

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

Decided and Entered: December 20, 2012

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In the Matter of ALYSHEIONNA  
HH., Alleged to be a  
Permanently Neglected Child.

CORTLAND COUNTY DEPARTMENT OF  
SOCIAL SERVICES,  
Respondent;

MEMORANDUM AND ORDER

TARA II.,  
Appellant.

(And Another Related Proceeding.)

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Calendar Date: November 13, 2012

Before: Mercure, J.P., Lahtinen, Malone Jr., Stein and  
Garry, JJ.

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Kelly M. Corbett, Fayetteville, for appellant.

Ingrid Olsen Tjensvold, Cortland County Department of  
Social Services, Cortland, for respondent.

Randolph V. Kruman, Cortland, attorney for the child.

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Malone Jr., J.

Appeals from two decisions and two orders of the Family Court of Cortland County (Campbell, J.), entered October 31, 2011, November 22, 2011, December 7, 2011 and February 1, 2012, which, among other things, granted petitioner's application, in a proceeding pursuant to Social Services Law § 384-b, to adjudicate Alysheionna HH. to be a permanently neglected child, and

terminated respondent's parental rights.

Respondent's daughter (born in 2009) was removed from respondent's custody at birth. The child was adjudicated, upon consent, to be a neglected child and placed with petitioner.<sup>1</sup> Following petitioner's June 2011 commencement of this Social Services Law § 384-b proceeding, Family Court found, after a hearing, that the child was permanently neglected and terminated respondent's parental rights. Respondent appeals.<sup>2</sup>

Respondent does not dispute that petitioner met its threshold burden of establishing that it "made diligent efforts to encourage and strengthen the parental relationship" (Social Services Law § 384-b [7] [a]; see Matter of Hailey ZZ. [Ricky ZZ.], 19 NY3d 422, 429 [2012]). Instead, she contends that petitioner did not establish by clear and convincing evidence "that respondent failed – for a period of more than a year – to 'substantially and continuously or repeatedly . . . maintain contact with or plan for the future of the child, although physically and financially able to do so'" (Matter of Jyashia RR. [John VV.], 92 AD3d 982, 984 [2012], quoting Social Services Law § 384-b [7] [a]; see Family Ct Act § 614 [1] [d]).

Petitioner acknowledges that respondent has maintained contact with the child throughout her placement with petitioner, but argues that respondent failed to adequately plan for the

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<sup>1</sup> While respondent was pregnant with the child at issue, Family Court adjudged her other child to be permanently neglected and placed him with a relative.

<sup>2</sup> Respondent's appeals from the decisions entered October 31, 2011 and December 7, 2011 must be dismissed as no appeal lies from a decision of the court (see CPLR 5512 [a]). The November 22, 2011 fact-finding order is also not appealable (see Matter of Alyssa L. [Deborah K.], 93 AD3d 1083, 1084-1085 [2012]). However, Family Court's findings may be challenged in the context of respondent's appeal from the February 1, 2012 dispositional order (see Matter of Arianna I., 100 AD3d 1281, \_\_\_ n 1, 2012 NY Slip Op 08189, \*4 n 1 [2012]).

child's future. Importantly, "contact and planning are alternative elements, and proof of failure to perform one [of these elements] is sufficient to sustain a finding of permanent neglect" (Matter of Jyashia RR. [John VV.], 92 AD3d at 984 [internal quotations marks and citations omitted]; see Matter of Chorus SS. [Elatisha SS.], 93 AD3d 1097, 1098 [2012], lv denied 19 NY3d 807 [2012]). Here, notwithstanding respondent's participation in some of the proffered services, the testimony of, among others, her caseworker, a family educator who monitored respondent's visits with the child, and the child's foster parents reveals that her parenting skills did not meaningfully improve, her employment was intermittent, her living arrangements remained unstable, and she consistently failed to accept the role that her conduct played in the removal of her children. Although respondent claims that she improved in all of these areas, we defer to Family Court's credibility assessments (see Matter of Summer G. [Amy F.], 93 AD3d 959, 961 [2012]; Matter of Syles DD. [Felicia DD.], 91 AD3d 1054, 1055 [2012], lv denied 18 NY3d 810 [2012]), and find that the court's conclusion that respondent permanently neglected the child is supported by a sound and substantial basis in the record.

Respondent next contends that Family Court abused its discretion in ordering termination of her parental rights rather than a suspended judgment because respondent had made significant strides in the month since the fact-finding hearing. However, the testimony at the dispositional hearing established that respondent's situation had not improved; indeed, both her employment and living arrangements remained unstable. On the other hand, the foster parents – with whom the child has resided since birth and who wish to adopt her – continued to provide a stable, nurturing home for the child and facilitate her relationship with her brother and her grandmother. Accordingly, Family Court's decision to terminate respondent's parental rights and free the child for adoption is in the child's best interests and is not an abuse of discretion (see Matter of Crystal JJ. [Sarah KK.], 85 AD3d 1262, 1264 [2011], lv denied 17 NY3d 711 [2011]; Matter of Kellcie NN. [Sarah NN.], 85 AD3d 1251, 1253

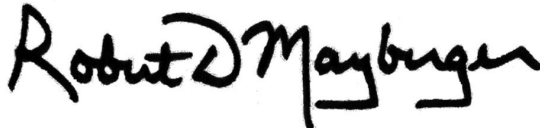
[2011]).<sup>3</sup>

Mercure, J.P., Lahtinen, Stein and Garry, JJ., concur.

ORDERED that the appeals from the decisions entered October 31, 2011 and December 7, 2011 and from the order entered November 22, 2011 are dismissed, without costs.

ORDERED that the order entered February 1, 2012 is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court

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<sup>3</sup> The father previously executed a judicial surrender of his parental rights.