

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

Decided and Entered: May 11, 2006

99134

In the Matter of ARIANNA OO.,
Alleged to be a Permanently
Neglected Child.

ULSTER COUNTY DEPARTMENT OF
SOCIAL SERVICES

MEMORANDUM AND ORDER

Respondent;

LISETTE OO.,

Appellant.

Calendar Date: March 28, 2006

Before: Cardona, P.J., Crew III, Peters, Spain and Mugglin, JJ.

Sandra M. Colatosti, Albany, for appellant.

Elisabeth Krisjanis, Ulster County Department of Social
Services, Kingston, for respondent.

Cappy Weiner, Law Guardian, Kingston.

Cardona, P.J.

Appeal from an order of the Family Court of Ulster County
(Mizel, J.), entered September 29, 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, and terminated respondent's parental
rights.

Petitioner commenced a neglect proceeding against
respondent in March 2003 due to two incidents earlier that year.

The first incident involved a domestic dispute between respondent and her daughter (born in 1993) which resulted in the child calling 911 for assistance. Police responding to the scene found respondent to be agitated and highly intoxicated. The child was taken to the home of a friend in order to diffuse the situation. The second incident involved respondent's arrest for driving while intoxicated and child endangerment after she lost control of her vehicle and struck a tree. The child was in the car at the time of the accident and it was later determined that respondent had a blood alcohol content over twice the legal limit. Later that night, the child was placed in foster care, where she has remained to date.

On the basis of the aforementioned incidents, Family Court adjudicated respondent's child to be neglected in April 2004. Petitioner commenced this proceeding in June 2004 alleging that the child had been in petitioner's custody for over one year and respondent failed to plan for the future of her child, although physically able to do so (see Social Services Law § 384-b [4] [d]; [7] [a]). Following respondent's admissions to the allegations in the petition, Family Court ultimately determined that the child was permanently neglected and terminated respondent's parental rights.

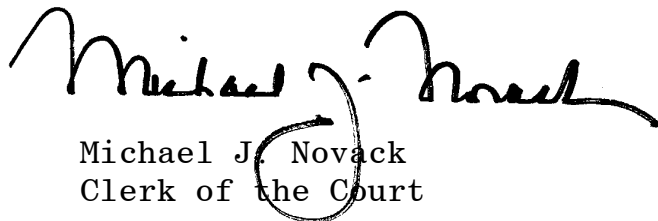
We do not agree with respondent's position that Family Court erred in entering an order terminating her parental rights (see Family Ct Act § 631 [c]; § 634) as opposed to suspending judgment (see Family Ct Act § 631 [b]; § 633). "At a dispositional hearing, Family Court's only concern is the best interest of the child, and there is no presumption that return to a parent is in the child's best interest" (Matter of Brandon OO. [James OO.], 302 AD2d 807, 807 [2003]; accord Matter of Jeremiah BB. [April BB.], 11 AD3d 763, 766 [2004]; see Family Ct Act § 631; Matter of Star Leslie W., 63 NY2d 136, 147-148). Here, the evidence at the dispositional hearing established that respondent had been largely noncompliant with petitioner's service plan, notwithstanding petitioner's diligence in offering various alternatives to address respondent's treatment needs (see Matter of Joshua BB. [Daryl BB.], 27 AD3d 867, ___, 811 NYS2d 178, 180-181 [2006]; Matter of Jeremiah BB. [April BB.], supra at 766). We further note that the child has expressed a desire to

be adopted by her foster family and the child's therapist testified that she is thriving in that environment and would benefit further from permanent resolution of her living situation (see Matter of Karina U. [Vickie V.], 299 AD2d 772, 773 [2002], lv denied 100 NY2d 501 [2003]). Thus, according deference to Family Court's choice of dispositional alternatives (see Matter of Joshua BB. [Daryl BB.], supra at 180; Matter of Thelonius BB. [Normandy DD.], 299 AD2d 775, 776 [2002]), and considering all of the circumstances herein, we conclude that the court's decision "was sound and had a 'substantial basis in the record'" (Matter of Joshua BB. [Daryl BB.], supra at 181, quoting Matter of Sheavlier v Melendrez, 296 AD2d 622, 623 [2002]).

Crew III, Peters, Spain and Mugglin, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Michael J. Novack
Clerk of the Court

