

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

D57777
T/htr

_____AD3d_____

Argued - November 16, 2018

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
HECTOR D. LASALLE
FRANCESCA E. CONNOLLY, JJ.

2018-02371

DECISION & ORDER

In the Matter of Anthony Carter, petitioner-respondent, v Dutchess County Department of Community and Family Services, appellant, et al., respondent.

(Docket No. V-829-18)

James Fedorchak, County Attorney, Poughkeepsie, NY (Laura Gail Skojec of counsel), for appellant.

Kelley M. Enderley, Poughkeepsie, NY, for petitioner-respondent.

Theoni Stamos-Salotto, Hopewell Junction, NY, attorney for the child.

In a proceeding pursuant to Family Court Act article 6, the Dutchess County Department of Community and Family Services appeals from an order of the Family Court, Dutchess County (Joseph A. Egitto, J.), dated February 28, 2018. The order, without a hearing, granted the father's petition for custody of the subject child.

ORDERED that the order is reversed, on the law, without costs or disbursements, the petition is denied, and the proceeding is dismissed.

In 2016, the Dutchess County Department of Community and Family Services (hereinafter the DCFS) commenced related proceedings pursuant to Family Court article 10 alleging that the parents had neglected the subject child. The Family Court temporarily placed the child in the custody of the Commissioner of the DCFS. Thereafter, the mother admitted to neglecting the child. The matter proceeded to a fact-finding hearing and, after the hearing, upon a finding that the

December 26, 2018

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DCFS failed to establish that the father neglected the child, the court dismissed the neglect petition against the father. The father then commenced this custody proceeding alleging, inter alia, that he was entitled to custody of the child since the neglect petition against him had been dismissed. The court granted the father's petition, without a hearing, over the objection of the DCFS and the attorney for the child. The DCFS appeals.

In light of our determination on a related appeal reversing the order dismissing the neglect petition against the father (*see Matter of Meeya P.*, _____ AD3d _____ [decided herewith]), the order appealed from must be reversed, the father's petition denied, and the proceeding dismissed.

MASTRO, J.P., BALKIN, LASALLE and CONNOLLY, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court