

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: February 23, 2006

98699

In the Matter of ANDRE M.,
Alleged to be a Permanently
Neglected Child.

SULLIVAN COUNTY DEPARTMENT OF
SOCIAL SERVICES,

MEMORANDUM AND ORDER

Respondent;

TONYA O.,

Appellant.

(And Two Other Related Proceedings.)

Calendar Date: January 19, 2006

Before: Crew III, J.P., Peters, Mugglin, Rose and Kane, JJ.

Theodore J. Stein, Woodstock, for appellant.

Marcia Heller, Sullivan County Department of Social
Services, Monticello, for respondent.

John Ferrara, Law Guardian, Monticello.

Kane, J.

Appeals from two orders of the Family Court of Sullivan
County (Meddaugh, J.), entered March 22, 2005 and June 30, 2005,
which granted petitioner's application, in a proceeding pursuant
to Social Services Law § 384-b, to adjudicate respondent's child
to be permanently neglected, terminated respondent's parental
rights and freed the child for adoption.

In September 2002, petitioner filed a neglect petition alleging that respondent left a drug treatment facility before completing treatment, her whereabouts were unknown and the friends and relatives caring for her son were unable to continue providing him care. Family Court placed the child in petitioner's custody and adjudicated the child neglected. Since that time, the child has remained in foster care for all but one week. In July 2004, petitioner commenced this proceeding alleging permanent neglect based on respondent's failure to plan for the child's future. The court determined that the child was permanently neglected, terminated respondent's parental rights, and placed the child in petitioner's custody to be freed for adoption. Respondent appeals.

Family Court's determination that respondent permanently neglected her son is supported by clear and convincing evidence. It is uncontested that petitioner made diligent efforts to strengthen the parental relationship. To establish that respondent, as a parent of a child in foster care for the statutory time period, permanently neglected her child under the circumstances here, petitioner had to prove by clear and convincing evidence that respondent failed to realistically plan for her child's future (see Social Services Law § 384-b [7] [a]; Matter of Raena TT. [Michelle UU.], 7 AD3d 936, 937 [2004]). Respondent made progress after she was released from prison the first time, to the point that she had unsupervised overnight visitation and petitioner was considering reuniting her with the child. Despite this progress, respondent again tested positive for drug use and refused to participate in long-term treatment, resulting in her violation of parole and subsequent incarceration. Her failure to effectively plan for the child's future was exhibited by her failure to maintain stable housing and successfully deal with the substance abuse problem that led to the child's placement in foster care, rendering him permanently neglected (see Matter of Brandon OO. [Claire PP.], 304 AD2d 873, 874 [2003]; Matter of Karina U. [Vickie V.], 299 AD2d 772, 773 [2002], lv denied 100 NY2d 501 [2003]).

Crew III, J.P., Peters, Mugglin and Rose, JJ., concur.

ORDERED that the orders are affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is fluid and cursive, with a large loop at the end of the last name.

Michael J. Novack
Clerk of the Court