

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

In re Lee B.

65 A.D.3d 549 (N.Y. App. Div. 2d Dep't 2009) · Decided August 4, 2009

SUMMARY

The court held that the mother permanently neglected the child by failing to enroll in court-ordered psychotherapy despite the agency's diligent efforts. However, it vacated the termination of her parental rights and remitted the matter for a new dispositional hearing because the mother had made sufficient progress toward strengthening her relationship with the child.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Prudenti, P.J.; Fisher, J.; Miller, J.; Lott, J.
JURISDICTION	New York
DECIDED	August 4, 2009
DISPOSITION	remanded
PROCEDURAL POSTURE	The mother appealed from portions of a Family Court order that adjudged her to have permanently neglected the child, terminated her parental rights, and transferred custody and guardianship for adoption.
STANDARD OF REVIEW	The permanent-neglect determination was reviewed for whether it was supported by clear and convincing evidence; the dispositional determination was reviewed on the facts and in the exercise of discretion.
PRECEDENTIAL VALUE	Published intermediate appellate decision; binding precedent within the applicable New York Appellate Division department unless superseded or otherwise limited.
PARTIES	the mother v. the petitioner

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that the mother permanently neglected the child by failing to enroll in court-ordered psychotherapy and failing to plan for the child's future.
2. Whether termination of the mother's parental rights was warranted in light of her progress toward strengthening her relationship with the child.
3. Whether the matter should be remitted for a new dispositional hearing rather than entering a suspended judgment after more than one year had passed since the prior dispositional hearing.

HOLDINGS

1. The Family Court properly adjudged that the mother permanently neglected the child because, during the relevant statutory period, she failed to enroll in court-ordered psychotherapy and therefore failed to plan for the child's future, although physically and financially able to do so and despite the agency's diligent efforts.
2. Termination of the mother's parental rights was unwarranted because the record showed sufficient progress toward strengthening her relationship with the child; the order therefore had to be modified to delete the termination and custody-transfer provisions.
3. Because more than one year had passed since the dispositional hearing, entering a suspended judgment at the time of the appellate decision would have been imprudent; the matter therefore had to be remitted for a new dispositional hearing and a new disposition.

KEY QUOTATIONS

“On the dispositional issue, however, the record indicates that the mother made sufficient progress toward strengthening her relationship with the child, such that the Family Court’s disposition terminating her parental rights was unwarranted” (550)

“Since more than one year has passed since the dispositional hearing was held, the entry of a suspended judgment at this time would be imprudent” (550)

FACTUAL BACKGROUND

During the relevant statutory period, the mother failed to enroll in court-ordered psychotherapy despite being physically and financially able to do so and despite the agency's diligent efforts to encourage and strengthen the parental relationship. The Appellate Division concluded that she consequently failed to plan for the child's future and permanently neglected the child. The record also showed that she had made sufficient progress toward strengthening her relationship with the child to make termination of her parental rights unwarranted.

PROCEDURAL HISTORY

After fact-finding and dispositional hearings, the Family Court, Queens County, determined that the mother permanently neglected the child and terminated her parental rights. The Appellate Division affirmed the

permanent-neglect adjudication but modified the order by deleting the termination and custody-transfer provisions and remitted for a new dispositional hearing and disposition.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Family Court, Queens County, must conduct a new dispositional hearing and enter a new disposition concerning the mother. The provisions terminating the mother's parental rights and transferring custody and guardianship to the Commissioner of Social Services of the City of New York and Little Flower Children and Family Services for adoption are deleted.

CASES CITED

- Matter of Justina Rose D., 28 A.D.3d 659, 660 (N.Y. App. Div. 2006)
- Matter of Christopher C., 58 A.D.3d 622, 623-624 (N.Y. App. Div. 2009)
- Matter of Shaquill Dywon M., 50 A.D.3d 1142, 1144 (N.Y. App. Div. 2008)
- Matter of Society for Seamen's Children v. Jennifer J., 208 A.D.2d 849, 850 (N.Y. App. Div. 1994)

OPINION

PER CURIAM.

In a proceeding pursuant to Social Services Law § 384-b and Family Court Act article 6 to terminate the parental rights of the mother and the father on the ground of permanent neglect, the mother appeals, as limited by her brief, from so much of an order of the Family Court, Queens County (Salinitro, J.), dated June 27, 2008, as, after fact-finding and dispositional hearings, determined that she permanently neglected the subject child, terminated her parental rights, and transferred the custody and guardianship of the child to the Commissioner of Social Services of the City of New York and to Little Flower Children and Family Services for the purpose of adoption.

Ordered that the order is modified, on the facts and in the exercise of discretion, by deleting the provisions thereof terminating the mother's parental rights and transferring custody and guardianship of the child to the Commissioner of Social Services of the City of New York and to Little Flower Children and Family Services for the purpose of adoption; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements, and the matter is remitted to the Family Court, Queens County, for a new dispositional hearing and a new disposition thereafter with respect to the appellant, in accordance herewith.

The Family Court properly concluded that the petitioner established, by clear and convincing evidence (see Social Services Law § 384-b [7] [a]), that during the relevant statutory period, the

mother failed to enroll in court-ordered psychotherapy, and thus failed to plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship (see Social Services Law § 384-b [7] [a]; Matter of Justina Rose D., 28 AD3d 659, 660 [2006]).

Accordingly, the Family Court properly adjudged that the mother permanently neglected the child (see Matter of Christopher C., 58 AD3d 622, 623 [2009]). *550On the dispositional issue, however, the record indicates that the mother made sufficient progress toward strengthening her relationship with the child, such that the Family Court's disposition terminating her parental rights was unwarranted (see Matter of Christopher C., 58 AD3d 622, 623 [2009]; Matter of Shaquill Dywon M., 50 AD3d 1142, 1144 [2008]).

Under the circumstances, instead of terminating her parental rights, the Family Court should have suspended judgment for one year, at which point it would have been in a better position to evaluate the mother's progress and to determine whether the child's best interests would be endangered by his return to the custody of the appellant (see Social Services Law § 384-b [1] [a] [ii]; Family Ct Act § 631 [b]; Matter of Christopher C., 58 AD3d 622, 624 [2009]; Matter of Shaquill Dywon M., 50 AD3d 1142, 1144 [2008]; Matter of Society for Seamen's Children v Jennifer J., 208 AD2d 849, 850 [1994]).

Since more than one year has passed since the dispositional hearing was held, the entry of a suspended judgment at this time would be imprudent (see Family Ct Act § 633). Accordingly, we remit the matter to the Family Court, Queens County, for a new dispositional hearing and a new disposition thereafter with respect to the mother (see Matter of Shaquill Dywon M., 50 AD3d 1142, 1144 [2008]; Matter of Society for Seamen's Children v Jennifer J., 208 AD2d 849, 850 [1994]).

Prudenti, P.J., Fisher, Miller and Lott, JJ., concur.