

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

In re Alisa E.

114 A.D.3d 1175, 980 N.Y.S.2d 193 (N.Y. App. Div. 4th Dep't 2014) · Decided February 7, 2014

SUMMARY

The Appellate Division, Fourth Department affirmed an order revoking a suspended judgment and terminating the respondent mother's parental rights. The court held that the petitioner proved by a preponderance of the evidence that the mother violated the suspended judgment's conditions and that termination was in the child's best interests.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Department
WRITING FOR THE COURT	Scudder, E.J.; Centra, J.; Fahey, J.; Carni, J.; Valentino, J.
JURISDICTION	New York
DECIDED	February 7, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from a Family Court order that revoked a suspended judgment and terminated her parental rights in a proceeding under Social Services Law § 384-b.
STANDARD OF REVIEW	The Family Court's credibility determination was entitled to great weight, and the Appellate Division reviewed whether the record supported the determination that termination was in the child's best interests.
PRECEDENTIAL VALUE	published
PARTIES	Respondent mother v. Petitioner

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- family law
- termination of parental rights
- appellate procedure

QUESTIONS PRESENTED

1. Whether the petitioner established by a preponderance of the evidence that the mother violated the terms and conditions of the suspended judgment.
2. Whether termination of the mother's parental rights was in the child's best interests after revocation of the suspended judgment.

HOLDINGS

1. The petitioner established by a preponderance of the evidence that the mother violated the terms and conditions of the suspended judgment.
2. A hearing on a petition alleging violation of a suspended judgment is part of the dispositional phase of a permanent-neglect proceeding, and the disposition must be based on the best interests of the child.
3. The record supported the Family Court's determination that termination of the mother's parental rights was in the child's best interests.

KEY QUOTATIONS

“It is well established that a hearing on a petition alleging that the terms of a suspended judgment have been violated is part of the dispositional phase of the permanent neglect proceeding, and that the disposition shall be based on the best interests of the child” (114 A.D.3d at 1176)

FACTUAL BACKGROUND

The mother violated conditions of a suspended judgment by failing to obtain suitable housing until after the violation petition was filed and by withdrawing or limiting releases for information from programs she attended. She claimed to have completed several programs but provided no verification and did not know whether the petitioner had approved them. She continued to live at her parents' house, where the petitioner was denied access to assess whether it was an appropriate place for the child to visit, and the Family Court found her testimony about living in a rented apartment not credible.

PROCEDURAL HISTORY

The Livingston County Family Court entered an order on June 8, 2012, revoking the suspended judgment and terminating the mother's parental rights with respect to her daughter. The Appellate Division unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Giovanni K. [Dawn K.], 68 A.D.3d 1766, 1767 (N.Y. App. Div. 4th Dep't 2009), lv. denied, 14 N.Y.3d 707 (2010)
- Matter of Baron C. [Dominique C.], 101 A.D.3d 1622, 1622 (N.Y. App. Div. 4th Dep't 2012)

- Matter of Richelis S. [Richard S.], 68 A.D.3d 1643, 1644-45 (N.Y. App. Div. 4th Dep't 2009), appeal dismissed, 14 N.Y.3d 767 (2010)
- Matter of Mercedes L., 12 A.D.3d 1184, 1184 (N.Y. App. Div. 4th Dep't 2004)

OPINION

PER CURIAM.

Appeal from an order of the Family Court, Livingston County (Robert B. Wiggins, J.), entered June 8, 2012 in a proceeding pursuant to Social Services Law § 384-b. The order, among other things, revoked a suspended judgment and terminated respondent's parental rights with respect to the subject child. It is hereby ordered that the order so appealed from is unanimously affirmed without costs.

Memorandum: Respondent mother appeals from an order revoking a suspended judgment pursuant to Family Court Act § 633 and terminating her parental rights with respect to her daughter. Contrary to the mother's contention, petitioner established by a preponderance of the evidence that the mother violated the terms and conditions of the suspended judgment (see Matter of Giovanni K. [Dawn K.], 68 AD3d 1766, 1767 [2009], lv denied 14 NY3d 707 [2010]).

Petitioner established that the mother failed to obtain suitable housing until after the violation petition was filed and that she withdrew or limited releases for information from programs that she attended. Although the mother testified that she had completed several programs, she failed to provide verification that she completed the programs and admitted that she did not know whether petitioner had approved those programs.

Petitioner established by a preponderance of the evidence that the mother continued to live at her parents' house, to which petitioner had been *1176denied access to make an assessment of whether it would be an appropriate home for the child to visit, and we note that Family Court's determination that the mother's testimony that she was living in the apartment that she rented was not credible is entitled to great weight (see Matter of Baron C. [Dominique C.], 101 AD3d 1622, 1622 [2012]).

It is well established that a hearing on a petition alleging that the terms of a suspended judgment have been violated is part of the dispositional phase of the permanent neglect proceeding, and that the disposition shall be based on the best interests of the child (see Matter of Richelis S. [Richard S.], 68 AD3d 1643, 1644-1645 [2009], appeal dismissed 14 NY3d 767 [2010]).

We conclude that the record supports the court's determination that termination of the mother's rights is in the best interests of the child (see Matter of Mercedes L., 12 AD3d 1184, 1184 [2004]). Present — Scudder, EJ., Centra, Fahey, Carni and Valentino, JJ.

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-supreme-court-of-the-state-of-new-york-appellate-division-fourth-department/2014/in-re-alisa-e-0ktr240>