

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

In re Crystal P.

93 A.D.3d 576 (N.Y. App. Div. 1st Dep't 2012) · Decided March 27, 2012

SUMMARY

The Appellate Division, First Department affirmed an order terminating the respondent mother’s parental rights based on clear and convincing evidence that her mental disability rendered her unable to provide proper and adequate care for the child. The court also held that the mother’s challenge to the absence of a dispositional hearing was unpreserved and, alternatively, that such a hearing was unnecessary under the circumstances.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Saxe, J.E.; Sweeny, J.; Catterson, J.; Renwick, J.; Manzanet-Daniels, J.
JURISDICTION	New York
DECIDED	March 27, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from a Family Court order terminating her parental rights and committing custody and guardianship of the child to the petitioner agency and the Commissioner of Social Services for adoption.
STANDARD OF REVIEW	The court reviewed whether clear and convincing evidence supported termination, deferred to Family Court's credibility determinations absent a basis to disturb them, and declined to review an unpreserved claim in the interest of justice.
PRECEDENTIAL VALUE	published opinion
PARTIES	Respondent mother v. Petitioner agency, Commissioner of Social Services

TOPICS

- termination of parental rights
- parental rights
- guardianships
- preservation of error
- appellate procedure

PRACTICE AREAS

family law

termination of parental rights

guardianships

appellate procedure

QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that respondent's mental retardation rendered her unable, at present and for the foreseeable future, to provide proper and adequate care for the child.
2. Whether Family Court erred by failing to conduct a dispositional hearing before terminating respondent's parental rights.
3. Whether the Appellate Division could review the dispositional-hearing claim when it was not preserved below.

HOLDINGS

1. Clear and convincing evidence established that respondent was unable, at present and for the foreseeable future, to provide proper and adequate care for the child because of her mental retardation; the termination order was therefore affirmed.
2. The claim that Family Court erred by failing to hold a dispositional hearing was unpreserved, and the court declined to review it in the interest of justice.

KEY QUOTATIONS

“Clear and convincing evidence, including various reports, respondent’s IQ scores, and the testimony of a psychologist, established that respondent is unable, at present and for the foreseeable future, to provide proper and adequate care for the child by reason of her mental retardation” (93 A.D.3d at 576)

FACTUAL BACKGROUND

Reports, respondent's IQ scores, and a psychologist's testimony constituted clear and convincing evidence that respondent was unable, at present and for the foreseeable future, to provide proper and adequate care for the child because of her mental retardation. Family Court credited that evidence and terminated respondent's parental rights, committing custody and guardianship for purposes of adoption.

PROCEDURAL HISTORY

Family Court, Bronx County, found that respondent mother was unable, because of mental retardation, to provide proper and adequate care for the child presently and for the foreseeable future. The court terminated her parental rights and committed custody and guardianship to the agency and Commissioner for adoption. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Erica D. [Maria D.], 80 A.D.3d 423 (N.Y. App. Div. 1st Dep't 2011), lv. denied, 16 N.Y.3d 708 (2011)
- Matter of Nathaniel T., 67 N.Y.2d 838, 842 (1986)
- Matter of Aaron Tyrell W., 58 A.D.3d 419 (N.Y. App. Div. 1st Dep't 2009)
- Matter of Joyce T., 65 N.Y.2d 39 (1985)

OPINION

PER CURIAM.

Order, Family Court, Bronx County (Sidney Gribetz, J.), entered on or about January 27, 2011, which, insofar as appealed from, upon a finding of mental retardation, terminated respondent mother's parental rights to the subject child, and committed custody and guardianship of the child to petitioner agency and the Commissioner of Social Services for the purpose of adoption, unanimously affirmed, without costs.

Clear and convincing evidence, including various reports, respondent's IQ scores, and the testimony of a psychologist, established that respondent is unable, at present and for the foreseeable future, to provide proper and adequate care for the child by reason of her mental retardation (see Social Services Law § 384-b [4] [c]; [6] [b]; Matter of Erica D. [Maria D.], 80 AD3d 423 [2011], lv denied 16 NY3d 708 [2011]).

There exists no basis to disturb the credibility determinations of the Family Court (see Matter of Nathaniel T., 67 NY2d 838, 842 [1986]). Respondent's claim that the court erred in not holding a dispositional hearing is unpreserved (see Matter of Aaron Tyrell W., 58 AD3d 419 [2009]), and we decline to review it in the interest of justice. Were we to review this claim, we would find that a dispositional hearing was not necessary to find that the termination of respondent's parental rights was in the best interests of the child, in light of her inability to provide care for the child (see Matter of Joyce T., 65 NY2d 39 [1985]).

We have considered respondent's remaining contentions and find them unavailing. Concur — Saxe, J.E, Sweeny, Catterson, Renwick and Manzanet-Daniels, JJ.