

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)