

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK

In re Cameron K.

118 A.D.3d 790 (N.Y. App. Div. 2014) · Decided June 11, 2014

SUMMARY

The New York Appellate Division, Second Department, affirmed the denial of a father's motion to vacate an order of fact-finding and disposition entered after his default in a child neglect proceeding. The court held that he failed to demonstrate a meritorious defense under Family Court Act § 1042 and upheld the derivative neglect finding.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York
WRITING FOR THE COURT	J.E. Skelos; Dillon, J.; Roman, J.; Maltese, J.
JURISDICTION	New York
DECIDED	June 11, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from an order denying his motion to vacate an order of fact-finding and disposition entered after his default at the continuation of a child-neglect fact-finding hearing.
STANDARD OF REVIEW	Abuse of discretion; whether the Family Court providently exercised its discretion in denying the motion to vacate.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Father v. Commissioner of Social Services of Richmond County

TOPICS

- family law procedure
- default
- parental rights
- appellate procedure

PRACTICE AREAS

- Family law
- Child protective proceedings
- Appellate procedure

QUESTIONS PRESENTED

1. Whether the Family Court providently exercised its discretion in denying the father's motion to vacate the order of fact-finding and disposition entered after his failure to appear at the continuation of the fact-finding hearing.
2. Whether the father demonstrated a meritorious defense sufficient to warrant vacatur and a rehearing under Family Court Act § 1042.
3. Whether the prior neglect finding was sufficiently proximate in time and substantively related to support a derivative finding of neglect.

HOLDINGS

1. The Family Court properly denied the father's motion to vacate because he failed to show a meritorious defense to the neglect petition.
2. The derivative finding of neglect was justified because the father's prior neglect demonstrated fundamental flaws in his understanding of parental duties and was sufficiently proximate in time that the condition could reasonably be found to continue.

KEY QUOTATIONS

“Such motion shall be granted on an affidavit showing ... a meritorious defense to the petition, unless the court finds that the parent or other person wilfully refused to appear at the hearing, in which case the court may deny the motion” (N.Y. Fam. Ct. Act § 1042)

“the nature of his neglect evidenced “fundamental flaws in [his] understanding of the duties of parenthood,” and a derivative finding of neglect is justified because the prior finding “was so proximate in time to the derivative proceeding . . . that it can reasonably be concluded that the condition still exists””

FACTUAL BACKGROUND

The father failed to appear at the continuation of a fact-finding hearing in a child-neglect proceeding. After fact-finding and dispositional hearings, the Family Court found that he derivatively neglected the subject child and placed the child in the custody of the Richmond County Commissioner of Social Services. The father later sought to vacate the order, but failed to demonstrate a meritorious defense to the neglect petition.

PROCEDURAL HISTORY

In a Family Court Act article 10 child-neglect proceeding, the Family Court found that the father derivatively neglected the subject child and placed the child in the custody of the Commissioner of Social Services of Richmond County. The father moved to vacate the fact-finding and disposition order, but the Family Court denied the motion. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Tahanie S. (Ramon A.), 97 A.D.3d 751, 753–754 (N.Y. App. Div. 2012)
- Matter of Hannah UU., 300 A.D.2d 942, 944 (N.Y. App. Div. 2002)
- Matter of Amber C., 38 A.D.3d 538, 540 (N.Y. App. Div. 2007)

OPINION

PER CURIAM.

In a child neglect proceeding pursuant to Family Court Act article 10, the father appeals from an order of the Family Court, Richmond County (Wolff, J.), dated August 15, 2013, which denied his motion to vacate an order of fact-finding and disposition of the same court dated May 18, 2012, which, upon his default in appearing at the continuation of the fact-finding hearing, and after fact-finding and dispositional hearings, found that he derivatively neglected the subject child and, *inter alia*, placed the subject child in the custody of the Commissioner of Social Services of Richmond County.

Ordered that the order dated August 15, 2013, is affirmed, without costs or disbursements. The Family Court providently exercised its discretion in denying the father’s motion to vacate an order of fact-finding and disposition entered upon his failure to appear at the continuation of the fact-finding hearing.

In a child protective proceeding pursuant to Family Court Act article 10, a parent or other person legally responsible for a child’s care not present at the hearing of the petition may move to vacate an order of disposition and schedule a rehearing. “Such motion shall be granted on an affidavit showing... a meritorious defense to the petition, unless the court finds that the parent or other person wilfully refused to appear at the hearing, in which case the court may deny the motion” (Family Ct Act § 1042; see Matter of Tahanie S. [Ramon A.], 97 AD3d 751, 753-754 [2012]).

Here, the father failed to show a meritorious defense to the petition. Contrary to the father’s contentions, the nature of his neglect evidenced “fundamental flaws in [his] understanding of the duties of parenthood,” and a derivative finding of neglect is justified because the prior finding “was so proximate in time to the derivative proceeding... that it can reasonably be concluded that the condition still exists” (Matter of Hannah UU., 300 AD2d 942, 944 [2002] [internal quotation marks omitted]; see Matter of Amber C., 38 AD3d 538, 540 [2007]).

Skelos, J.E, Dillon, Roman and Maltese, JJ., concur.