

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

Matter of Cayden L.R.

108 A.D.3d 1154, 969 N.Y.S.2d 674 (N.Y. App. Div. 2013) · No. CAF 12-01060 · Decided July 19, 2013

SUMMARY

The New York Appellate Division, Fourth Department, affirmed an order terminating the mother's parental rights based on permanent neglect. The court held that the agency made diligent efforts to reunite the mother and child and that the mother failed to plan adequately for the child's future. A dissent argued that the agency's misdiagnoses of the mother and child resulted in inadequate, insufficiently tailored services.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Scudder, P.J.; Smith, J.; Centra, J.; Lindley, J.
JURISDICTION	New York
DECIDED	July 19, 2013
DOCKET	CAF 12-01060
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from a Family Court order in a proceeding under Social Services Law § 384-b that terminated her parental rights. The Appellate Division treated the notice of appeal from the fact-finding order as valid and deemed the appeal properly taken from the subsequent order of disposition.
STANDARD OF REVIEW	The court reviewed whether Family Court properly determined, under the clear-and-convincing-evidence standard applicable to permanent-neglect proceedings, that the agency made diligent efforts and that the mother failed to plan for the child's future.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Melissa R. v. Jefferson County Department of Social Services

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the notice of appeal from the fact-finding order could be treated as a valid appeal from the subsequent order of disposition.
2. Whether the Department of Social Services made diligent efforts to encourage and strengthen the mother's relationship with the child and to reunite the family.
3. Whether the mother failed to plan for the child's future within the meaning of Social Services Law § 384-b.
4. Whether the Department of Social Services could challenge the posttermination-visitation provision without filing a cross-appeal.

HOLDINGS

1. The court exercised its discretion to treat the mother's notice of appeal from the fact-finding order as valid and deemed the appeal properly taken from the order of disposition.
2. The Family Court properly determined that the Department of Social Services made diligent efforts to encourage and strengthen the mother's relationship with the child.
3. The Family Court properly determined that the mother failed to plan for the future of the child.
4. The Department of Social Services' challenge to the portion of the order granting posttermination visitation was not properly before the court because the agency did not cross-appeal.

KEY QUOTATIONS

“Nevertheless, we exercise our discretion to treat the notice of appeal as valid and deem the appeal as properly taken from the order of disposition” (108 A.D.3d at 1154)

“Most significantly, petitioner arranged for a child psychologist to meet with the mother on several occasions in her home to provide parenting training, and we agree with the court’s assessment that this was “truly a diligent effort” by petitioner to encourage and strengthen the parent-child relationship.” (108 A.D.3d at 1155)

“At a minimum, parents must ‘take steps to correct the conditions that led to the removal of the child from their home’” (108 A.D.3d at 1155)

FACTUAL BACKGROUND

The Jefferson County Department of Social Services provided the mother with psychological assessment, therapy, parenting, budgeting, and nutrition education, services for the child, and supervised and unsupervised

visitation. It also arranged for a child psychologist to provide parenting training to the mother in her home. Although the mother participated in the services and visitation, the evidence showed that she could care for the child only for short periods and could not provide long-term care, and that the child displayed a marked negative behavioral change during increased unsupervised overnight visits. The court also found that the mother had not addressed the problems that led to the child's removal.

PROCEDURAL HISTORY

Jefferson County Family Court entered an order terminating the mother's parental rights with respect to the child and granting posttermination visitation. The mother appealed. The Appellate Division exercised its discretion under CPLR 5520(c) to deem the appeal taken from the order of disposition and affirmed without costs. One justice dissented, concluding that the petition should have been dismissed for failure to prove diligent efforts and failure to plan for the child's future.

DISPOSITION

affirmed

CASES CITED

- Matter of Anthony M., 56 A.D.3d 1124, 1124, leave denied, 12 N.Y.3d 702
- Matter of Nathaniel T., 67 N.Y.2d 838, 840
- Matter of Abraham C., 55 A.D.3d 1442, 1442-1443, leave denied, 12 N.Y.3d 701
- Matter of Ja-Nathan F., 309 A.D.2d 1152, 1152
- Matter of Alexander M., 106 A.D.3d 1524, 1525
- Matter of Carl G. v. Oneida County Department of Social Services, 24 A.D.3d 1274, 1276
- Matter of Serenity G. [Orena G.], 101 A.D.3d 1639, 1639-1640
- Matter of Sheila G., 61 N.Y.2d 368, 385
- Matter of Patricia C., 63 A.D.3d 1710, 1711
- Matter of Colinia D. [Thomas F.], 84 A.D.3d 1755, 1756