

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

Matter of Sean P. (Brandy P.)

2017 NY Slip Op 08951 (App. Div. 2017) · No. 1184 CAF 16-01308 · Decided December 22, 2017

SUMMARY

The New York Appellate Division, Fourth Department, affirmed an order determining that the respondent mother neglected the subject child in a Family Court Act article 10 proceeding. The court held that the evidence, including caseworker testimony and neonatal hospital records, established that the mother's mental illness and intellectual disabilities created an imminent risk of harm and impaired her ability to provide minimally adequate care.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Smith, J.P.; Peradotto, J.; DeJoseph, J.; Nemoyer, J.; Curran, J.
JURISDICTION	New York
DECIDED	December 22, 2017
DOCKET	1184 CAF 16-01308
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from an order of Family Court, Onondaga County, in an Article 10 neglect proceeding that adjudged the respondents to have neglected the subject child.
STANDARD OF REVIEW	The Appellate Division reviewed whether the neglect determination had a sound and substantial basis in the record, according deference to Family Court's factual findings. The petitioner was required to establish neglect by a preponderance of the evidence.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Brandy P. v. Onondaga County Department of Children and Family Services

TOPICS

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

PRACTICE AREAS

family law

child welfare

neglect proceedings

appellate practice

QUESTIONS PRESENTED

1. Whether the evidence established neglect under Family Court Act article 10 by showing that the child was impaired or in imminent danger of impairment as a consequence of the mother's failure to exercise a minimum degree of care.
2. Whether the neglect finding was improperly based solely on the mother's mental illness.

HOLDINGS

1. A neglect finding is supported when the petitioner proves by a preponderance of the evidence that the child's physical, mental, or emotional condition was impaired or in imminent danger of impairment and that the actual or threatened harm resulted from the parent's failure to exercise a minimum degree of care. The evidence here provided a sound and substantial basis for finding that the mother neglected the child.
2. Evidence of mental illness alone does not support a neglect finding, but mental illness may be considered as part of a neglect determination when additional proof shows that the parent's condition creates an imminent risk of physical, mental, or emotional harm to the child. The record contained such additional proof here.
3. Family Court's factual findings are entitled to deference and will not be disturbed unless they lack a sound and substantial basis in the record; the findings here satisfied that standard.

KEY QUOTATIONS

*"petitioner's burden was to "demonstrate by a preponderance of the evidence first, that [the] child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired and second, that the actual or threatened harm to the child is a consequence of the failure of the parent . . . to exercise a minimum degree of care in providing the child with proper supervision or guardianship"" (2017 NY Slip Op 08951, at *1)*

*"While evidence of mental illness, alone, does not support a finding of neglect, such evidence may be part of a neglect determination when the proof further demonstrates that a respondent's condition creates an imminent risk of physical, mental or emotional harm to a child"" (2017 NY Slip Op 08951, at *2)*

FACTUAL BACKGROUND

The evidence included testimony and notes from the petitioner's caseworker and neonatal hospital records concerning the mother's care of the child during the first four days of his life. The evidence showed that the mother's mental illness and intellectual disabilities rendered her unable to feed the child properly or support the child's head, even while under hospital supervision. The court concluded that the child would be harmed if the mother controlled his feeding schedule or held him unsupervised.

PROCEDURAL HISTORY

The Onondaga County Department of Children and Family Services commenced a proceeding under article 10 of the Family Court Act. Family Court determined that Brandy P. neglected the child and entered an order on June 7, 2016. The Appellate Division unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Ilona H. (Elton H.), 93 AD3d 1165, 1166 (4th Dept 2012)
- Nicholson v. Scopetta, 3 NY3d 357, 368 (2004)
- Matter of Kaleb U. (Heather V.—Ryan U.), 77 AD3d 1097, 1098 (3d Dept 2010)
- Matter of Arianna M. (Brian M.), 105 AD3d 1401, 1401 (4th Dept 2013), lv denied 21 NY3d 862 (2013)
- Matter of Paul U., 12 AD3d 969, 971 (3d Dept 2004)
- Matter of Claudina E.P. (Stephanie M.), 91 AD3d 1324, 1324 (4th Dept 2012)
- Matter of Anthony TT. (Philip TT.), 80 AD3d 901, 902 (3d Dept 2011), lv denied 17 NY3d 704 (2011)
- Matter of Joseph MM. (Clifford MM.), 91 AD3d 1077, 1079 (3d Dept 2012), lv denied 18 NY3d 809 (2012)

OPINION

PER CURIAM.

Matter of Sean P. (Brandy P.) (2017 NY Slip Op 08951) Matter of Sean P. (Brandy P.) 2017 NY Slip Op 08951 Decided on December 22, 2017 Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 22, 2017 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: SMITH, J.P., PERADOTTO, DEJOSEPH, NEMOYER, AND CURRAN, JJ. 1184 CAF 16-01308 [*1]IN THE MATTER OF SEAN P. ONONDAGA COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, PETITIONER-RESPONDENT; BRANDY P., RESPONDENT-APPELLANT, AND SEAN P., RESPONDENT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (DANIELLE K. BLACKABY OF COUNSEL), FOR RESPONDENT-APPELLANT. ROBERT A. DURR, COUNTY ATTORNEY, SYRACUSE (MAGGIE SEIKALY OF COUNSEL), FOR PETITIONER-RESPONDENT. LAURA ESTELA CARDONA, ATTORNEY FOR THE CHILD, SYRACUSE. Appeal from an order of the Family Court, Onondaga County (Michael L. Hanuszczak, J.), entered June 7, 2016 in a proceeding pursuant to Family Court Act article 10.

The order, among other things, adjudged that respondents had neglected the subject child. It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: In this proceeding pursuant to article 10 of the Family Court Act, respondent mother appeals from an order in which Family Court determined that she neglected the subject child.

In reviewing the propriety of the order, we note that petitioner's burden was to "demonstrate by a preponderance of the evidence first, that [the] child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired and second, that the actual or threatened harm to the child is a consequence of the failure of the parent... to exercise a minimum degree of care in providing the child with proper supervision or guardianship' " (Matter of Ilona H. [Elton H.], 93 AD3d 1165, 1166 [4th Dept 2012], quoting *Nicholson v Scopetta*, 3 NY3d 357, 368 [2004]; see §§ 1012 [f] [i] [B]; 1046 [b] [i]).

We further note that the court's "findings of fact are accorded deference and will not be disturbed unless they lack a sound and substantial basis in the record" (Matter of Kaleb U. [Heather V.—Ryan U.], 77 AD3d 1097, 1098 [3d Dept 2010]; see Matter of Arianna M. [Brian M.], 105 AD3d 1401, 1401 [4th Dept 2013], lv denied 21 NY3d 862 [2013]).

We conclude that there is a sound and substantial basis in the record supporting the court's determination that petitioner met its burden of establishing the mother's neglect of the child, i.e., that "the child was in imminent danger of impairment as a result of [the mother's] failure to exercise a minimum degree of care" (Matter of Paul U., 12 AD3d 969, 971 [3d Dept 2004]; see Matter of Claudina E.P.

[Stephanie M.], 91 AD3d 1324, 1324 [4th Dept 2012]; see generally *Nicholson*, 3 NY3d at 368-370). The evidence supporting the court's determination includes the testimony and notes of petitioner's caseworker, as well as neonatal hospital records, which outline the mother's difficulties in caring for the child during the first four days of his life.

We reject the mother's contention that the finding of neglect was based solely on her mental illness. " While evidence of mental illness, alone, does not support a finding of neglect, such evidence may be part of a neglect determination when the proof further demonstrates that a respondent's condition creates an imminent risk of physical, mental or emotional harm to a child' [*2]" (Matter of Anthony TT.

[Philip TT.], 80 AD3d 901, 902 [3d Dept 2011], lv denied 17 NY3d 704 [2011]; see generally Matter of Joseph MM. [Clifford MM.], 91 AD3d 1077, 1079 [3d Dept 2012], lv denied 18 NY3d 809 [2012]). Petitioner presented testimony and documentary evidence establishing that the mother's mental illness and intellectual disabilities rendered her unable to feed the child properly or to support the child's head, even while under hospital supervision.

Thus, there was a sound and substantial basis supporting the court's determination that the child would be harmed if the mother were allowed to control his feeding schedule or to hold the child

unsupervised. Entered: December 22, 2017 Mark W. Bennett Clerk of the Court

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