

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

Matter of Ronald Kendell G. (Janet G.)

2019 NY Slip Op 01321 (App. Div. 2019) · No. 8473 · Decided February 21, 2019

SUMMARY

The Appellate Division, First Department affirmed the denial of a mother's motion to vacate her default in a permanent neglect proceeding. The court held that she failed to provide a reasonable excuse for her nonappearance or establish a meritorious defense, and that the evidence supported termination of her parental rights as being in the children's best interests.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Friedman, J.P.; Gische, J.; Kapnick, J.; Gesmer, J.; Kern, J.
JURISDICTION	New York
DECIDED	February 21, 2019
DOCKET	8473
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from a Family Court order denying her motion to vacate a default order that found her to have permanently neglected her children, terminated her parental rights, and committed custody and guardianship to the petitioner agency and the Commissioner for the Administration for Children's Services for adoption.
STANDARD OF REVIEW	Whether to vacate a default is committed to the court's discretion. The appellate court reviewed Family Court's exercise of that discretion and the mother's failure to demonstrate both a reasonable excuse for her default and a meritorious defense.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Janet G. v. Saint Dominic's Family Services

TOPICS

termination of parental rights

parental rights

family law procedure

appellate procedure

PRACTICE AREAS

family law

termination of parental rights

parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether Family Court providently exercised its discretion in denying the mother's motion to vacate the default entered in the permanent-neglect proceeding.
2. Whether the mother established a reasonable excuse for her failure to appear.
3. Whether the mother established a meritorious defense to the allegations of permanent neglect.
4. Whether the preponderance of the evidence supported termination of the mother's parental rights as being in the children's best interests.

HOLDINGS

1. Family Court providently exercised its discretion in denying the mother's motion to vacate the default because she failed to establish a reasonable excuse for her failure to attend the hearing.
2. The mother failed to establish a meritorious defense to the allegations of permanent neglect.
3. The preponderance of the evidence supported the finding that termination of the mother's parental rights was in the children's best interests.

FACTUAL BACKGROUND

The mother failed to appear timely at a hearing despite warnings from her counsel and the agency that she was required to attend. She attributed her nonappearance to employment in Pennsylvania but did not substantiate that claim or contact the court or counsel to advise that she would be late, and she had a pattern of prior nonappearances. Although she participated in some services, the record showed no change in her ability to care for the children, while their foster mother, also their paternal grandmother, had cared for them for several years and addressed their special needs.

PROCEDURAL HISTORY

Family Court, Bronx County, entered a March 23, 2018 order upon the mother's default, determining that she permanently neglected the children, terminating her parental rights, and awarding custody and guardianship for adoption. The court denied her motion to vacate that order in an order entered on or about April 13, 2018. The Appellate Division, First Department, unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Derrick T., 261 AD2d 108 [1st Dept 1999]
- Matter of Ilyas Zaire A.-R. [Habiba A.-R.], 104 AD3d 512 [1st Dept 2013], lv denied 21 NY3d 859 [2013]
- Matter of Janaya T. [Sarah T.], 165 AD3d 566 [1st Dept 2018]
- Matter of Tyshawn S. [Shana S.], 143 AD3d 990 [2d Dept 2016]
- Matter of Angel P., 44 AD3d 448, 449 [1st Dept 2007]

OPINION

PER CURIAM.

Matter of Ronald Kendell G. (Janet G.) (2019 NY Slip Op 01321) Matter of Ronald Kendell G. (Janet G.) 2019 NY Slip Op 01321 Decided on February 21, 2019 Appellate Division, First 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 21, 2019 Friedman, J.P., Gische, Kapnick, Gesmer, Kern, JJ. 8473 [*1]In re Ronald Kendell G., III, and Another, Children Under the Age of Eighteen Years, etc., Janet G., Respondent-Appellant, Saint Dominic's Family Services, Petitioner-Respondent. Geoffrey P. Berman, Larchmont, for appellant. Warren & Warren, P.C., Brooklyn (Ira L. Eras of counsel), for respondent.

Cabelly & Calderon, Jamaica (Lewis S. Calderon of counsel), attorney for the children. Order, Family Court, Bronx County (Gilbert A. Taylor, J.), entered on or about April 13, 2018, which denied respondent mother's motion to vacate an order, same court and Judge, entered on or about March 23, 2018, which, upon the mother's default, determined that she permanently neglected the subject children, terminated her parental rights, and committed custody and guardianship of the children to petitioner agency and the Commissioner for the Administration for Children's Services for the purpose of adoption, unanimously affirmed, without costs.

The court providently exercised its discretion in denying the mother's motion to vacate her default because she failed to substantiate her claim that employment in Pennsylvania prevented her from timely attending the hearing (see Matter of Derrick T., 261 AD2d 108 [1st Dept 1999]). Notwithstanding that the day before the hearing both the mother's counsel and the agency warned her that she must appear, the mother failed to contact the court or counsel to advise them that while she intended to appear, she would be late (see Matter of Ilyas Zaire A.-R.

[Habiba A.-R.], 104 AD3d 512 [1st Dept 2013], lv denied 21 NY3d 859 [2013]). The mother's excuse was also unreasonable in light of her pattern of nonappearances (*id.* at 512-513). The mother also failed to establish a meritorious defense to the allegations of permanent neglect. Despite the mother's claims to the contrary, the agency exercised diligent efforts to reunite her with the children (see Matter of Janaya T. [Sarah T.], 165 AD3d 566 [1st Dept 2018]).

Although the mother participated in certain services, there was no change in her ability to care for the children (see Matter of Tyshaw S. [Shana S.], 143 AD3d 990 [2d Dept 2016]). Furthermore, the preponderance of the evidence supported the finding that termination of the mother's parental rights was in the children's best interest.

The record shows that the foster [*2]mother, who is also the children's paternal grandmother, has cared for the children for several years and tends to their special needs (see Matter of Angel P., 44 AD3d 448, 449 [1st Dept 2007]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: FEBRUARY 21, 2019 CLERK