

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

In re Julien Javier F.

110 A.D.3d 562 (N.Y. App. Div. 1st Dep't 2013) · Decided October 24, 2013

SUMMARY

The Appellate Division, First Department, affirmed Family Court’s fact-finding determinations that the mother violated the terms of suspended judgments in a parental-rights matter. The court held that a preponderance of the evidence supported the violations, including unsuitable housing, drug and alcohol relapse, missed planning conferences, and failure to obtain required clearances, while dismissing the appeals from the dispositional orders because they were entered on default.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Per Curiam; Andrias, J.P.; Friedman, J.; Acosta, J.; DeGrasse, J.; Freedman, J.
JURISDICTION	New York
DECIDED	October 24, 2013
DISPOSITION	other
PROCEDURAL POSTURE	The mother appealed Family Court orders of disposition terminating her parental rights and transferring custody and guardianship of the children to the Children's Aid Society and the Commissioner of Social Services for adoption after findings that she violated suspended judgments.
STANDARD OF REVIEW	Whether the findings were supported by a preponderance of the evidence; the court relied on the credible evidence adduced at the hearing.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	The mother v. Children's Aid Society, Commissioner of Social Services

TOPICS

termination of parental rights

parental rights

family law procedure

default judgment

appellate procedure

PRACTICE AREAS

family law

appellate procedure

parental rights

QUESTIONS PRESENTED

1. Whether the evidence supported Family Court's finding that the mother violated the terms of the suspended judgments.
2. Whether the mother could appeal the orders of disposition when those orders were entered upon her default.
3. Whether a violation of a suspended judgment may be found when the parent has not violated every term of the judgment.

HOLDINGS

1. A preponderance of the evidence supported Family Court's finding that the mother violated the terms of the suspended judgments.
2. No appeal lies from the orders of disposition because they were entered upon the mother's default.
3. A parent need not violate all of the terms of a suspended judgment for a violation to be found; a material violation of one or more terms may support revocation.

KEY QUOTATIONS

"It is not necessary for a parent to violate all of the terms of a suspended judgment for a violation to be found" (563)

FACTUAL BACKGROUND

The mother was subject to suspended judgments requiring, among other things, compliance with planning conferences, maintenance of suitable housing, abstinence from drugs and alcohol, and clearance of persons living in or visiting her apartment. The evidence showed that she missed some planning conferences, maintained an apartment affected by mold and gnats, relapsed in January 2011 during the suspended-judgment period, and failed to obtain clearance for her live-in paramour and other friends residing in the apartment. Although she complied with some terms, Family Court found that she materially violated the suspended judgments.

PROCEDURAL HISTORY

Family Court, Bronx County, entered orders of disposition on or about August 14, 2012, based on fact-finding determinations that the mother violated the terms of suspended judgments. The Appellate Division unanimously affirmed the fact-finding determinations but dismissed the appeals from the orders of disposition because those orders were entered upon the mother's default.

DISPOSITION

other

CASES CITED

- Matter of Skyler S.M. [S. LaToya J.], 83 A.D.3d 549 (1st Dep't 2011)
- Matter of Christian Anthony Y.T. [Donna Marie T.], 78 A.D.3d 410 (1st Dep't 2010)
- Matter of Gianna W. [Jessica S.], 96 A.D.3d 545 (1st Dep't 2012)

OPINION

PER CURIAM.

Orders of disposition, Family Court, Bronx County (Sarah E Cooper, J.), entered on or about August 14, 2012, which, upon fact-finding determinations that the mother violated the terms of the suspended judgments, terminated her parental rights to the subject children, and transferred custody and guardianship of them to petitioner Children's Aid Society (the agency) and the Commissioner of Social Services for the purpose of adoption, unanimously affirmed, with respect to the fact-finding determinations, and the appeals therefrom otherwise dismissed, without costs.

No appeal lies from the orders of disposition, as they were *563entered upon the mother's default (see CPLR 5511; Matter of Skyler S.M. [S. LaToya J.], 83 AD3d 549 [1st Dept 2011]). A preponderance of the evidence supports Family Court's finding that the mother violated the terms of the suspended judgments (see Matter of Christian Anthony Y.T. [Donna Marie T.], 78 AD3d 410 [1st Dept 2010]).

Notwithstanding the mother's efforts to comply with some of the terms of the suspended judgments, the credible evidence adduced at the hearing established, inter alia, that she missed some of the planning conferences, and her apartment was not maintained in a suitable manner due to mold and gnat infestation.

Although the mother was required to remain drug and alcohol free, she relapsed in January 2011, approximately six months after the suspended judgment period had begun. She also failed to obtain clearance for her live-in paramour because it might "hurt her case," or for other friends that she allowed to live in her apartment. It is not necessary for a parent to violate all of the terms of a suspended judgment for a violation to be found (see Matter of Gianna W. [Jessica S.], 96 AD3d 545 [1st Dept 2012] [finding that the failure to secure suitable housing was a material violation and constituted grounds for revocation]).

Concur — Andrias, J.P., Friedman, Acosta, DeGrasse and Freedman, JJ.