

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

In re Luke M.

112 A.D.3d 535 (1st Dep't 2013) · Decided December 24, 2013

SUMMARY

The Appellate Division unanimously affirmed an order terminating the respondent mother’s parental rights based on permanent neglect and transferring custody and guardianship of the children for adoption. The court held that the agency made diligent efforts to strengthen the parent-child relationship, while the mother failed to comply with critical service-plan requirements and did not demonstrate insight into the children’s needs. The court also concluded that termination, rather than a suspended judgment, was in the children’s best interests.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Mazzarelli, J.P.; Sweeny, J.; Moskowitz, J.; Freedman, J.; Clark, J.
JURISDICTION	New York
DECIDED	December 24, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from a Family Court order of fact-finding and disposition terminating her parental rights upon a finding of permanent neglect and transferring custody and guardianship of the children for purposes of adoption.
STANDARD OF REVIEW	The Appellate Division deferred to the Family Court's credibility, character, and temperament findings and reviewed whether the evidence supported the finding of permanent neglect and whether termination was in the children's best interests.
PRECEDENTIAL VALUE	published
PARTIES	Respondent mother v. Cardinal McCloskey Services, Commissioner of Social Services of the City of New York

TOPICS

- termination of parental rights
- parental rights
- adoption
- family law procedure
- family law

PRACTICE AREAS

family law

termination of parental rights

adoption

QUESTIONS PRESENTED

1. Whether the agency established by clear and convincing evidence that it made diligent efforts to strengthen the parent-child relationship and that the mother permanently neglected the children.
2. Whether the Family Court should have suspended judgment for one year rather than terminated the mother's parental rights.
3. Whether termination of the mother's parental rights was in the children's best interests.

HOLDINGS

1. The agency established by clear and convincing evidence that it made diligent efforts to strengthen the parent-child relationship and that the mother permanently neglected the children.
2. A suspension of judgment was not warranted because the mother failed to demonstrate sufficient progress toward understanding and meeting the children's needs or accepting responsibility for the conduct leading to their removal.
3. Termination of the mother's parental rights was in the children's best interests and was supported by a preponderance of the evidence.

FACTUAL BACKGROUND

During the relevant period, the mother was incarcerated and subject to an eight-year order of protection barring contact with the children after pleading guilty to an assault charge connected to the neglect proceedings. The agency developed a service plan, updated the mother about the children, and reminded her to comply, but she failed to obtain a mental-health evaluation, document completion of WINGS services, or provide alternate care resources. She also failed to accept responsibility for severe physical abuse, while the children remained in foster care, bonded with their foster families, and received needed therapy, services, and medication.

PROCEDURAL HISTORY

After a fact-finding hearing, Bronx County Family Court found that the mother permanently neglected the children. Following a dispositional hearing, the court terminated her parental rights and transferred custody and guardianship to Cardinal McCloskey Services and the Commissioner of Social Services for adoption. The Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Adaliz Marie R. [Natividad G.], 78 A.D.3d 409 (1st Dep't 2010)

- Matter of Antwone Lee S., 49 A.D.3d 276 (1st Dep't 2008)
- Matter of Irene C. [Reina M.], 68 A.D.3d 416 (1st Dep't 2009)
- Matter of Jeremy H. [Logann K.], 100 A.D.3d 518 (1st Dep't 2012)
- Matter of Marie J., 307 A.D.2d 265 (2d Dep't 2003)
- Matter of Michael B., 80 N.Y.2d 299, 311 (1992)
- Matter of Ibrahim B., 57 A.D.3d 382 (1st Dep't 2008)

OPINION

In re Luke M. 112 A.D.3d 535

PER CURIAM.

Order of fact-finding and disposition, Family Court, Bronx County (Gayle E Roberts, J.), entered on or about November 26, 2012, which terminated respondent mother's parental rights to the subject children upon a finding of permanent neglect and transferred custody and guardianship of the children to Cardinal McCloskey Services and the Commissioner of Social Services of the City of New York for the purposes of adoption, unanimously affirmed, without costs. *536 Throughout the relevant period, the mother was incarcerated and subject to an eight-year order of protection precluding contact with the children, following her guilty plea to an assault charge related to the underlying neglect proceedings. Nevertheless, the agency established by clear and convincing evidence that it made diligent efforts to strengthen the parent-child relationship, including developing an appropriate service plan tailored to the situation, regularly updating the mother on the children's progress and continually reminding her to comply with the requirements of the service plan. Despite the agency's efforts, however, the mother failed to comply with critical components of the service plan, including her failure to request and obtain a mental health evaluation during her incarceration despite being advised to do so, to provide documentation of completion of services through the WINGS program, and to provide alternate resources for the care of the children in light of her incarceration (see Matter of Adaliz Marie R. [Natividad G.], 78 AD3d 409 [1st Dept 2010]; Matter of Antwone Lee S., 49 AD3d 276 [1st Dept 2008]). The mother also lacked insight into her behavior and failed to accept any responsibility for the severe physical abuse of one of the subject children, which affected the other children who were present, and led to their removal and to her incarceration (see Matter of Irene C. [Reina M.], 68 AD3d 416 [1st Dept 2009]). Moreover, the court properly drew a negative inference from the mother's failure to testify or to present evidence to rebut the agency's case (see Matter of Jeremy H. [Logann K.], 100 AD3d 518 [1st Dept 2012]). According deference to the Family Court's findings as to the credibility, character, and temperament of the mother and other witnesses, we find that the evidence adduced at the fact-finding hearing supports the Family Court's finding of permanent neglect (see Matter of Marie J., 307 AD2d 265 [2d Dept 2003]). At a dispositional hearing after a finding of permanent neglect, the Family Court must make its determination based on the best interests of the children (see Family Ct Act § 631). The mother contends that the Family Court

should have suspended judgment for one year pursuant to Family Court Act § 633 to prepare her to be reunited with the children (see *Matter of Michael B.*, 80 NY2d 299, 311 [1992]). Here, however, notwithstanding the mother's recent efforts to avail herself of certain services offered to her since her release from prison, she has failed to demonstrate any progress toward gaining insight into the needs or care of the children, and failed to accept any responsibility for her behavior which led to their removal, such *537that returning the children to her would be a risk to their well-being. Moreover, the children have not resided with the mother since 2008, and have bonded with their respective foster families and homes, where they are well cared for and wish to remain. In addition, the children, all of whom have special needs, are receiving necessary therapy, services and medication in their foster homes. On the other hand, the evidence demonstrated that the mother lacked knowledge, insight and understanding into the respective needs and care of the children. Thus, the finding that termination of the mother's parental rights is in the children's best interests is supported by a preponderance of the evidence (see *Matter of Ibrahim B.*, 57 AD3d 382 [1st Dept 2008]). Concur — Mazzairelli, J.R, Sweeny, Moskowitz, Freedman and Clark, JJ.