

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

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CAF 20-00654

PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, GREENWOOD, AND NOWAK, JJ.

IN THE MATTER OF JOHLYANNE F.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

EVANGELISTA A., RESPONDENT-APPELLANT,
ET AL., RESPONDENTS.

JOSEPH T. JARZEMBEK, BUFFALO, FOR RESPONDENT-APPELLANT.

BENJAMIN E. MANNION, BUFFALO, FOR PETITIONER-RESPONDENT.

LYLE T. HAJDU, LAKEWOOD, ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Erie County (Lisa Bloch Rodwin, J.), entered August 25, 2020, in a proceeding pursuant to Family Court Act article 10. The order, among other things, adjudged that respondent Evangelista A. had abused the subject child.

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

Memorandum: In this proceeding pursuant to Family Court Act article 10, respondent mother appeals from an order entered after a fact-finding hearing that, inter alia, adjudged that the child who is the subject of this proceeding was abused by the mother. As a preliminary matter, we exercise our discretion to treat the mother's notice of appeal from the order following the fact-finding hearing as a valid notice of appeal from the subsequently entered order of fact-finding and disposition (see CPLR 5520 [c]; *Matter of Ariana F.F. [Robert E.F.]*, 202 AD3d 1440, 1441 [4th Dept 2022]; *Matter of Hunter K. [Robin K.]*, 142 AD3d 1307, 1308 [4th Dept 2016]).

Contrary to the mother's contention, petitioner met its burden of establishing by a preponderance of the evidence that the mother abused the child (see generally *Matter of Philip M.*, 82 NY2d 238, 243-244 [1993]; *Matter of Mya N. [Reginald N.]*, 185 AD3d 1522, 1523-1524 [4th Dept 2020], *lv denied* 35 NY3d 917 [2020]). Petitioner presented the testimony of medical providers who examined the 20-month-old child on July 7, 2019 and found that the child had five circular-shaped burns to her legs that appeared to have been sustained at the same time, likely recently, and were in the early stage of healing. One provider testified that in her experience a child would cry out in pain when receiving those burns. The providers also noted that the child had

multiple bruises, including bruising to her ear, which was highly suspicious for nonaccidental trauma. Petitioner presented testimony that the child had been with the mother the morning of July 5 until approximately 3:00 p.m., and thereafter the child had been in the presence of multiple relatives at a public park until the mother picked the child up around midnight. Several of the child's relatives noticed the burn marks on the child around 6:00 p.m., and the mother herself noticed the marks when she picked the child up that night. The other respondents testified at the hearing that, while at the park, the child never cried out in pain, and Family Court made the inference that the child had sustained the burn injuries earlier that day, when she was in the mother's care. The court also relied on the testimony of several members of the mother's family regarding the mother's explosive temper and numerous instances where she struck or screamed at the child. We accord great weight and deference to the court's determinations, "including its drawing of inferences and assessment of credibility," and we will not disturb those determinations where, as here, they are supported by the record (*Matter of Shaylee R.*, 13 AD3d 1106, 1106 [4th Dept 2004]).

We have considered the mother's remaining contention and conclude that it does not warrant reversal or modification of the order.