestic violence program.

DILLON, J.P., BALKIN, MILLER and IANNACCI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court