

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

Matter of Yamira Empress S. (Yvonne M. S.)

2017 NY Slip Op 08273 (App. Div. 2017) · No. 2016-05963 · Decided November 22, 2017

SUMMARY

The Appellate Division, Second Department affirmed an order terminating the mother's parental rights based on permanent neglect and her present and foreseeable inability to provide proper and adequate care. The court held that the petitioner established by clear and convincing evidence that it made diligent efforts to strengthen the parental relationship and that the mother failed to plan for the child's future.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Reinaldo E. Rivera, J.P.; Sheri S. Roman, J.; Hector D. LaSalle, J.; Betsy Barros, J.
JURISDICTION	New York
DECIDED	November 22, 2017
DOCKET	2016-05963
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from an order of fact-finding and disposition of the Family Court, Queens County, that found her to have permanently neglected the child, found her presently and foreseeably unable to provide proper and adequate care, terminated her parental rights, and transferred guardianship and custody for adoption.
STANDARD OF REVIEW	Whether the petitioner established the statutory grounds for termination of parental rights by clear and convincing evidence.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Yvonne M. S. (Anonymous), the mother v. New York Foundling Hospital

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QUESTIONS PRESENTED

1. Whether the petitioner exercised diligent efforts to strengthen the parental relationship as required by Social Services Law § 384-b.
2. Whether clear and convincing evidence established that the mother permanently neglected the child by failing to plan for the child's future despite the petitioner's diligent efforts.
3. Whether clear and convincing evidence established that the mother was presently and for the foreseeable future unable to provide proper and adequate care under Social Services Law § 384-b(4)(c).
4. Whether termination of the mother's parental rights and transfer of guardianship and custody for adoption were proper.

HOLDINGS

1. The petitioner met its initial burden of establishing by clear and convincing evidence that it exercised diligent efforts to strengthen the parental relationship.
2. The evidence established by clear and convincing evidence that, despite the petitioner's diligent efforts, the mother failed to plan for the future of the child and therefore permanently neglected the child.
3. The Family Court properly found by clear and convincing evidence that the mother was presently and for the foreseeable future unable to provide proper and adequate care for the child under Social Services Law § 384-b(4)(c).

KEY QUOTATIONS

“Dr. Frank concluded that the mother was “mildly mentally retarded,” and that her limitations were such that the child, if returned to her care presently or in the foreseeable future, would be at risk of being neglected.”
([*2])

FACTUAL BACKGROUND

The petitioner provided regular visitation, a visiting coach, referrals for mental-health services and parenting-skills training, and attempted to place the mother in supportive housing. Despite those efforts, the mother failed to plan for the child's future. A court-appointed psychologist found that the mother's full-scale IQ was 65, that her intellectual and adaptive functioning were significantly compromised, and that she lacked the ability to parent independently; he concluded that returning the child to her care presently or in the foreseeable future would pose a risk of neglect.

PROCEDURAL HISTORY

The New York Foundling Hospital commenced a proceeding under Social Services Law § 384-b to terminate the mother's parental rights on grounds of permanent neglect and inability to provide proper and adequate care. Following fact-finding and dispositional hearings, the Family Court, Queens County, entered the challenged order. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Sheila G., 61 N.Y.2d 368, 385 (1984)
- Matter of Elias P. (Ferman P.), 145 A.D.3d 1066, 1068 (2d Dep't 2016)
- Matter of Daniel K.L. (Shaquanna L.), 138 A.D.3d 743, 744 (2d Dep't 2016)
- Matter of Jahira N.D. (Shaniqua S.S.), 111 A.D.3d 826, 827 (2d Dep't 2013)
- Matter of Joyce T., 65 N.Y.2d 39, 45-46 (1985)
- Matter of Kaylee Y.B. (Beverly B.), 137 A.D.3d 901, 902 (2d Dep't 2016)
- Matter of Diante B. (Kelly B.), 75 A.D.3d 599, 600 (2d Dep't 2010)
- Matter of Mercedes W.R. (Ellen C.), 69 A.D.3d 638, 638 (2d Dep't 2010)
- Matter of Karan Ann B., 293 A.D.2d 673, 673-674 (2d Dep't 2002)

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