

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

Matter of Zander L. (Athena L.)

2018 NY Slip Op 04499 (N.Y. Ct. App. 2018) · No. 821 CAF 17-01172 · Decided June 15, 2018

SUMMARY

The Appellate Division, Fourth Department affirmed an order revoking a suspended judgment and terminating the respondent mother's parental rights under Social Services Law § 384-b. The court held that the petitioner established by a preponderance of the evidence that the mother failed to comply with multiple suspended-judgment conditions, including requirements concerning safe parenting, housing, and visitation.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Centra, J.P.; Peradotto, J.; Nemoyer, J.; Troutman, J.; Winslow, J.
JURISDICTION	New York
DECIDED	June 15, 2018
DOCKET	821 CAF 17-01172
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from an order of Family Court that revoked a suspended judgment and terminated her parental rights in a proceeding under Social Services Law § 384-b.
STANDARD OF REVIEW	The court reviewed whether Family Court properly found, by a preponderance of the evidence, that respondent failed to comply with the terms of the suspended judgment and whether revocation and termination of parental rights were in the child's best interests.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; precedential within the applicable New York appellate hierarchy.
PARTIES	Athena L. v. Erie County Department of Social Services

TOPICS

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

PRACTICE AREAS

family law

termination of parental rights

juvenile and child welfare

QUESTIONS PRESENTED

1. Whether Family Court properly found by a preponderance of the evidence that the mother failed to comply with the terms of the suspended judgment.
2. Whether Family Court properly revoked the suspended judgment and terminated the mother's parental rights after finding noncompliance.
3. Whether the mother's failure to obtain appropriate housing independently supported revocation of the suspended judgment.

HOLDINGS

1. When Family Court determines by a preponderance of the evidence that a respondent has failed to comply with any term of a suspended judgment, it may revoke the suspended judgment and terminate parental rights.
2. The petitioner established by a preponderance of the evidence that the mother failed to comply with the suspended judgment.
3. Failure to obtain appropriate housing as required by a suspended judgment can alone constitute grounds for revocation of the suspended judgment.

KEY QUOTATIONS

*"It is well established that, if Family Court " determines by a preponderance of the evidence that there has been noncompliance with any of the terms of the suspended judgment, the court may revoke the suspended judgment and terminate parental rights' "" ([*1])*

*"We note that the "failure to obtain appropriate housing as required [by a suspended judgment] can, alone, constitute grounds for the revocation of a suspended judgment"" ([*2])*

FACTUAL BACKGROUND

The mother was subject to a suspended judgment requiring, among other things, safe and developmentally appropriate parenting practices, adequate housing, and that no other person be present during visits with the child. She had been evicted after friends caused problems and damage at her apartment, including an incident involving a drug-addicted friend who suffered a seizure and left blood throughout the apartment. Although she obtained a new apartment, her roommate had a history of drug abuse and Child Protective Services involvement, was occasionally present during visits, and the housing arrangement did not permit children to live there.

PROCEDURAL HISTORY

The Erie County Family Court entered an order on June 19, 2017 revoking the suspended judgment and terminating Athena L.'s parental rights with respect to the subject child. Athena L. appealed to the Appellate Division, Fourth Department, which unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Kh'Niayah D. [Niani J.], 155 AD3d 1649, 1650 [4th Dept 2017], lv denied 31 NY3d 901 [2018]
- Matter of Ireisha P. [Shonita M.], 154 AD3d 1340, 1340-1341 [4th Dept 2017], lv denied 30 NY3d 910 [2018]
- Matter of Frederick MM., 23 AD3d 951, 953 [3d Dept 2005]
- Matter of Gianna W. [Jessica S.], 96 AD3d 545, 545 [1st Dept 2012]

OPINION

PER CURIAM.

Matter of Zander L. (Athena L.) (2018 NY Slip Op 04499) Matter of Zander L. (Athena L.) 2018 NY Slip Op 04499 Decided on June 15, 2018 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 June 15, 2018 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: CENTRA, J.P., PERADOTTO, NEMOYER, TROUTMAN, AND WINSLOW, JJ. 821 CAF 17-01172 [*1]IN THE MATTER OF ZANDER L. ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES, PETITIONER-RESPONDENT; ATHENA L., RESPONDENT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR RESPONDENT-APPELLANT. KATHERINE E. MEIER-DAVIS, BUFFALO, FOR PETITIONER-RESPONDENT. DAVID C. SCHOPP, THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (CHARLES D. HALVORSEN OF COUNSEL), ATTORNEY FOR THE CHILD. Appeal from an order of the Family Court, Erie County (Sharon M. LoVallo, J.), entered June 19, 2017 in a proceeding pursuant to Social Services Law § 384-b.

The order, among other things, revoked a suspended judgment and terminated respondent's parental rights with respect to the subject child. It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs. Memorandum: In a proceeding pursuant to Social Services Law § 384-b, respondent mother appeals from an order that revoked a suspended judgment and terminated her parental rights with respect to the subject child.

We affirm. It is well established that, if Family Court " determines by a preponderance of the evidence that there has been noncompliance with any of the terms of the suspended judgment, the court may revoke the suspended judgment and terminate parental rights' " (Matter of Kh'Niayah D. [Niani J.], 155 AD3d 1649, 1650 [4th Dept 2017], lv denied 31 NY3d 901 [2018]; see Matter of

Ireisha P. [Shonita M.], 154 AD3d 1340, 1340-1341 [4th Dept 2017], lv denied 30 NY3d 910 [2018]).

Contrary to the mother's contention, petitioner established by a preponderance of the evidence that she failed to comply with the terms of the suspended judgment. Indeed, the record establishes that the mother violated numerous terms of the suspended judgment, including requirements that she demonstrate safe and developmentally appropriate parenting practices, maintain adequate housing, and not have anyone else present during visits with the child.

During her hearing testimony, the mother acknowledged that she had been evicted from her apartment because her friends were causing problems, including causing damage to the apartment. In one incident the mother's friend, who was addicted to drugs, suffered a seizure and got blood "everywhere," resulting in the involvement of the police.

Although the mother has obtained a new apartment, her new roommate, who was occasionally present during the mother's visits with the child, has a history of drug abuse and involvement with Child Protective Services. Furthermore, the terms of the mother's housing arrangement do not allow her to have children living in her new apartment, and she has made no additional efforts to obtain child-friendly housing.

Contrary to the mother's further contention, upon determining that the mother did not comply with the terms of the suspended judgment, the court properly revoked it and determined that it was in the child's best interests to terminate the mother's parental rights (see *Kh'Niayah D.*, 155 AD3d at 1650).

We note that the "failure to obtain appropriate housing as required [by a [*2]suspended judgment] can, alone, constitute grounds for the revocation of a suspended judgment" (*Matter of Frederick MM.*, 23 AD3d 951, 953 [3d Dept 2005]; see *Matter of Gianna W. [Jessica S.]*, 96 AD3d 545, 545 [1st Dept 2012]). Entered: June 15, 2018 Mark W. Bennett Clerk of the Court