

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                                                                                                                                                                                                                                                                  |

TOPICS

termination of parental rights

parental rights

adoption

guardianships

appellate procedure

## PRACTICE AREAS

family law

termination of parental rights

adoption

guardianships

## 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)

## OPINION

### PER CURIAM.

Matter of Yamira Empress S. (Yvonne M. S.) (2017 NY Slip Op 08273) Matter of Yamira Empress S. (Yvonne M. S.) 2017 NY Slip Op 08273 Decided on November 22, 2017 Appellate Division, Second 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 November 22, 2017 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department REINALDO E. RIVERA, J.P. SHERI S. ROMAN HECTOR D. LASALLE BETSY BARROS, JJ. 2016-05963 (Docket No. B-16849-13) [\*1]In the Matter of Yamira Empress S. (Anonymous), also known as Yamira S. (Anonymous). New York Foundling Hospital, respondent; Yvonne M. S. (Anonymous), appellant.

Richard J. Cardinale, Brooklyn, NY, for appellant. Daniel Gartenstein, Long Island City, NY, for respondent. Seymour W. James, Jr., New York, NY (Tamara A. Steckler and Sara H. Reisberg of counsel), attorney for the child. DECISION & ORDER Appeal by the mother from an order of fact-finding and disposition of the Family Court, Queens County (Joan L. Piccirillo, J.), dated April 6, 2016.

The order, after fact-finding and dispositional hearings, found that the mother permanently neglected the subject child and, pursuant to Social Services Law § 384-b(4)(c), was presently and for the foreseeable future unable to provide proper and adequate care for the subject child, terminated her parental rights, and transferred guardianship and custody of the subject child to the petitioner and the New York City Children's Services for the purpose of adoption.

ORDERED that the order of fact-finding and disposition is affirmed, without costs or disbursements. The petitioner commenced this proceeding to terminate the mother's parental rights pursuant to Social Services Law § 384-b on the grounds that she permanently neglected the subject child and, pursuant to Social Services Law § 384-b(4)(c), was presently and for the foreseeable future unable to provide proper and adequate care for the child.

After fact-finding and dispositional hearings, the Family Court found that the mother permanently neglected the child and, pursuant to Social Services Law § 384-b(4)(c), was presently and for the foreseeable future unable to provide proper and adequate care for the child, terminated her parental rights, and transferred guardianship and custody of the child to the petitioner and the New York City Children's Services for the purpose of adoption.

The mother appeals. Contrary to the mother's contention, the petitioner met its initial burden of establishing by clear and convincing evidence that it exercised diligent efforts to strengthen the parental relationship by, among other things, scheduling regular visits between the mother and the child, providing the mother with a visiting coach to assist her to interact appropriately with the child during visits, referring her to mental health services and parenting skills training, and attempting to place her in supportive housing (see Social Services Law § 384-b[3][g][i]; 7[a], [f]; Matter of Sheila G., 61 NY2d 368, 385; Matter of Elias P. [Ferman P.], 145 AD3d 1066, 1068; Matter of Daniel K.L.

[Shaquanna L.], 138 AD3d 743, 744). Moreover, the evidence adduced at the fact-finding [\*2]hearing established, by the requisite clear and convincing standard of proof, that despite the petitioner's efforts, the mother failed to plan for the future of the child (see Social Services Law § 384-b[7][a]; Matter of Elias P. [Ferman P.], 145 AD3d 1066; Matter of Daniel K.L.

[Shaquanna L.], 138 AD3d at 744; Matter of Jahira N.D. [Shaniqua S.S.], 111 AD3d 826, 827). The record also supports the Family Court's determination that the petitioner established by clear and convincing evidence that, pursuant to Social Services Law § 384-b(4)(c), the mother was presently and for the foreseeable future unable to provide proper and adequate care for the child (see Social Services Law § 384-b[3][g][i]; [4][c]; [6][b]; Matter of Joyce T., 65 NY2d 39, 45-46; Matter of Kaylee Y.B.

[Beverly B.], 137 AD3d 901, 902; Matter of Diante B. [Kelly B.], 75 AD3d 599, 600; Matter of Mercedes W.R. [Ellen C.], 69 AD3d 638, 638; Matter of Karan Ann B., 293 AD2d 673, 673-674).

Dr. Mitchell Frank, the court-appointed psychologist who evaluated the mother, concluded that the mother's full scale IQ was 65, her intellectual functioning was in the extremely low range of abilities, her deficits originated during childhood, and her adaptive functioning abilities were significantly compromised.

Dr. Frank noted that while the mother was motivated to parent and would be capable of assisting another in the tasks of parenting, she lacked the ability to parent independently. 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.

The mother did not challenge Dr. Frank's testimony. Accordingly, the Family Court properly terminated the mother's parental rights and transferred guardianship and custody of the child to the petitioner and the New York City Children's Services for the purpose of adoption. RIVERA, J.P., ROMAN, LASALLE and BARROS, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court