

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

In re Princess Ashley C.

96 A.D.3d 682 (N.Y. App. Div. 1st Dep't 2012) · Decided June 28, 2012

SUMMARY

The New York Appellate Division, First Department affirmed an order finding that the mother neglected the children and awarding custody to their paternal aunt. The court held that the mother’s severe, untreated mental illness created an imminent risk of harm and actual impairment, rejected her request for an independent social-worker interview, and found her challenge to the consolidated hearing unpreserved.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Saxe, J.P.; Friedman, J.; Renwick, J.; DeGrasse, J.; Richter, J.
JURISDICTION	New York
DECIDED	June 28, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Family Court order that, after a neglect fact-finding determination, granted the paternal aunt's custody petition and placed the children in her custody.
STANDARD OF REVIEW	The neglect finding was reviewed under the preponderance-of-the-evidence standard. The denial of the request for an independent social worker was reviewed for abuse of discretion, and the custody disposition was reviewed for sound discretion and the best interests of the children. The challenge to the consolidated hearing was unpreserved because the mother did not object below.
PRECEDENTIAL VALUE	published
PARTIES	The mother v. Carol E., paternal aunt

TOPICS

- family law procedure
- child custody
- parental rights
- appellate procedure
- preservation of error

PRACTICE AREAS

family law

juvenile dependency

child custody

appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence established neglect because the mother's mental illness placed the children's physical, mental, or emotional condition in imminent danger of impairment and caused actual impairment.
2. Whether Family Court abused its discretion by denying the mother's request for an independent social worker to interview the children regarding possible reinstatement of contact.
3. Whether the mother's challenge to the consolidated custody and dispositional hearing was preserved for appellate review.
4. Whether Family Court properly awarded custody to the paternal aunt based on the best interests of the children.

HOLDINGS

1. A preponderance of the evidence supported the finding of neglect because the mother's long-standing, untreated mental illness created an imminent risk of harm to the children and caused actual impairment through inadequate supervision, excessive school absences, and inadequate food.
2. Family Court acted within its sound discretion in denying the mother's request for an independent social worker to interview the children because the children had already been interviewed several times and consistently opposed contact with the mother.
3. The mother's argument that Family Court could not properly analyze the evidence after holding a consolidated custody and dispositional hearing was unpreserved because she did not object on that ground below.
4. Family Court properly awarded custody to the paternal aunt because the disposition was in the children's best interests, including in light of evidence that they were thriving and wished to remain in her care.

KEY QUOTATIONS

“A preponderance of the evidence supports Family Court’s finding that the [children]’s physical, mental or emotional condition was in imminent danger of becoming impaired as a result of the mother’s long-standing history of mental illness and resistance to treatment” (682)

FACTUAL BACKGROUND

The mother had long-standing severe mental illness, including major depression, anxiety, and trichotillomania, and her condition deteriorated because she did not comply with treatment. Her lack of insight and illness impaired her ability to supervise the children, contributed to excessive school absences, and often prevented her from providing adequate food. The children had previously been interviewed by therapists, social workers, caseworkers, and their attorney, consistently expressed that they did not want contact with the mother, and were thriving in the paternal aunt's care.

PROCEDURAL HISTORY

Family Court, New York County, found that the mother neglected the children and granted the custody petition of their paternal aunt, placing the children in her custody. The mother appealed, challenging the neglect finding, the denial of her request for an independent social worker to interview the children, and the court's consolidation of the custody and dispositional hearing. The Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Naomi S. [Hadar S.], 87 A.D.3d 936, 937 (N.Y. App. Div. 1st Dep't 2011), lv. denied, 18 N.Y.3d 804 (2012)
- Matter of Christopher R. [Lecrieg B.B.], 78 A.D.3d 586, 586-87 (N.Y. App. Div. 1st Dep't 2010)
- Matter of Aliyah B. [Denise J.], 87 A.D.3d 943, 943 (N.Y. App. Div. 1st Dep't 2011)
- Matter of Lavountae A., 57 A.D.3d 1382, 1382 (N.Y. App. Div. 4th Dep't 2008), aff'd, 12 N.Y.3d 832 (2009)
- Matter of Noah Jeremiah J. [Kimberly J.], 81 A.D.3d 37, 41 (N.Y. App. Div. 1st Dep't 2010)
- Matter of Crystal P. [Andrea L.], 93 A.D.3d 576 (N.Y. App. Div. 1st Dep't 2012)
- Eschbach v. Eschbach, 56 N.Y.2d 167, 171 (1982)

OPINION

PER CURIAM.

Order of disposition and custody, Family Court, New York County (Rhoda J. Cohen, J.), entered on or about June 27, 2011, which, upon a fact-finding determination that the mother neglected the subject children, granted the custody petition of their paternal aunt and placed them in her custody, unanimously affirmed, without costs. “A preponderance of the evidence supports Family Court’s finding that the [children]’s physical, mental or emotional condition was in imminent danger of becoming impaired as a result of the mother’s long-standing history of mental illness and resistance to treatment” (Matter of Naomi S. [Hadar S.], 87 AD3d 936, 937 [2011], lv denied 18 NY3d 804 [2012]; see also Family Ct Act § 1046 [b] [i]; § 1012 [f] [i] [B]).

The mother suffers from long-standing severe mental illness, which is characterized by major depression, anxiety and trichotillomania, an anxiety disorder that manifested in her pulling out her hair and peeling off the skin on her feet.

The record shows her lack of insight into the effect of her illness on the subject children, as well as deterioration of her condition due to noncompliance with treatment (see Matter of Christopher R. [Lecrieg B.B.], 78 AD3d 586, 586-587 [2010]). Her mental illness not only created an imminent risk of harm to the children, but resulted in actual impairment, as the condition caused her to be

unable to provide them with adequate supervision and to permit them to have excessive school absences.

In addition, her condition often rendered her unable to provide the children with adequate food (see e.g. *Matter of Aliyah B.* [Denise J.], 87 AD3d 943, 943 [2011]; *Matter of Lavountae A.*, 57 AD3d 1382, 1382 [2008], *affd* 12 NY3d 832 [2009]).

The court exercised sound discretion in denying the mother's request to assign an independent social worker to interview the children to explore reinstating contact between her and the children. The children, on several occasions, had previously been interviewed by therapists, social workers, caseworkers, and their attorney as to their feelings regarding having contact with their parents.

Moreover, throughout the entirety of the proceedings, the children's stance on having no contact with the mother remained unaltered (see e.g. *Matter of Noah Jeremiah J.* [Kimberly J.], 81 AD3d 37, 41 [2010]). *683Finally, the mother did not object, on the grounds of the court's purported inability to properly analyze the evidence, to the court's holding a consolidated custody and dispositional hearing, thus, this argument is unpreserved on appeal (see *Matter of Crystal P.* [Andrea L.], 93 AD3d 576 [2012]).

In any event, the court properly considered first, a disposition with regard to the neglect case and then, petitioner Carol E.'s custody petition, and determined that awarding custody to her was in the best interests of the children, given the evidence that they were thriving and wished to remain in her care (see *Eschbach v Eschbach*, 56 NY2d 167, 171 [1982]).

Concur — Saxe, J.P., Friedman, Renwick, DeGrasse and Richter, JJ.