

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

In re La'Derrick W.

63 A.D.3d 1538 (N.Y. App. Div. 4th Dep't 2009) · Decided June 5, 2009

SUMMARY

The Appellate Division reversed a Family Court order terminating the mother's parental rights based on permanent neglect. It held that Family Court abused its discretion by permitting the mother's attorney to withdraw without providing notice, making the purported withdrawal ineffective and requiring reassignment of counsel and a new hearing.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Fourth Department
WRITING FOR THE COURT	Smith, J.P.; Centra, J.; Fahey, J.; Garni, J.; Gorski, J.
JURISDICTION	New York
DECIDED	June 5, 2009
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Respondent mother appealed from a Family Court order entered on default that terminated her parental rights after a finding of permanent neglect.
STANDARD OF REVIEW	Abuse of discretion as to the attorney withdrawal issue; legal review of the effect of the ineffective withdrawal on the default order and appealability.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Respondent mother

TOPICS

- termination of parental rights
- parental rights
- default
- family law procedure
- appellate procedure

PRACTICE AREAS

- family law
- termination of parental rights
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether Family Court abused its discretion by permitting the mother's attorney of record to withdraw without notice to the mother.
2. Whether the ineffective withdrawal rendered the termination order improperly entered as a default order and permitted appellate review.
3. Whether the matter should be remitted for reassignment of counsel and a new hearing on the termination petition.

HOLDINGS

1. An attorney of record may withdraw as counsel only upon notice to the client; Family Court abused its discretion by granting the mother's attorney's withdrawal motion without notice to her.
2. Because the purported withdrawal of counsel was ineffective, the termination order was improperly entered as a default order, and the appeal was not precluded.
3. The order terminating parental rights must be reversed and the matter remitted to Family Court for reassignment of counsel and a new hearing on the petition.

KEY QUOTATIONS

*“An attorney of record may withdraw as counsel only upon notice to his or her client” (*1539)*

*“Because the purported withdrawal of counsel in this case was ineffective, the order entered by Family Court was improperly entered as a default order and appeal therefrom is not precluded” (*1539)*

FACTUAL BACKGROUND

The proceeding concerned a petition under Social Services Law § 384-b seeking termination of the mother's parental rights based on permanent neglect of her children. The mother's attorney moved to withdraw, and Family Court granted that motion without providing notice to the mother. Family Court then entered a default order terminating the mother's parental rights.

PROCEDURAL HISTORY

Family Court, Jefferson County, granted the mother's attorney's motion to withdraw without notice to the mother and thereafter entered a default order terminating her parental rights. The Appellate Division reversed on the law and remitted the matter for reassignment of counsel and a new hearing on the petition.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remit to Family Court, Jefferson County, for reassignment of counsel and a new hearing on the petition.

CASES CITED

- Matter of Hohenforst v DeMagistris, 44 A.D.3d 1114, 1116 (N.Y. App. Div. 2007)
- Matter of Davontae D., 62 A.D.3d 1251 (N.Y. App. Div. 2009)
- Matter of Michael W., 239 A.D.2d 865, 866 (N.Y. App. Div. 1997)
- Matter of Tierra C., 227 A.D.2d 994, 995 (N.Y. App. Div. 1996)
- Matter of Kwasi S., 221 A.D.2d 1029 (N.Y. App. Div. 1995)

OPINION

PER CURIAM.

*1539Appeal from an order of the Family Court, Jefferson County (Richard V Hunt, J.), entered April 3, 2008 in a proceeding pursuant to Social Services Law § 384-b. The order, among other things, terminated respondent's parental rights. It is hereby ordered that the order so appealed from is unanimously reversed on the law without costs and the matter is remitted to Family Court, Jefferson County, for further proceedings in accordance with the following memorandum: Respondent mother appeals from a default order terminating her parental rights upon a finding that she had permanently neglected her children.

We agree with the mother that Family Court abused its discretion in granting the motion of the mother's attorney to withdraw as counsel for the mother without notice to her. "An attorney of record may withdraw as counsel only upon notice to his or her client" (Matter of Hohenforst v DeMagistris, 44 AD3d 1114, 1116 [2007]; see CPLR 321 [b] [2]; Family Ct Act § 165 [b]; Matter of Davontae D., 62 AD3d 1251 [2009]; Matter of Michael W., 239 AD2d 865 [1997]). "Because the purported withdrawal of counsel in this case was ineffective, the order entered by Family Court was improperly entered as a default order and appeal therefrom is not precluded" (Matter of Tierra C., 227 AD2d 994, 995 [1996]; see Matter of Kwasi S., 221 AD2d 1029 [1995]).

We therefore reverse the order and remit the matter to Family Court for reassignment of counsel and a new hearing on the petition (see Davontae D., 62 AD3d 1251 [2009]; Michael W., 239 AD2d at 866 [1997]). In light of our conclusion that a new hearing on the petition is necessary, we do not address the mother's remaining contentions. Present—Smith, J.R, Centra, Fahey, Garni and Gorski, JJ.