

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

Matter of B.W. (N.W.)

2023 NY Slip Op 01153 · No. B3285/21; Appeal No. 17444; Case No. 2022-02538 · Decided March 2, 2023

SUMMARY

The Appellate Division, First Department, affirmed an order finding that the respondent mother permanently neglected and abandoned the subject children. The court held that clear and convincing evidence established abandonment, failure to plan for the children's future, and the agency's diligent efforts to strengthen the parental relationship.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Moulton, J.P.; González, J.; Scarpulla, J.; Shulman, J.
JURISDICTION	New York
DECIDED	March 2, 2023
DOCKET	B3285/21; Appeal No. 17444; Case No. 2022-02538
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from a Family Court order that, to the extent appealable and as limited by the briefs, brought up for review a fact-finding order determining that she permanently neglected and abandoned the subject children.
STANDARD OF REVIEW	The Appellate Division reviewed whether clear and convincing evidence supported the findings of abandonment and permanent neglect.
PRECEDENTIAL VALUE	published
PARTIES	N.W. v. Rising Ground

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether clear and convincing evidence supported the finding that the mother abandoned the children by failing to visit or communicate with them or the agency for the six months preceding the filing of the petition.
2. Whether clear and convincing evidence supported the finding of permanent neglect based on the agency's diligent efforts to strengthen the parental relationship and the mother's failure to plan for the children's future.

HOLDINGS

1. Clear and convincing evidence supported the finding that the mother abandoned the children because she failed to visit or communicate with the children or the agency for the six months immediately preceding the filing of the petition, although she was able to do so and was not prevented or discouraged by the agency.
2. Clear and convincing evidence supported the finding of permanent neglect because the agency made diligent efforts to strengthen the parental relationship and the mother nevertheless failed to plan for the children's future.

KEY QUOTATIONS

*“Clear and convincing evidence supported the determination that the mother had abandoned the children by failing to visit or communicate with the children or the agency for the six months immediately prior to the filing of the petition, although she was able to do so and not prevented or discouraged from doing so by the agency.” (*1)*

*“The finding of permanent neglect is also supported by clear and convincing evidence that the agency made diligent efforts to strengthen the parental relationship by, among other things, scheduling visitation and providing the mother with referrals for appropriate services, and that despite those efforts, the mother failed to plan for the children's future during the relevant time period.” (*1)*

FACTUAL BACKGROUND

The mother failed to visit or communicate with the children or the agency during the six months immediately preceding the filing of the petition, although she was able to do so and was not prevented or discouraged by the agency. The agency scheduled visitation and provided referrals for appropriate services, but the mother failed to attend scheduled visits, was inattentive during virtual visits, did not complete a drug treatment program or comply with her service plan, and resisted efforts to plan for the children's future. The children were placed with the agency and resided in the home of their maternal grandmother.

PROCEDURAL HISTORY

After a hearing, Family Court, Bronx County, entered a fact-finding order on or about December 22, 2021, finding that the mother permanently neglected and abandoned the children. Family Court entered an order on or

about March 3, 2022, and the Appellate Division unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Messiah C.T. (Eusebio C.T.), 180 A.D.3d 544 (1st Dep't 2020)
- Matter of Irene O., 38 N.Y.2d 776 (1975)
- Matter of Salma M., 294 A.D.2d 198 (1st Dep't 2002)
- Matter of Nadine Nicky McD. (Vernice H.), 138 A.D.3d 495 (1st Dep't 2016)
- Matter of Bryce Raymond R. (Ann M.), 162 A.D.3d 522, 523 (1st Dep't 2018)
- Matter of Calvario Chase Norall W. (Denise W.), 85 A.D.3d 582 (1st Dep't 2011)

OPINION

Matter of B.W. (N.W.) 2023 NY Slip Op 01153

PER CURIAM.

Matter of B.W. (N.W.) ([Citation for case: Matter of B.W. \(N.W.\)](/opinion/9381944/matter-of-bw-nw/)) 2023 NY Slip Op 01153

Matter of B.W. (N.W.)
<a data-bbox="606 1187 916 1211" href="/opinion/9381944/matter-of-bw-nw/">Citation for case: Matter of B.W. (N.W.) 2023 NY Slip Op 01153
Decided on March 02, 2023
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 and Entered: March 02, 2023
Before: Moulton, J.P., González, Scarpulla, Shulman, JJ.
Docket No. B3285/21 Appeal No. 17444 Case No. 2022-02538
[*1] In the Matter of B.W., and Another, Children Under Eighteen Years of Age, etc., N.W., Respondent-Appellant, Rising Ground, Petitioner-Respondent.
Carol L. Kahn, New York, for appellant.
Rosin Steinhagen Mendel PLLC, New York (Douglas H. Reiniger of counsel), for respondent.
Steven P. Forbes, Huntington, attorney for the children.
Order, Family Court, Bronx County (Cynthia Lopez, J.), entered on or about March 3, 2022, which, to the extent appealable and as limited by the briefs, brings up for review a fact-finding order, same court (Michael R. Milsap, J.), entered on or about December 22, 2021, which found, after a hearing, that respondent mother permanently neglected and abandoned the subject children, unanimously affirmed, without

costs.

Clear and convincing evidence supported the determination that the mother had abandoned the children by failing to visit or communicate with the children or the agency for the six months immediately prior to the filing of the petition, although she was able to do so and not prevented or discouraged from doing so by the agency (*see* Social Services Law § 384-b [3] [g] [i]; [4] [b]; [5] [a]). The mother's limited contacts with the children during the relevant period were too sporadic and insubstantial to defeat the finding of abandonment (*see* *Matter of Messiah C.T. [Eusebio C.T.]*, [180 AD3d 544](/opinion/4728739/matter-of-messiah-ct-eusebio-ct/) [1st Dept 2020]). The credible evidence belied the mother's contentions that the foster mother told her that there was an order of protection prohibiting her from contact with the children and that she did not maintain contact with the agency because there was no case planner assigned to her case (*see* *Matter of Irene O.*, [38 NY2d 776](/c/NY2d/38/776/) [1975]; *Matter of Salma M.*, [294 AD2d 198](/c/AD2d/294/198/) [1st Dept 2002]). In any event, at all relevant times, the mother was aware that the children were placed with the agency, and residing in the home of their maternal grandmother, and her failure to maintain contact with the agency constituted a manifestation of intent to forego parental rights (*see* *Matter of Nadine Nicky McD. [Vernice H.]*, [138 AD3d 495](/opinion/3193427/matter-of-nadine-nicky-mcd-vernice-h/) [1st Dept 2016]).

The finding of permanent neglect is also supported by clear and convincing evidence that the agency made diligent efforts to strengthen the parental relationship by, among other things, scheduling visitation and providing the mother with referrals for appropriate services, and that despite those efforts, the mother failed to plan for the children's future during the relevant time period (*see* Social Services Law § 384-b[7][a]). Among other things, the mother failed to complete a drug treatment program or comply with any portion of her service plan (*see* *Matter of Bryce Raymond R. [Ann M.]*, [162 AD3d 522](#), 523 [1st Dept 2018]), and seemed to show little insight into why she was referred for services. The mother failed to attend scheduled visits and was inattentive during virtual visits (*see* *Matter of Calvario Chase Norall W. [Denise W.]*, [85 AD3d 582](/opinion/5963202/in-re-calvario-chase-norall-w/) [1st Dept 2011]). The mother was hostile toward agency staff, telling them to stop contacting her, and resisted the agency's efforts to engage her in planning for the children. The mother's various excuses for her failure to comply with services and visitation were speculative and otherwise unsupported by the credible evidence.

We have considered the mother's remaining arguments [*2] and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER

<p>OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.</p>

<p>ENTERED: March 2, 2023</p>

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