

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

Matter of Annabella C. (Sandra C.)

2019 NY Slip Op 00777 (App. Div. 2019) · No. CAF 17-00348 · Decided February 1, 2019

SUMMARY

The Appellate Division, Fourth Department, affirmed an order adjudging the respondent mother to have neglected the subject child in a Family Court Act article 10 proceeding. The court held that the mother's argument for dismissal under Family Court Act § 1051(c) was unpreserved because she had not moved for that relief and, in any event, lacked merit.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Peradotto, J.; Carni, J.; Nemoyer, J.; Winslow, J.
JURISDICTION	New York
DECIDED	February 1, 2019
DOCKET	CAF 17-00348
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from an order of Family Court, Erie County, adjudging that she neglected the subject child in a proceeding under Family Court Act article 10.
PRECEDENTIAL VALUE	Published appellate memorandum; precedential value not otherwise specified in the opinion.
PARTIES	Sandra C. v. Erie County Department of Social Services

TOPICS

- family law procedure
- preservation of error
- appellate procedure
- parental rights
- family law

PRACTICE AREAS

- family law
- child welfare

QUESTIONS PRESENTED

1. Whether the mother's contention that the neglect petition should have been dismissed under Family Court Act § 1051(c) was preserved for appellate review.
2. If preserved, whether the contention had merit.

HOLDINGS

1. The mother's contention was not preserved for appellate review because she never moved for dismissal under Family Court Act § 1051(c).
2. Even if the contention had been preserved, it was without merit.

KEY QUOTATIONS

*“That contention is not preserved for our review because the mother never moved for that relief” (*1)*

*“In any event, that contention is without merit.” (*1)*

FACTUAL BACKGROUND

The proceeding concerned an allegation that respondent mother neglected the subject child. Family Court determined that the mother had neglected the child. On appeal, the mother's sole contention concerned dismissal of the neglect petition under Family Court Act § 1051(c), rather than the underlying factual determination.

PROCEDURAL HISTORY

The Erie County Department of Social Services commenced a neglect proceeding under Family Court Act article 10. Family Court entered an order determining that respondent had neglected the subject child. Respondent appealed, contending that the neglect petition should have been dismissed under Family Court Act § 1051(c). The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Malachi H. [Dequisa H.], 125 AD3d 478, 478 (1st Dept 2015)
- Matter of Josee Louise L.H. [DeCarla L.], 121 AD3d 492, 493 (1st Dept 2014), lv denied 24 NY3d 913 (2015)

OPINION

PER CURIAM.

Matter of Annabella C. (Sandra C.) (2019 NY Slip Op 00777) Matter of Annabella C. (Sandra C.) 2019 NY Slip Op 00777 Decided on February 1, 2019 Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on February 1, 2019 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: WHALEN, P.J., PERADOTTO, CARNI, NEMOYER, AND WINSLOW, JJ. 1298 CAF 17-00348 [*1]IN THE MATTER OF ANNABELLA C. ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES, PETITIONER-RESPONDENT; SANDRA C., RESPONDENT-APPELLANT. HOPPE & ASSOCIATES, INC., BUFFALO (KELI ILES-HERNANDEZ OF COUNSEL), FOR RESPONDENT-APPELLANT.

NATALIE M. STUTZ, BUFFALO, FOR PETITIONER-RESPONDENT. DAVID E. BLACKLEY, LOCKPORT, ATTORNEY FOR THE CHILD. Appeal from an order of the Family Court, Erie County (Lisa Bloch Rodwin, J.), entered February 3, 2017 in a proceeding pursuant to Family Court Act article 10.

The order determined that respondent had neglected the subject child. It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs. Memorandum: In this proceeding pursuant to Family Court Act article 10, respondent mother appeals from an order which adjudged that she neglected the subject child.

The mother's sole contention on appeal is that Family Court erred in failing to dismiss the neglect petition pursuant to Family Court Act § 1051 (c). That contention is not preserved for our review because the mother never moved for that relief (see Matter of Malachi H. [Dequisa H.], 125 AD3d 478, 478 [1st Dept 2015]; Matter of Josee Louise L.H. [DeCarla L.], 121 AD3d 492, 493 [1st Dept 2014], lv denied 24 NY3d 913 [2015]).

In any event, that contention is without merit. Entered: February 1, 2019 Mark W. Bennett Clerk of the Court