

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)

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