

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

In re Joanna P.

101 A.D.3d 1751 (4th Dep't 2012) · Decided December 28, 2012

SUMMARY

The Appellate Division dismissed as moot the mother's appeal concerning her oldest child, who had reached age 18. It upheld the termination of her parental rights as to the younger children based on permanent neglect, concluding that the petitioner made diligent efforts and that a suspended judgment would not serve the children's best interests.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Fourth Department
WRITING FOR THE COURT	Smith, J.P.; Peradotto, J.; Lindley, J.; Valentino, J.; Whalen, J.
JURISDICTION	New York
DECIDED	December 28, 2012
DISPOSITION	dismissed
PROCEDURAL POSTURE	The respondent mother appealed from an order that terminated her parental rights on the ground of permanent neglect.
STANDARD OF REVIEW	The Appellate Division reviewed whether the record supported Family Court's determinations regarding diligent efforts, permanent neglect, and whether a suspended judgment would serve the children's best interests.
PRECEDENTIAL VALUE	Published appellate memorandum; precedential under applicable New York law.
PARTIES	Respondent mother v. Petitioner

TOPICS

termination of parental rights parental rights mootness family law procedure appellate procedure

PRACTICE AREAS

family law termination of parental rights appellate procedure

QUESTIONS PRESENTED

1. Whether the petitioner established by clear and convincing evidence that it made the diligent efforts required to support termination of the mother's parental rights for permanent neglect.
2. Whether the mother demonstrated a meaningful plan for the younger children's future and addressed the problems that caused their removal.
3. Whether a suspended judgment would serve the best interests of the younger children.
4. Whether the appeal concerning the oldest child was moot because that child had reached age eighteen.

HOLDINGS

1. The appeal concerning the oldest child was dismissed as moot because the child had reached age eighteen.
2. The petitioner met its initial burden of establishing by clear and convincing evidence that it made the requisite diligent efforts to encourage and strengthen the mother's relationship with the younger children, and the mother failed to establish a meaningful plan for their future addressing the problems that caused their removal.
3. A suspended judgment would not serve the best interests of the younger children.

KEY QUOTATIONS

"Petitioner was not required to ensure that the mother succeeded in overcoming her obstacles but, rather, the mother was required to assume some responsibility in dealing with those challenges" (1751-1752)

"The progress made by [the mother] in the months preceding the dispositional determination was not sufficient to warrant any further prolongation of the children's] unsettled familial status" (1752)

FACTUAL BACKGROUND

The petitioner sought termination of the mother's parental rights based on permanent neglect involving her children. The petitioner established that it had made diligent efforts to encourage and strengthen the mother's relationship with the younger children. Although the mother participated in some services, she failed to address successfully the problems that led to the children's removal and continued to prevent their safe return. By the time of the appeal, the oldest child had reached age eighteen.

PROCEDURAL HISTORY

Family Court entered an order terminating the mother's parental rights under Social Services Law § 384-b. On appeal, the Appellate Division dismissed as moot the portion concerning the oldest child because that child had reached age eighteen and upheld Family Court's determination concerning the younger children.

DISPOSITION

dismissed

CASES CITED

- Matter of Anthony M., 56 A.D.3d 1124, 1124 (2008), lv denied, 12 N.Y.3d 702 (2009)
- Matter of Rachael N. [Christine N.], 70 A.D.3d 1374, 1374 (2010), lv denied, 15 N.Y.3d 708 (2010)
- Matter of Gerald G. [Orena G.], 91 A.D.3d 1320, 1320 (2012), lv denied, 19 N.Y.3d 801 (2012)
- Matter of Brittany K., 59 A.D.3d 952, 953 (2009), lv denied, 12 N.Y.3d 709 (2009)
- Matter of Tiara B. [Torrence B.], 70 A.D.3d 1307, 1307-1308 (2010), lv denied, 14 N.Y.3d 709 (2010)
- Matter of Mercedes L., 12 A.D.3d 1184, 1185 (2004)
- Matter of Saboor G., 303 A.D.2d 1022, 1023 (2003)
- Matter of Roystar T. [Samaritan B.], 72 A.D.3d 1569, 1569 (2010), lv denied, 15 N.Y.3d 707 (2010)

OPINION

PER CURIAM.

Memorandum: Respondent mother appeals from an order that, inter alia, terminated her parental rights pursuant to *1752 Social Services Law § 384-b on the ground of permanent neglect. We dismiss as moot the appeal from the order insofar as it concerned the mother's oldest child inasmuch as she has attained the age of 18 (see Matter of Anthony M., 56 AD3d 1124, 1124 [2008], lv denied 12 NY3d 702 [2009]).

We conclude that petitioner met its initial burden of establishing by clear and convincing evidence that it made the requisite diligent efforts to encourage and strengthen the mother's relationship with the younger children, and the mother failed to establish that she "had 'a meaningful plan for the child[ren's] future, including that [she has] addressed the problems that caused the removal' of the child[ren]" (Matter of Rachael N. [Christine N.], 70 AD3d 1374, 1374 [2010], lv denied 15 NY3d 708 [2010]). "Petitioner was not required to ensure that the mother succeeded in overcoming her obstacles but, rather, the mother was required to assume some responsibility in dealing with those challenges" (Matter of Gerald G. [Orena G.], 91 AD3d 1320, 1320 [2012], lv denied 19 NY3d 801 [2012]). " '[Although [the mother] participated in [some of] the services offered by petitioner, [s]he failed to address successfully the problems that led to the removal of the children] and continued to prevent [their] safe return' " (Matter of Brittany K., 59 AD3d 952, 953 [2009], lv denied 12 NY3d 709 [2009]).

Contrary to the mother's contention, the record supports Family Court's determination that a suspended judgment would not serve the best interests of the younger children (see Matter of Tiara B. [Torrence B.], 70 AD3d 1307, 1307-1308 [2010], lv denied 14 NY3d 709 [2010]; see generally Matter of Mercedes L., 12 AD3d 1184, 1185 [2004]; Matter of Saboor G., 303 AD2d 1022, 1023 [2003]). " The progress made by [the mother] in the months preceding the dispositional determination was not sufficient to warrant any further prolongation of the children's] unsettled familial status' " (Matter of Roy star T. [Samaritan B.], 72 AD3d 1569, 1569 [2010], lv denied 15 NY3d 707 [2010]).

Present — Smith, J.P., Peradotto, Lindley, Valentino and Whalen, JJ.

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