

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

In re Aidan D.

58 A.D.3d 906 (3d Dep't 2009) · Decided January 27, 2009

SUMMARY

The New York Appellate Division affirmed an order terminating the respondent’s parental rights after she admitted that her child was permanently neglected. The court held that her knowing, voluntary, and intelligent admissions satisfied the agency’s burden and that the termination disposition was supported by substantial evidence concerning the child’s best interests.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Spain, J.; Cardona, E.J.; Rose, J.; Kavanagh, J.; Stein, J.
JURISDICTION	New York
DECIDED	January 27, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent appealed from a Family Court order adjudicating her child permanently neglected and terminating her parental rights in a proceeding under Social Services Law § 384-b.
STANDARD OF REVIEW	The agency's efforts and the parent's failures in a permanent-neglect proceeding ordinarily must be proven by clear and convincing evidence. The Appellate Division reviewed the termination disposition for a sound and substantial basis and accorded deference to Family Court's determination, affirming where supported by substantial record evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Respondent parent v. Petitioner authorized agency

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Family Court properly accepted respondent's admission to permanent neglect.
2. Whether respondent's admission was sufficient without proof of the agency's diligent efforts to strengthen the parental relationship.
3. Whether termination of respondent's parental rights was supported by the child's best interests and the record.

HOLDINGS

1. When a parent admits to permanent neglect, the agency need not present evidence establishing that it exercised diligent efforts to strengthen the parental relationship, and the court need not determine that issue.
2. Family Court properly accepted respondent's admission because it was knowing, voluntary, and intelligent, made in open court with the active assistance and consultation of counsel, and respondent's admissions concerning housing and permanency-planning meetings independently supported permanent neglect.
3. Termination of respondent's parental rights was the appropriate disposition because it served the child's best interests and was supported by a sound and substantial basis in the record.

KEY QUOTATIONS

“In cases where, as here, a parent admits to permanent neglect, there is no need for the agency to put forth evidence establishing—nor is it necessary for the court to determine— that the agency had exercised diligent efforts to strengthen the parental relationship” (907)

“Respondent’s knowing, voluntary and intelligent admissions, made in open court with the active assistance of and consultation with counsel, satisfied petitioner’s burden of proof” (908)

FACTUAL BACKGROUND

The agency removed Aidan D., born in 2004, from respondent's custody in November 2004 after finding that he suffered from failure to thrive because respondent failed to feed him adequately. Respondent was required to cooperate with the agency, obtain counseling, improve her living situation, and plan for the child's future, but she admitted that she failed to obtain appropriate housing and regularly attend permanency-planning meetings. At disposition, the evidence showed unstable housing and employment, sporadic visitation, repeated relocation without address updates, and expert opinions that respondent could not provide consistent parental support and that returning the child to her posed serious risks.

PROCEDURAL HISTORY

The authorized agency removed the child from respondent's custody after discovering that he was suffering from failure to thrive. The child was later adjudicated neglected and placed in the agency's custody. After respondent

admitted the allegations of permanent neglect, Family Court held a dispositional hearing and terminated her parental rights. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Sheila G., 61 N.Y.2d 368, 373 (1984)
- Matter of Anthony S., 291 A.D.2d 747, 748 (2002)
- Matter of Rita XX., 279 A.D.2d 901, 902 (2001)
- Matter of Shadazia W., 52 A.D.3d 1330, 1331 (2008), lv. denied, 11 N.Y.3d 706 (2008)
- Matter of Patricia O., 175 A.D.2d 870, 871 (1991)
- Matter of Noele D., 209 A.D.2d 828, 829 (1994)
- Matter of Frederick MM., 23 A.D.3d 951, 953 (2005)
- Matter of William PP., 185 A.D.2d 397, 398 (1992)
- Matter of Sharena C., 186 A.D.2d 249, 250 (1992)
- Matter of Debra Ann D., 133 A.D.2d 83, 84 (1987)
- Matter of Star Leslie W., 63 N.Y.2d 136, 147 (1984)
- Matter of Deborah F. v. Matika G., 50 A.D.3d 1213, 1214 (2008)
- Matter of Joshua BB., 27 A.D.3d 867, 869 (2006)

OPINION

SPAIN, J.

Spain, J. Appeal from an order of the Family Court of Saratoga County (Abramson, J.), entered January 3, 2008, which granted petitioner's application, in a proceeding pursuant to Social Services Law § 384-b, to adjudicate respondent's child to be permanently neglected, and terminated respondent's parental rights. Petitioner removed Aidan D. (born in 2004) from respondent's custody in November 2004, after it was discovered that he was suffering from a "failure to thrive" due to respondent's failure to adequately feed him (see Family Ct Act § 1024).

After a hearing pursuant to Family Ct Act § 1027, the child was temporarily placed with petitioner and, at that time, petitioner placed the child into the home of a foster mother, where he remains today. In March 2005, the child was found to be a neglected child and was placed in petitioner's custody. Respondent was required to, among other things, cooperate with petitioner in preparing for the child's future, obtain counseling and improve her living situation.

In July 2006, petitioner commenced this proceeding, alleging that the child was permanently neglected. Upon finding that respondent voluntarily, intelligently and knowingly admitted to

allegations in the petition, Family Court found the child to be permanently neglected.

In a subsequent dispositional hearing, begun in March 2007 and concluded in December 2007, respondent's parental rights were terminated and an order was issued to that effect. Respondent now appeals asserting, among other things, that Family Court erred in accepting her admission to permanently neglecting her child.* We affirm. Social Services Law § 384-b (7) (a) defines a permanently neglected child as "a child who is in the care of an authorized agency and whose parent or custodian has failed for a period of more than one year following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child." Both the agency's efforts and the parent's failures must be demonstrated *908by clear and convincing evidence (see *Matter of Sheila G.*, 61 NY2d 368, 373 [1984]; *Matter of Anthony S.*, 291 AD2d 747, 748 [2002]).

In cases where, as here, a parent admits to permanent neglect, there is no need for the agency to put forth evidence establishing—nor is it necessary for the court to determine—that the agency had exercised diligent efforts to strengthen the parental relationship (see *Matter of Rita XX.*, 279 AD2d 901, 902 [2001]; see also *Matter of Shadazia W.*, 52 AD3d 1330, 1331 [2008], lv denied 11 NY3d 706 [2008]; *Matter of Patricia O.*, 175 AD2d 870, 871 [1991]).

Initially, respondent proceeded to the dispositional hearing and never moved to vacate her admission pursuant to CPLR 5015 so as to raise the contentions now advanced on appeal in a timely manner before Family Court (see *Matter of Noele D.*, 209 AD2d 828, 829 [1994]).

Moreover, while respondent, during the admissions colloquy, offered partial explanations for some of the allegations in the permanent neglect petition, her unqualified admission to failing to obtain appropriate housing up to the time that the petition was filed, as required, alone constituted sufficient grounds for accepting her admission to permanent neglect (see *Matter of Frederick MM.*, 23 AD3d 951, 953 [2005]).

She also admitted to failing to regularly attend her monthly permanency planning meetings. Respondent's knowing, voluntary and intelligent admissions, made in open court with the active assistance of and consultation with counsel, satisfied petitioner's burden of proof (see *Matter of William PP.*, 185 AD2d 397, 398 [1992]; see also Family Ct Act § 622; *Matter of Sharena C.*, 186 AD2d 249, 250 [1992]; *Matter of Debra Ann D.*, 133 AD2d 83, 84 [1987]).

We also find that, considering the child's best interests, Family Court's disposition terminating respondent's parental rights was the appropriate disposition and, since it is supported by a sound and substantial basis, we see no grounds upon which to disturb it (see *Matter of Star Leslie W.*, 63

NY2d 136, 147 [1984]; Matter of Deborah F. v Matika G., 50 AD3d 1213, 1214 [2008]; Matter of Joshua BB., 27 AD3d 867, 869 [2006]).

Despite respondent's recent positive strides, she remained unemployed and had maintained insufficiently stable housing. Respondent's visitation with the child had been sporadic despite petitioner making all arrangements, with no contact in the last four months of 2006 and missing almost half of the visits from December 2006 to March 2007 (the start of the dispositional hearing); she relocated repeatedly without updating her address and missed permanency hearings without good cause.

The licensed child psychologist who evaluated all of the parties *909involved opined that respondent was incapable of providing parental support and direction to her children, the child was not bonded to her and she was unable to play a consistent role in his life.

The psychologist believed that the child appeared bonded with his foster mother, brother and grandmother and that the foster mother can provide a loving, stable and supportive environment for him. The psychologist also opined that the child would be at great risk for psychological and possibly physical harm if returned to or allowed contact with respondent.

Upon review, we find that Family Court's determination, to which we accord deference, is supported by substantial record evidence (see Matter of Joshua BB., 27 AD3d at 869). The record is replete with very strong evidence that the child's best interests will be served by termination of respondent's parental rights with regard to him and we are not persuaded by any of her contentions on appeal that a different result or disposition is warranted.

Cardona, EJ., Rose, Kavanagh and Stein, JJ., concur. Ordered that the order is affirmed, without costs. By order dated September 18, 2008, this Court granted the motion of Holly L., the child's foster mother, for leave to intervene in this appeal (see Social Services Law § 383 [3]).