

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH DEPARTMENT

In re Charity W.

79 A.D.3d 1722, 914 N.Y.S.2d 841 (N.Y. App. Div. 4th Dep't 2010) · Decided December 30, 2010

SUMMARY

The New York Appellate Division affirmed an order denying a mother's motion to vacate a default finding of permanent neglect in a proceeding to terminate her parental rights. The court held that the mother was not deprived of effective assistance of counsel because the record showed that she and her attorney had notice of the continued hearing date and that counsel had attempted to present a meritorious defense.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Department
WRITING FOR THE COURT	Scudder, P.J.; Carni, J.; Lindley, J.; Pine, J.; Gorski, J.
JURISDICTION	New York
DECIDED	December 30, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from an order of Family Court, Onondaga County, denying her motion to vacate an order of fact-finding and disposition entered after she failed to appear for the second day of a fact-finding hearing in a proceeding to terminate her parental rights for permanent neglect.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Respondent mother v. Petitioner

TOPICS

- termination of parental rights
- family law procedure
- default judgment
- appellate procedure

PRACTICE AREAS

- family law
- appellate procedure
- termination of parental rights

QUESTIONS PRESENTED

1. Whether the mother's assigned attorney was ineffective for failing to ensure that she knew when to appear for the continuation of the fact-finding hearing.
2. Whether the mother's assigned attorney was ineffective for failing to provide a meritorious defense in support of the motion to vacate the order entered upon her default.

HOLDINGS

1. The mother's assigned attorney was not ineffective because both the mother and counsel were notified of the continuation date, and the mother did not dispute that she was present when the date was designated.
2. Counsel was not ineffective because the record established that counsel attempted to provide the requisite meritorious defense; the fact that Family Court found the preferred defense lacking in merit did not establish ineffective assistance.

KEY QUOTATIONS

“Indeed, the mother merely states generally that her attorney “may not have clearly informed her” of the date of the continuation of the fact-finding hearing, but she does not dispute that she was present in court when the date was designated.” (1723)

“Although the court determined that the preferred defense lacked merit, that determination does not establish that the mother’s attorney was ineffective.” (1723)

FACTUAL BACKGROUND

In a proceeding to terminate her parental rights on the ground of permanent neglect, the respondent mother failed to appear for the second day of the fact-finding hearing. Both the mother and her assigned attorney had been notified of the continuation date, and the mother had been present when the date was designated. Family Court found permanent neglect, later reopened the dispositional hearing to allow the mother to testify and present evidence, and nevertheless again determined that termination of parental rights was in the child's best interests.

PROCEDURAL HISTORY

Family Court proceeded with the fact-finding hearing in the mother's absence and found that she had permanently neglected the subject child. The court then conducted a dispositional hearing, awarded custody and guardianship to the petitioner, and terminated the mother's parental rights. Family Court denied the mother's motion to vacate the permanent-neglect finding but reopened the dispositional hearing in the interests of justice; after the mother testified and presented evidence, the court adhered to its prior determination. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Michael F., 16 AD3d 1116 [2005]

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