

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

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CAF 24-01141

PRESENT: BANNISTER, J.P., MONTOUR, NOWAK, DELCONTE, AND KEANE, JJ.

IN THE MATTER OF KEVIN V.

WAYNE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

SARA L. AND RYEN V., RESPONDENTS-APPELLANTS.

LAW OFFICE OF VERONICA REED, SCHENECTADY (VERONICA REED OF COUNSEL),
FOR RESPONDENT-APPELLANT SARA L.

THOMAS L. PELYCH, HORNELL, FOR RESPONDENT-APPELLANT RYEN V.

JACQUELINE A. MCCORMICK, LYONS, FOR PETITIONER-RESPONDENT.

SUSAN E. GRAY, CATONSVILLE, ATTORNEY FOR THE CHILD.

Appeals from an order of the Family Court, Wayne County (Richard M. Healy, J.), entered June 25, 2024, in a proceeding pursuant to Social Services Law § 384-b. The order, inter alia, determined that respondents had severely abused the subject child and transferred the guardian and custody rights of the subject child to petitioner.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the matter is remitted to Family Court, Wayne County, for further proceedings in accordance with the following memorandum: In this proceeding pursuant to Social Services Law § 384-b, respondents, the subject child's mother and father, separately appeal from an order that, inter alia, adjudged the child to be severely abused within the meaning of Social Services Law § 384-b (8) and terminated their parental rights without conducting a hearing. We reverse.

We agree with respondents that Family Court erred in summarily terminating their parental rights based exclusively upon the testimony adduced during a prior Family Court Act article 10 proceeding. As an initial matter, in this proceeding petitioner never formally moved for summary judgment on the amended petition or for a finding that reasonable efforts to return the child to his home were no longer required (*see* Family Ct Act § 1039-b [a]), and thus the court erred in summarily granting that relief (*see id.*; Family Ct Act § 165, CPLR 2214, 3212; *see generally* *Matter of Suffolk County Dept. of Social Servs. v James M.*, 83 NY2d 178, 182 [1994]).

Even if we were to construe the amended petition here to be the

functional equivalent of a notice of motion seeking summary judgment, we conclude that the court did not have the authority, in the context of this Social Services Law § 384-b proceeding, to retroactively make a finding of severe abuse under Family Court Act § 1051 (e) based upon the evidence adduced during the prior article 10 abuse proceeding. As relevant here, Family Court Act § 1051 (e) provides that in an article 10 abuse case, the court may "[i]n addition to a finding of abuse, . . . enter a finding of severe abuse or repeated abuse, . . . which shall be admissible in a proceeding to terminate parental rights pursuant to [Social Services Law § 384-b (4) (e)] . . . If the court makes such additional finding of severe abuse or repeated abuse, the court shall state the grounds for its determination, which shall be based upon clear and convincing evidence."

Thus, while it is true that a court is permitted to make a severe abuse finding as part of the disposition in an article 10 abuse case (*see generally id.*), that did not occur here. Indeed, in the context of the underlying article 10 proceeding, petitioner did not seek a determination that respondents severely abused the child, and the court made no such determination. Moreover, the entirety of the court's findings in the article 10 matter were based upon a preponderance of the evidence—not clear and convincing evidence as required by the statute (*see id.*). Finally, we note that the court improperly issued an order of disposition in this case before conducting a dispositional hearing (*see* Family Ct Act § 631; Social Services Law § 384-b [8] [f]). We therefore reverse the order and remit the matter to Family Court for further proceedings on the petition.