

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

Matter of Ebony S. (Earlind G.)

123 A.D.3d 1136 (2d Dep't 2014) · No. 2014-01579 · Decided December 31, 2014

SUMMARY

The Appellate Division, Second Department affirmed a Family Court disposition releasing three children to their mother. The court held that the appellant's sexual abuse of another child supported a finding of derivative abuse of the three children because the conduct demonstrated a fundamental defect in parental duties and defective impulse control creating a substantial risk of harm.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Reinaldo E. Rivera, J.P.; Peter B. Skelos, J.; Sheri S. Roman, J.; Robert J. Miller, J.
JURISDICTION	New York
DECIDED	December 31, 2014
DOCKET	2014-01579
DISPOSITION	affirmed
PROCEDURAL POSTURE	Earlind G. appealed from a Family Court order of disposition that released three children to their mother. The appeal also brought up for review the Family Court's prior fact-finding order determining that he derivatively abused the children.
STANDARD OF REVIEW	The Appellate Division deferred to the Family Court's assessment of witness credibility and found no basis in the record to disturb it.
PRECEDENTIAL VALUE	published and precedential New York Appellate Division decision
PARTIES	Earlind G. v. Administration for Children's Services

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Family Court properly found that the appellant derivatively abused Ebony S., Jasmine S., and Alissa D. based on its determination that he sexually abused Alyson S.
2. Whether the record provided a basis to disturb the Family Court's credibility determinations at the fact-finding hearing.

HOLDINGS

1. The Family Court properly found that the appellant derivatively abused Ebony S., Jasmine S., and Alissa D. because his sexual abuse of Alyson S. established a fundamental defect in his understanding of parental duties and impulse control so defective as to create a substantial risk of harm to any child in his care.
2. There was no basis in the record to disturb the Family Court's assessment of witness credibility at the fact-finding hearing.

KEY QUOTATIONS

“The Family Court’s determination that the appellant sexually abused the child Alyson S. supported the court’s finding that he derivatively abused the children Ebony S., Jasmine S., and Alissa D., and as the conduct established a fundamental defect in his understanding of his parental duties relating to the care of children and demonstrated that his impulse control was so defective as to create a substantial risk of harm to any child in his care” (123 A.D.3d at 1136)

FACTUAL BACKGROUND

The Family Court determined that Earlind G. had sexually abused the child Alyson S. Based on that conduct, the court found that he derivatively abused Ebony S., Jasmine S., and Alissa D. The conduct was found to reflect a fundamental defect in his understanding of parental duties and defective impulse control creating a substantial risk of harm to any child in his care.

PROCEDURAL HISTORY

After a fact-finding hearing, the Family Court, Kings County, found that the appellant derivatively abused Ebony S., Jasmine S., and Alissa D. based on its determination that he had sexually abused Alyson S. The court subsequently entered an order of disposition releasing the three children to their mother. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Michael U. [Marcus U.], 110 A.D.3d 821, 821-822
- Matter of Kyanna T. [Winston R.], 99 A.D.3d 1011, 1013
- Matter of Aliyah G. [Arlenie G.], 95 A.D.3d 885, 886
- Matter of Daniel W., 37 A.D.3d 842, 843
- Matter of Linda F. [Jose F.], 119 A.D.3d 944

OPINION

PER CURIAM.

Matter of Ebony S. (Earlind G.) (2014 NY Slip Op 09141) Matter of Ebony S. (Earlind G.) 2014 NY Slip Op 09141 Decided on December 31, 2014 Appellate Division, Second 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 December 31, 2014 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department REINALDO E. RIVERA, J.P.

PETER B. SKELOS SHERI S. ROMAN ROBERT J. MILLER, JJ. 2014-01579 (Docket Nos. N-5981-10, N-5982-10, N-5984-10) [*1]In the Matter of Ebony S. (Anonymous). Administration for Children's Services, respondent; andEarlind G. (Anonymous), appellant. (Proceeding No. 1)In the Matter of Jasmine S. (Anonymous). Administration for Children's Services, respondent;Earlind G. (Anonymous), appellant.

(Proceeding No. 2)In the Matter of Alissa D. (Anonymous). Administration for Children's Services, respondent;Earlind G. (Anonymous), appellant. (Proceeding No. 3) Richard L. Herzfeld, New York, N.Y., for appellant. Zachary W. Carter, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and Janet L. Zaleon of counsel), for respondent. Seymour W. James, Jr., New York, N.Y.

(Tamara A. Steckler and Marcia Egger of counsel), attorney for the children. DECISION & ORDER Appeal from an order of disposition of the Family Court, Kings County (Steven Z. Mostofsky, J.), dated July 9, 2013. The order, inter alia, released the children Ebony S., Jasmine S., and Alissa D. to the custody of their mother.

The appeal brings up for review an order of fact-finding of that court (Michael Ambrosio, J.), dated May 15, 2013, which, after a hearing, found that the appellant derivatively abused the children Ebony S., Jasmine S., and Alissa D. ORDERED that the order is affirmed, without costs or disbursements.

The Family Court's determination that the appellant sexually abused the child Alyson S. supported the court's finding that he derivatively abused the children Ebony S., Jasmine S., and Alissa D., and as the conduct established a fundamental defect in his understanding of his parental duties

relating to the care of children and demonstrated that his impulse control was so defective as to create a substantial risk of harm to any child in his care (see Matter of Michael U. [Marcus U.], 110 AD3d 821, 821-822; Matter of Kyanna T. [Winston R.], 99 AD3d 1011, 1013; Matter of Aliyah G. [Arlenie G.], 95 AD3d 885, 886; Matter of Daniel W., 37 AD3d 842, 843).

There is no basis in the record to disturb the Family Court's assessment of the credibility of the witnesses at the fact-finding hearing (see Matter of Linda F. [Jose F.], 119 AD3d 944). The appellant's remaining contention is without merit. RIVERA, J.P., SKELOS, ROMAN and MILLER, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court