

Legal Updates for CPS and Child Welfare Fall 2008

Monday, October 6, 2008

Handout Materials



**New York State
Office of
Children & Family
Services**

New York State
Office of Children and Family Services
and
SUNY Distance Learning Project

LEGAL UPDATES FOR CPS AND CHILD WELFARE FALL 2008

October 6, 2008

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10/6/08 TELECONFERENCE

Selected Child Welfare Caselaw

Margaret A. Burt, Esq. 9/12/08

REMOVALS

Matter of Amanda M.K., 49 AD3d 1249, 852 NYS2d 883 (4th Dept. 2008)

Onondaga County Family Court properly removed an infant in a FCA §1022 hearing where imminent risk was proven that included evidence of prior neglect adjudications of four older siblings.

Matter of Louke H., 50 AD3d 904, 854 NYS2d 669 (2nd Dept. 2008)

The Second Department concurred with a Queens County Family Court ruling that the children in this matter should not be discharged to the father while the Article 10 action was pending. Not only would the children be at imminent risk to their emotional, mental and physical health but the father also failed to comply with the Family Court order that his children be evaluated at the Child Advocacy Center. The “safer course” is not to return the children until the fact finding can be held.

Matter of Solomon W., 50 AD3d 912, 856 NYS2d 207 (2nd Dept. 2008)

A Westchester County mother was alleged to have neglected her children after an incident where her 18 month old son’s feet were burned in scalding bath water. The children were first removed but then after the mother’s admission to neglect, the court returned the children with an order that the mother cooperate with 24 hour a day homemaker services and comply with mental health therapy. Five months later, the children were again removed after the agency alleged that they were at imminent risk and the court held a §1028 hearing. The children were at imminent risk as the mother did not comply with the court ordered homemaker services and had threatened the 16th homemaker sent to her home with a knife in front of one of the children. She also failed to keep appointments with her psychiatrist and failed to take her medications. The safer course is to not return the children pending a fact finding. (Note: Unless the removal was on a new petition, it is not necessary to prove “imminent risk” on a removal requested after there has already been an adjudication as per FCA 1051(d))

Matter of Hannah Y., 50 AD3d 1201, 854 NYS2d 797 (3rd Dept. 2008)

The Third Department reversed and remanded a neglect matter from Columbia County. The lower court had held a FCA § 1022 hearing regarding the DSS’ request to remove one of the children and the mother was present at the hearing. She was not advised of her right to have a lawyer represent her and she and the father participated in the hearing, including testifying, without the assistance of counsel. It was only after the

hearing that the court advised the respondents of their right to an attorney and assigned a Public Defender. In the subsequent neglect fact finding, the court clearly relied on the testimony from the § 1022. A fundamental right was denied the respondents and reversal is necessary. The court continued the child's placement until the matter could be reheard in Columbia County Family Court.

Matter of Rosy S., 54 AD3d 377 dec'd 8/12/08 (2nd Dept. 2008)

The Second Department reversed Kings County Family Court's ruling in a FCA § 1028 hearing to return two children to a mother. The Appellate Division ruled that the lower court erred in returning the children to the mother instead of placing the children with the non-respondent father where the undisputed proof at the removal hearing was that the mother had engaged in a sexual relationship with her 15 year old son. The lower court had ordered a return of the two younger children who were not alleged to be directly harmed, only derivatively. The court found that the impaired level of judgment in the level of care with respect to the eldest child created a substantial risk of harm to the other children. The mother's failure to take the stand should have drawn a strong inference.

GENERAL ART. 10 ISSUES

Matter of Brian R., 48 AD3d 575, 853 NYS2d 565 (2nd Dept. 2008)

The Second Department affirmed a Westchester County Family Court's ruling to disqualify a respondent father's attorney. The attorney had spoken to and also used one of the subject children as a translator in his conversation with his client without advising or having requested the consent of the child's attorney.

Matter of Nassau County DSS v Marisol M., 2008 NY Misc LEXIS 1226, 239 NYLJ 36 (Family Court, Nassau County 2008)

In a physical abuse and excessive corporal punishment case, Nassau County Family court ruled that the 16 year old child could testify in court but with the respondents not present in the court room. Given her age, unsworn *in camera* testimony is not warranted but given her fear of retribution and the mother's blaming of the child, the court excluded the parents from the room and allowed the defense attorneys to consult with the respondents after the direct and before their cross of the child. The child was back living with the parents and more animosity and recrimination would not be helpful in rebuilding the family's relationships.

Matter of Emily I., 50 AD3d 1181, 854 NYS2d 792 (3rd Dept. 2008)

A St. Lawrence County mother was found to have abused her four year old daughter after an incident where the mother shot the father while he was holding the child. The mother told the father she would shoot him even if it meant the child would be harmed

and she then seriously injured the father. She was charged with attempted murder and reckless endangerment. An abuse petition was filed and the mother moved to adjourn the abuse matter until after her criminal matters had been completed which was denied by the lower court. The Third Department concurred that it was within the proper discretion of Family Court to permit the abuse proceeding to proceed regardless of the chilling affect that may have on the mother's decisions regarding the handling of and testifying in the abuse case. Abuse proceedings should be resolved as quickly as possible and further delay was not in the child's best interests. The court commented (but did not say this was required) that the lower court did not draw a negative inference regarding the mother's decision not to testify.

DERIVATIVE ISSUES

Matter of Justin P., 50 AD3d 802, 856 NYS2d 177 (2nd Dept. 2008)

The Second Department affirmed a Kings County Family Court finding of abuse and neglect upon a summary judgment motion. With its motion ACS had submitted the mother's sworn testimony at the FCA §1028 hearing as well as the medical examiners report of the autopsy of one of the children. This created a *prima facie* case of abuse and neglect of the deceased child and derivative neglect of the 5 other children. The mother's submissions provided no triable issue of fact. The Second Department rejected the mother's claim that the lower court had acted as an "advocate for ACS" at the §1028 hearing.

Matter of Tradale CC., 52 AD3d 900, 859 NYS2d 288 (3rd Dept. 2008)

The Third Department affirmed the Sullivan County Family Court's order on a summary judgment motion that determined that a newborn baby was derivately neglected. The mother's four older children had been in foster care for the last 2 years after prior adjudications both in this court and Schenectady County for neglect. Although the neglect findings themselves were from 2004 and 2005, years before this child's birth in 2007, the problematic conditions continued to exist. Multiple permanency orders had been made in which the court had found that the mother had failed to make adequate progress in parenting, mental health issues and substance abuse treatment. DSS had argued that the appeal should be dismissed based on the "fugitive disentitlement doctrine" as the mother had on two occasions removed the child from his foster home and absconded with him. Under the doctrine an appeal cannot be sought where the appellant is willfully unavailable to obey the underlying order should it be affirmed. The Third Department ruled that since the mother was no longer a fugitive – she was incarcerated – the doctrine did not apply.

Matter of Alexandria C., 48 AD3d 1047, 850 NYS2d 757 (4th Dept. 2008)

Chautauqua County Family Court correctly adjudicated a newborn child to be derivately neglected. The mother's four older daughters had been determined to be neglected

and had been placed in foster care. She had surrendered her parental rights to those children three months before the birth of this child. She had not successfully completed services ordered regarding the older children as it related to her mental health issues and substance abuse issues.

Matter of Tasha M., 19 Misc3d 1141(A), NY Misc LEXIS 3201 (Family Court, Monroe County 2008)

Monroe County Family Court made a finding of derivative neglect regarding a newborn baby where the mother had given birth to five other children. The first child went into foster care at age 12 and remained in care until he was 18. All the other children were removed as they were each born. The mother's rights to the second child were terminated and that child has already been adopted. Parental rights to the third and the fourth child have been terminated and they are awaiting adoption. The fifth child is currently the subject of a pending termination. The sixth child is derivatively neglected based on this history. The mother has long standing mental health problems and does not obey court orders (Note: sounds like a no reasonable efforts order is appropriate here!)

Matter of Jovon J., 51 AD3d 1395, 857 NYS2d 850 (4th Dept. 2008)

The Monroe County Family Court properly adjudicated derivative neglect regarding a son of a respondent who had been criminally convicted for sexually abusing his stepdaughter. The father had an impaired level of parental judgment so as to create a substantial risk of harm to any child in his care, particularly since the respondent had also directed his son to participate in sexually abusing the stepdaughter. The criminal conviction of sexual abuse with respect to the stepdaughter was conclusive proof of derivative neglect as a matter of law

Matter of Kadiatou B., 52 AD3d 388, 861 NYS2d 20 (1st Dept. 2008)

The First Department affirmed Bronx County Family Court's dismissal of a derivative neglect petition regarding an infant. The mother of the child, 15 years old and a recent immigrant from Africa, had given birth to twins in 1999. One of the twins died some three months after his premature birth and the surviving twin, who was severely injured, was placed in foster care. In 2002 the Family Court (same Judge) had made a finding of abuse regarding that death and injury. Seven years after the death, the child who is the subject of the current petition was born to the same parents. The Appellate Division found that the 2002 adjudication was based solely on a *res ipsa* argument. No proof was ever provided that either parent had actually committed an intentional, reckless or even negligent act in the 2002 death. Neither parent was ever charged criminally for the death of the one twin or for the injuries to the other. There was no finding at that time that the parents had a faulty understanding of appropriate parenting. In the current matter, ACS had offered the medical examiner's report that the child's death in 2002 had been ruled a "homicide". Although the baby had 3 or 4 skull fractures that caused

the death, there was no evidence offered to support the report's conclusion that the death was a homicide as opposed to an accident. No proof was ever provided as to who was caring for the child at the time of her death. Although the death is "extremely disturbing", it is not dispositive regarding this new child without proof that the fatal injuries were the result of the intentional conduct of the parents. Much evidence was provided that the parents have followed all of the service requests of the caseworker since the birth of this third child. They have received counseling and services since the 2002 abuse adjudication. The caseworker specifically testified that there were no current parenting concerns. While the case was pending regarding this 3rd child, ACS discharged the surviving twin from foster care to the parent's home without even returning that matter to court. ACS clearly believes whatever problems existed in the home have now been resolved. The parents are not exhibiting any fundamental defects in judgment that would allow for a derivative finding.

Matter of Vashaun P. 53 AD3d 712, 861 NYS2d 453 (3rd Dept. 2008)

The Third Department concurred with Columbia County Family Court that a mother had derivately neglected a newborn child. The Appellate Court heard this appeal along with an appeal regarding the termination of two older siblings in care and affirmed both. Regarding the derivative neglect, the two older siblings had been in care for almost a year when the mother – who had relocated to NYC without any notice – gave birth to another child. NYC transferred the case regarding the newborn to Columbia County. The mother had taken no meaningful steps to resolve the issues that had caused the older children to be placed. The original issue was a "near total failure" to provide for even the most basic of needs for the children. She still did not have proper shelter nor had she taken advantage of the many services offered to her but had instead relocated to NYC and did not inform DSS of her whereabouts.

Matter of Jonathan S., 53 AD3d 1089, 861 NYS2d 556 (4th Dept. 2008)

The Fourth Department affirmed a Cattaraugus County Family Court adjudication that the parents had neglected a newborn. The mother had derivately neglected him based on a prior neglect for an older child and her inability to make progress in regard to that. The mother had completed parenting classes but had not participated in the classes and therefore could not be evaluated regarding her comprehension of the class. Further, during supervised visitation, she continued to have to be prompted to properly care for the children and her parenting skills did not seem to improve even with coaching. The mother had surrendered an older son five months before the birth of this child. The father had directly neglected the child as he was unable to provide a stable home for the child and did not provide the intellectually limited mother with assistance to care for the child.

GENERAL NEGLECT

Matter of Sean K., 50 AD3d 1220, 855 NYS2d 301 (3rd Dept. 2008)

A Broome County father was found to have neglected his stepson and daughter and the adjudication was affirmed on appeal to the Third Department. The CPS worker found the home in disarray and with a foul odor. There were dirty diapers and cat feces throughout the house. The baby was in a high chair covered with spaghetti and flies and fleas were swarming all around her. The father told the CPS worker that he had been convicted of sexually abusing a 3 year old when he was 16 years old and had been sentenced to prison although he had received a youthful offender status. He also disclosed that while in prison, he had not completed a sexual offender program. The father then threatened the female CPS worker with his fist and chased her from the home, causing a third party to come to her rescue. On appeal, the father claimed that the court should not have considered his criminal conviction due to the youthful offender status. Any claim of confidentiality was waived as the offender chose to tell about the adjudication as well as the underlying conviction. He further told of his failure to seek treatment. The fact of his being an untreated child sex offender living in a home with young children was obviously relevant to the court's decision. The status of youthful offender does not bar testimony about what he told the CPS worker and its subsequent consideration in the matter. The disposition that included a sex abuse treatment program and a mental health evaluation and supervised visitation was appropriate.

Matter of Kayla W., 47 AD3d 571, 850 NYS 2d 86 (1st Dept. 2008)

A New York County Family Court neglect finding was affirmed on appeal where the mother had been found to have a major depressive disorder. A psychiatrist and a psychologist had both seen the mother in the days before the petition and described her poor impulse control, poor insight into her condition and depression such that in their opinion she would not be able to adequately care for her 2 year old. Two Judges wrote a lengthy dissent in which they criticized the expert opinions and argued that it was not properly established that the mother was in fact mentally ill and further that her condition demonstrated any threat to the child.

Matter of James C., 47 AD3d 712, 848 NYS2d 896 (2nd Dept. 2008)

A Richmond County father neglected his son by allowing the child's mother to have overnight visitation. He was aware of the mother's drug and alcohol abuse and had been told by ACS not to use the mother as a caretaker. The father also knew that the court had previously ordered that the mother have no more than 5 hours of supervised visitation with the child at any one time.

Matter of Evan F., 48 AD3d 811, 853 NYS2d 142 (2nd Dept. 2008)

The Second Department upheld an Orange County Family Court's neglect adjudication against a father. The father led the police on a car chase with the child in the vehicle. He also educationally neglected the child in that the child had excessive absences for the last two school years allowing the court to reasonably conclude that the child was in imminent danger of becoming impaired.

Matter of Tajani B., 49 AD3d 874, 854 NYS2d 520 and 49 AD3d 876, 854 NYS2d 518 (2nd Dept. 2008)

A Suffolk County father and mother neglected a three year old son and five month old daughter when they kept a loaded gun on a bed where it was accessible to the three year old and also next to the baby's crib.

Matter of Imman H., 49 AD3d 879, 854 NYS2d 517 (2nd Dept. 2008)

Kings County Family Court found that the respondent parents had emotionally neglected their daughter by making her the witness physical abuse of her uncle and then having her assist in the disposal of his dismembered corpse. On appeal to the Second Department, the Appellate Court agreed. The evidence consisted of the child's out of court statements to a detective as well as the uncle's remains being located where the child indicated. Further the child's psychologist testified that the child exhibited symptoms of post traumatic stress disorder. The mother failed to testify. The lower court properly refused to allow the mother to subpoena the child or the child's mental health records. The child's out of court statements were corroborated and she did not need to testify in person given the potential psychological harm. After reviewing the child's mental health records in chambers, the court properly denied the mother's motion for their production as the mother failed to demonstrate that the records were needed for her case.

Matter of Courtney G., 49 AD3d 1327, 854 NYS2d 268 (4th Dept. 2008)

Onondaga Family Court dismissed a neglect petition *sua sponte* as legally insufficient and the Fourth Department reversed. The matter was returned for a hearing on the neglect petition as the allegations, if proven, could consist of neglect. It was alleged that the mother used cocaine, and that she failed to supervise her 14 year old daughter to the extent that the child had become pregnant on more than one occasion. It was also alleged that the mother had engaged in physical altercations with the teenager, including one when the girl was 7 months pregnant. The petition also claimed that the mother had failed to supervise and provide guidance to her daughter after the baby was born.

Matter of Brian I., 51 AD3d 792, 858 NYS2d 286 (2nd Dept. 2008)

The Second Department affirmed Orange County Family Court's adjudication of neglect against a father and the placement of the children in foster care. The father had been criminally convicted of multiple sexual crimes against other children which demonstrated an impaired level of parental judgment as to create a substantial risk of harm to the children.

Matter of Aaliyah G., 51 AD3d 918, ___ NYS2d ___ (2nd Dept. 2008)

A Suffolk County father neglected his child by using marijuana when the child was in his care and by using the child as a "barricade" between himself and a police officer. The lower court properly placed the child in the care of the mother.

Matter of Derrick C., 52 AD3d 1325, ___ NYS2d ___ (4th Dept. 2008)

The Fourth Department affirmed a Jefferson County Family Court's neglect adjudication regarding a mother. The mother had continued to reside with the father despite the fact that he had pled guilty to sexually abusing her son. She refused to believe the child had been sexually abused. Neglect of that child and derivative neglect of her two daughters was an appropriate adjudication as she demonstrated a fundamental defect in her understanding of proper parenting responsibility. She created an atmosphere detrimental to the children. The dispositional requirement that the mother "acknowledge her role in the sexual abuse" was a permissible condition even though there was no proof that she had sexually abused the child directly. The mother can satisfy that condition by acknowledging that the sexual abuse occurred.

Matter of Lashina P., 52 AD3d 293, ___ NYS2d ___ (1st Dept. 2008)

The First Department affirmed a neglect finding against a New York County father and agreed that the child needed to be placed in foster care. The father was aware that the mother was mildly mentally retarded and could not properly care for the child but despite knowing this, he made no other arrangement for the child's care other than that the child would be left in the care of the mother.

EDUCATIONAL NEGLECT

Matter of Ashley X., 50 AD3d 1194, 854 NYS2d 794 (3rd Dept. 2008)

A Rensselaer County Family Court finding of educational neglect was affirmed on appeal to the Third Department. The child had missed 28 days of the 82 school days of the first half of second grade. Although the mother claimed the child was ill, 25 of the absences were unexcused. The child was not brought to a doctor at any time and the mother did not have an approved home schooling program. The child was behind in

several subjects and her teacher testified that her learning would improve if she attended school more regularly. When the mother testified about the lack of impact on the child, she opened the door about whether the child had any adverse effects due to the missing school. This allowed the law guardian to call the child's teacher from first grade as a witness even though the absenteeism in that year had not been part of the pleadings. Post petition evidence was also permitted to be introduced but that was only for impeachment and the respondent had more than a week's notice that this evidence would be offered.

Matter of Viveca AA., 51 AD3d 1072, 856 NYS 2d 715 (3rd Dept. 2008)

The Third Department affirmed a neglect finding from Schenectady as well as the dispositional placement of the child with a grandmother. The mother had a long history of mental illness. She has schizoaffective disorder, bipolar disorder posttraumatic stress disorder, and schizophrenia. She had been hospitalized six times in the past and refuses to cooperate with treatment or take medication. She is unable to take care of her home safely and withdrew the child from school. Although she claimed to be home schooling the child, she did not submit adequate documentation that she was actually doing so.

“DIRTY HOUSE”

Matter of Aiden L., 47 AD3d 1089, 850 NYS2d 671 (3rd Dept. 2008)

The Third Department agreed with Columbia County Family Court that a mother had neglected her 1 year old. The police were called to a scene of domestic violence at the parents' home. The father had thrown items about the home, including a compact disc which hit the child in the face. CPS removed the child due to the violence as well as the deplorable conditions in the home. While the petition was pending the child was returned to the mother. A temporary order of protection required the mother to maintain the home on a clean and habitable condition and that the child have no contact with the father. The mother claimed that the home was only temporarily in disarray due to the father's outburst and that she had not neglected the baby. The Third Department agreed with the lower court that the evidence showed that the home was “permeated with a rancid, foul odor, garbage bags were stacked by the door, half-emptied food containers were sprawled across the living room, dishes encrusted with decayed food were piled in the sink, an open bucket containing cleaning solution was on the floor, and sharp utensils were scattered throughout the apartment all within the child's reach” . The home was virtually impossible to walk through due to the clothes and trash strewn about. The fact that the mother tried to claim this was only a temporary circumstance was more proof that she did not understand the danger these conditions posed to her 1 year old.

Matter of David II., 49 AD3d 1093, 854 NYS2d 583 (3rd Dept. 2008)

The Third Department affirmed a neglect finding against a Columbia County mother but reversed one against the child's grandmother. The 15 year old boy lived with his mother and grandmother. The child attended school consistently in clothing that smelled strongly of urine. He often wore the same clothing to school for an extended length of time and his odor was strong enough to be noticed before he arrived into a room and required windows to be opened. The smell was described as "foul" and "putrid". Other students refused to sit near him. He also was unbathed, disheveled and wore unclean clothes. The child himself testified that he was aware of his odor and that it was due to unsanitary conditions at home where he was required to clean numerous cat cages. The mother was aware of the problem and had been advised numerous times by school officials and had not responded to the conditions in the home or assisted the child with personal hygiene. The Appellate Court agreed that this was neglect and did not disturb the lower court's placement of the child in foster care.

However the Family Court erred in finding the mother and grandmother neglectful in another incident at the school. They were called to the school after the child claimed that he had cut his mouth on a razor blade after eating a Halloween apple. The grandmother shouted at the child that he was lying and grabbed him, trying to get him to open his mouth and show that there were no cuts. The mother observed this and failed to go to the child's assistance. Although this behavior was inappropriate, it was not neglectful and was only a misguided attempt to get the child to own up to his story telling – a behavior that was admittedly a ongoing problem issue with the child.

The Appellate Court commented in a footnote that it was "unacceptable" that the court orders in this case were delayed in their preparation and entry and gave as an example that the factfinding and dispositional order took over 6 months to be drafted and entered even though the child was in care for all of that time.

Matter of Rebecca KK., 51 AD3d 1086, 856 NYS2d 705 (3rd Dept. 2008)

The Cortland County mother of a 14 year old girl was found to have neglected her and the adjudication was affirmed on appeal. The child had been sexually abused for years by her father and she now suffers from enuresis and encopresis stemming from the emotional trauma of the abuse. The father is incarcerated for the sexual abuse and the mother was being supervised by DSS. The child consistently wore filthy clothing that smelled of urine and feces. The home was not clean as the child relived herself on the furniture and floors. The girl did not shower, wash her hair or wear clean clothes and had been sent home from school as the other children became ill from her odor. The home smelled of human waste and there are stains on the furniture and mattresses. The mother was resistant to attempts to have her clean the apartment, launder the child's clothes or assist the child in washing. The lower court appropriately placed the child in foster care. The lower court also appropriately ended visitation after the mother expressed anger, made threats and had inappropriate physical contact with the child

during visitation. The mother had also threatened to kill the caseworkers and service providers.

EXCESSIVE CORPORAL PUNISHMENT

Matter of Hattie G. v MCDHHS, 48 AD3d 1292, 851 NYS2d 324 (4th Dept. 2008)

A Monroe County mother successfully pursued an Art. 78 proceeding to the Fourth Department and the indicated report against her was unfounded and the SCR was ordered to reverse its prior fair hearing ruling. The mother's 14 year old daughter stayed out all night without permission and the mother struck her with a plastic toy waffle bat. She hit her several times in the legs and buttocks and then accidentally hit her in the head. The accidental hit caused a small welt or bruise under the child's right eye. When she appeared at school the next day, the school called in a report to the hotline. The child remained at her father's home for a few days and then returned to her mother's home with no further incident. At the fair hearing, the CPS worker testified that he believed the mother had engaged in excessive corporal punishment and the FHO agreed. The Fourth Department ordered the matter to be unfounded, ruling that there was no proof that the child had to have any medical treatment. Also there was no proof that the mother had engaged in corporal punishment in the past. In fact all of the children had denied that the mother had used excessive corporal punishment in the past. The child is now 17 years old, lives with the mother and is about to graduate from high school.

Matter of Charnel T., 49 AD3d 427, 853 NYS2d 346 (1st Dept. 2008)

A New York County mother used excessive corporal punishment on her child by striking him with an extension cord. The child's out of court statements were corroborated by medical evidence of linear abrasions on his face, forearm and back.

Matter of Nicholas L., 50 AD3d 1141, 857 NYS2d 628 (2nd Dept. 2008)

The Second Department concurred with Kings County Family Court that a father had inflicted excessive corporal punishment on his son. The child's out of court statements were corroborated by the caseworker's testimony of the observed facial injuries to the child. The father was also criminally convicted for the behavior which resulted in the injury. The other children were derivately neglected as the father lacked basic understanding of his parental duties.

Matter of Devante S., 51 AD3d 482, 857 NYS2d 141 (1st Dept. 2008)

A Bronx County Family Court adjudication of neglect was upheld on appeal to the First Department. The children's out of court statements cross corroborated each other that the father used excessive corporal punishment. The caseworker also testified about the father's angry behavior in a home visit and the children's fearfulness in his presence. Further, there had been a prior court adjudication of neglect due to the father's use of a belt on a toddler. The father had failed to follow agency recommendations. Lastly, the father failed to testify on his own behalf and the court can draw the "strongest negative inference".

Matter of Christian O., 51 AD3d 402, 856 NYS2d 612 (1st Dept. 2008)

The First Department reversed a neglect adjudication from New York County Family Court. The 11 year old child arrived past his curfew without explanation. The father kicked at the mattress on which the child was laying and at the same time, the child raised his legs, causing the father to accidentally kick his ankle. Medical treatment was not required, the father expressed remorse and there was no evidence of prior excessive corporal punishment. The child was not sufficiently impaired to support a finding of neglect or to support a derivative finding regarding a sibling. The incident was an isolated one and while losing his temper and kicking in the direction of the child was not acceptable, it was not neglect.

DOMESTIC VIOLENCE

Matter of Elijah C., 49 AD3d 340, 852 NYS2d 764 (1st Dept. 2008)

The First Department affirmed that a New York County father had neglected his son. The "much larger" father committed acts of domestic violence on the child's legally blind mother. These acts occurred in the child's presence and exposed the child to an imminent risk of harm. No expert evidence was needed to show that the child was impaired or at risk of impairment.

Matter of Michael F., 50 AD3d 796, 854 NYS2d 661 (2nd Dept. 2008)

The Second Department agreed with Suffolk County Family Court that a father had neglected his son by subjecting the child's mother to violence in the child's presence. The child's out of court statements were sufficiently corroborated. This action also derivatively neglected the other son.

PHYSICAL ABUSE

Matter of Joshua R., 47 AD3d 465, 849 NYS2d 246 (1st Dept. 2008)

The First Department affirmed a New York County Family Court finding that a father had neglected his son and derivately neglected his daughter but reversed the lower court's finding that the behavior constituted abuse. The nine year old boy had refused to eat and the father had responded by shoving food into the child's mouth to the extent that the child vomited. The father also slapped the child in the face, giving him a bloody nose and a bruise near his eye. This behavior was clearly neglect but not abuse as the injury did not rise to the abuse level. One Judge dissented saying that the injury was abuse when viewed in the light of other evidence that the father had an uncontrollable temper, was verbally abusive to the children and had exhibited dramatic hostility during the investigation. The dissent argued that this did not appear to be an isolated incident and the child could have fallen or choked when the incident occurred and more severe injury was indeed a risk.

Matter of Seth G., 50 AD3d 1530, 856 NYS 2d 778 (4th Dept. 2008)

A Monroe County mother failed to rebut the *res ipsa* injury to her 3 year old resulting in an abuse finding regarding that child and a derivative neglect for a newborn. The medical testimony was that the toddler had extensive bruising on his face and shoulder which would have resulted from pressure placed around his neck. The mother provided differing explanations for the child's injuries and the lower court properly discredited those explanations. The younger child was born several days after the incident and therefore it was appropriate to determine that child to be equally at risk.

Matter of Samuel L., 52 AD3d 394, 861 NYS2d 311 (1st Dept. 2008)

A Bronx mother failed to rebut the prima facie evidence of child abuse. The five month old child had a bulging fontanel, bilateral subdural hematoma, a skull fracture and retinal hemorrhages. The injuries were not accidental and would have been at least days old if not more likely weeks old when the child was finally brought to the hospital. The mother offered neither medical testimony nor any plausible explanation for the injuries. The adjudication of abuse on the infant and derivative neglect on the siblings and their placement in foster care was affirmed by the First Department.

SEX ABUSE

Matter of Brandi U., 47 AD3d 1103, 849 NYS2d 710 (3rd Dept. 2008)

A Madison County Family Court adjudication of abuse and derivative neglect was affirmed on appeal. The 15 year old child provided out of court statements in writing to the police that described a specific act of sex abuse as well as prior sexual abuse by

her father. At the fact finding both the child and the caseworker testified and the child's sworn in court testimony corroborated her out of court disclosures. Although there were some minor inconsistencies in the child's testimony, the lower court properly credited the child's testimony. The child's 11, 4 and 2 year old siblings were derivately neglected.

Matter of Briana A., 50 AD3d 1560, 857 NYS2d 837 (4th Dept. 2008)

A sex abuse and neglect finding against a Wyoming County respondent was affirmed on appeal to the Fourth Department. The child's repeated out of court statements cannot corroborate each other but the corroboration was provided by the child's age inappropriate knowledge of sexual contact .

Matter of Michelle M., 52 AD3d 1284, __NYS2d __ (4th Dept. 2008)

The Fourth Department concurred with Ontario County Family Court that a stepfather had sexually abused his stepdaughter and derivately neglected his own children. For over a year, the stepfather had repeatedly pressed his body against his stepdaughter for his own sexual gratification as she lay in bed. He made sexual comments to her and attempted to kiss her and place his tongue in her mouth. This fundamental flaw in his understanding of parental responsibilities places his own children at risk. The court did not err in refusing the father's motion for payment to hire his own expert given that he did not show that the appointment was in fact necessary.

Matter of Jordan XX., 53 AD3d 740, __NYS2d__ (3rd Dept. 2008)

The Third Department affirmed a Schoharie County Family court adjudication of abuse. The child was observed at day care to have bruising and swelling on his genital area and pointed to his penis and said "ow". The injuries had not been observed when he had been at day care the day before. Medical evidence indicated that the injuries were not accidental. The respondent offered only speculative and implausible explanations for the injury, claiming that the child must have been injured at the day care. The lower court did not find the respondent credible.

ARTICLE TEN DISPOS and PERMANENCY HEARINGS

Matter of Courtney B., 47 AD3d 808, 649 NYS2d 179 (2nd Dept. 2008)

After both parents admitted to neglect in Suffolk County Family Court and the child was placed in the care of the paternal grandmother, the mother participated in Drug Treatment Court. She completed an inpatient substance abuse program as well as parenting programs. Both the child's attorney and DSS supported the child's return to the custody of the mother which Family Court ordered. The father and the paternal

grandmother appealed the return to the Second Department arguing that the child should stay in the care of the paternal grandmother. The Appellate Division agreed with the lower court that since the mother had completed her programs, she had a superior right to custody of the child over the grandmother. The mother had resolved the issues leading to the child's placement which was had been only temporary and she was now entitled to a return of custody.

Matter of Haylee RR., 47 AD3d 1093, 849 NYS2d 359 (3rd Dept. 2008)

A Broome County mother unsuccessfully appealed the Family Court order to change her daughter's goal to adoption. The child had been removed from both parents shortly after her birth in November 2004. She resided for a couple of months with a paternal aunt but was then placed in nonkinship foster care. The original petition alleged derivative neglect based on a prior proceeding in the state of Pennsylvania where the parents had been found to have abused a four month old son who had a broken leg and seven broken ribs in various stages of healing. The boy was ultimately surrendered for adoption by the parents who could not provide an explanation for the child's injuries. Regarding the child who is the subject of this matter, the mother admitted to neglect and the father who was incarcerated out of state, consented to a voluntary placement. When the child had been out of the home for about a year and a half, the parental aunt filed for Art. 6 custody. While the custody petition was still pending and about when the child had been out of the home for two years, DSS filed a TPR petition. Broome County Family Court held a permanency hearing while the TPR was pending. The Third Department concurred that the child's goal should be changed to adoption by the foster parents. Although DSS had offered services to the parents, they continued to be unable to explain how the son had been so seriously injured. Without being able to explain and take responsibility for their son's injuries, the goal of reunification for this child was no longer appropriate. The foster parents had cared for the child since she was three months old and wanted to adopt her so it was appropriate to leave the child with them. The lower court did provide the aunt with visitation so the option in the future of the aunt becoming the caretaker or even the adoptive parent of the child remained a possibility.

Matter of Brittany T., 48 AD3d 995, 852 NYS2d 475 (3rd Dept. 2008)

The Third Department reversed a ruling by Chemung County Family Court that found the respondent parents had violated a prior dispositional order. This matter was originally a neglect case that had resulted in various placements and supervision orders over the last few years. At the time of the appeal the child was 14 years old. The child is severely obese and has significant health issues due to the obesity. The lower court had found a violation regarding the most recent supervision order that allowed the child to be returned to the parent's home. In the 6 months in which the child had been home, she had regained weight she had lost in foster care and more. At the time of the filing of the violation, the child's weight was over 260 pounds. The lower court found that the parents had violated the detailed terms of the supervision order in numerous ways. Upon a lengthy review of the evidence the Appellate Court disagreed and found that as

a whole, the parents were attempting to resolve the child's obesity and health issues and that the parents were not exhibiting a continuous or willful pattern to ignore the court's orders. In a footnote, the court commented that the fact that the child had lost a significant amount of weight since being placed back in care due to the violation was "outside the record" and could not be considered.

Matter of Alfano, 49 AD3d 635, 854 NYS2d 159 (2nd Dept. 2008)

Suffolk County Family Court placed a child in temporary Art.10 custody with non relative resources when a petition was filed against the mother. She admitted to neglect and in a later permanency hearing, the court changed the child's permanency goal to APPLA. The resources then filed an Art 6 custody petition for the child which the lower court granted. The mother appealed and argued that the non relative resources did not have standing to seek Art. 6 custody of the child. On appeal, the Second Department ruled that the resources had standing based on their lawful temporary Art. 10 custody as well as due to the Family Court's authority to achieve permanency for the child.

Matter of Colleen F., 49 AD3d 1228, 854 NYS2d 257 (4th Dept. 2008)

The subject child in this matter had been adopted at age 10 by the respondent mother and her husband. At the time of the adoption a biological aunt and uncle who had maintained a relationship with the child had sought to adopt or be granted custody. After having been advised by DSS that the child was in the process of being adopted by foster parents, they withdrew their request and the child was adopted by the foster parents. The adoptive mother was then criminally charged with raping another foster child in the home. The adoptive mother consented to a finding of abuse and of derivative neglect. The biological aunt and uncle now sought custody of the child and the Genesee County Family Court granted them custody after finding that they had proven extraordinary circumstances. The child did not want to go to the aunt and uncle and appealed the order. The Fourth Department agreed that the custody order was in the child's best interests despite the teenage child's position. The adoptive mother had since been criminally convicted of the rape and was in prison. The adoptive father had not been the primary caretaker and now had serious health problems. The aunt and uncle had a stable home environment and would be able to meet the child's needs. The child had maintained a relationship with a biological sister who was adopted and lived in another state. The aunt testified that she was not opposed to assisting the child with maintaining a relationship with her adoptive brothers. Although the expressed desire of this now 13 year old child should be a factor, it is not determinative and it would not be in the child's best interests to remain in the adoptive home.

Matter of Brandon A., 50 AD3d 395, 855 NYS2d 457 (1st Dept. 2008)

The First Department affirmed a series of decisions made in Bronx County Family Court permanency hearing where a former foster mother appeared. The lower court properly

denied the former foster mother's motion to intervene in the matter. She was not the current foster mother nor had the child resided with her for more than 12 months. She was not entitled to party status nor did she have any status accorded to her due to any prior custody proceeding. Family Court has jurisdiction to refuse to return a child to a prior foster parent's care regardless of any ruling made in a fair hearing decision. Former nonkinship foster parents do not have a protected liberty interest in the relationship with the child. The lower court also properly dismissed a motion for visitation and to adopt the child.

Matter of Faison V Capozello 50 AD3d 797, 856 NYS2d 179 (2nd Dept. 2008)

Family Court properly denied a custody petition brought by an out of state father regarding a child who was in care with Suffolk County DSS due to the child's neglect. The Second Department agreed that the matter was covered by ICPC. The New Jersey report was that the father would not provide a suitable environment for the child and therefore the Suffolk County Family Court had to deny the out of state father's request for custody.

Matter of Linda S. 50 AD3d 805, 856 NYS2d 174 (2nd Dept. 2008)

The Second Department found that Westchester County Family Court properly proceeded in a matter in which the grandmother had sought Art. 6 custody. The parents of two children were found to have abused and neglected them. The mother had given birth at home while the father was in another room and intoxicated. The mother had the 8 year old child assist her with the birth. The 8 year old then watched as the mother placed the newborn infant in a plastic bag and into a basket and then left the newborn on the doorstep of a stranger. The baby was found several hours later. The mother was convicted of abandonment and endangering the welfare of a child. Upon the filing of the Art. 10 petition, the children were placed in a foster home. Before the Art. 10 matter was adjudicated, the maternal grandmother filed an Art. 6 petition. The lower court held the Art. 6 petition in abeyance until the Art. 10 matter had been adjudicated and the Appellate Court ruled that this was appropriate. After the lower court made findings of neglect, both parents signed conditional surrenders of the children to be adopted by the foster parents. The lower court then correctly dismissed the Art. 6 petition of the grandmother as a relative does not have preference for custody over an agency selected adoptive parent. The grandmother is not entitled to override the right of the birth parents to surrender the children to the agency.

Matter of Isaac Q., 53 AD3d 731, ___NYS2d___ (3rd Dept. 2008)

A Clinton County father appealed the Family Court's decision in a permanency hearing to change visitation with his three children from unsupervised to supervised. The decision was appropriate given that the children were not adequately supervised during

the visits. An older son who resided with the father allegedly had sexually abused the youngest son during a visit and had also allegedly urinated on the belongings of one of the daughters. One of the placed children was so fearful of the older son that she would “dig at her own skin” during the visit. The children were not fed properly during the visits. The visits need to be supervised to safeguard the children’s well being.

Matter of Christopher H., ___AD3d___, dec’d 8/12/08 (2nd Dept. 2008)

The Second Department reviewed a Dutchess County father’s motion to modify the dispositional order in an Art. 10. The father had consented to a finding without an admission that he had sexually abused one child and derivately neglected the other and his visitation was to be supervised and would occur only upon the consent of the children’s therapist. The father was also to submit to evaluations, attend a sex offender treatment program and complete a parenting program. Four months later the father filed to modify the disposition, claiming to have completed a parenting program and having had an evaluation by a therapist that DSS chosen. The therapist had arranged a polygraph test of the father and provided the opinion that the father had not sexually abused his daughter and therefore the father did not need sexual offender treatment. The lower court dismissed the petition without a hearing based on the father not having completed the sex offender treatment program as ordered. The Appellate Court reversed and remanded the matter for a hearing on the matter of the question of visitation. The court refused to rule on the issue of the father’s sexual abuse but indicated that the lower court should at least take testimony on the best interests of the children in resuming visitation.

TERMINATIONS

Matter of Kyle K., 49 AD3d 1333, 854 NYS 2d 270 (4th Dept. 2008)

Erie County Family Court terminated a father’s rights on both the grounds of mental illness and permanent neglect. The Fourth Department found it to be “logically inconsistent” for the court to grant both petitions. “ The father could not be found to been mentally ill to a degree warranting termination of his parental rights and at the same time be found to have failed to plan for the future of the children although physically and financially able to do so.” If he is so mentally ill, he cannot be physically able to plan. (Note: The court did not rule that the DSS could not allege both grounds as is a common practice)

The Fourth Department reviewed both terminations, which were decided in one hearing and found that the proof of mental illness was not sufficient but the ground of permanent neglect was appropriate. As to the mental illness, the psychologist testified that the tests were inconclusive and that during the interviews the father displayed no signs of mental illness. The children had reported the father as having said odd things – including that other people sent him “impulses” and that the children would be replaced with evil people if they went outside the home. It was also reported that the father

covered the lights on his microwave with a towel and altered the children's report card grades. Although these actions might be strange, there was no testimony that his strange behavior was frequent or even connected to the removal of the children. Permanent neglect was proven in that the father failed to complete a required program of mental health counseling and failed to assist with the children's educational problems. Even though it was not raised on appeal, the court had not held a dispositional hearing and as such is required on the grounds of permanent neglect, the Fourth Department remanded for such.

ABANDONMENT

Matter of Maliq M., 48 AD3d 1251, 851 NYS2d 330 (4th Dept. 2008)

The Fourth Department affirmed the Monroe County Family Court's termination of a father's rights on abandonment. The lower court correctly precluded the father from any proof outside of the relevant 6 months.

Matter of Tonasia K., 49 AD3d 1247, 852 NYS2d 881 (4th Dept. 2008)

An Onondaga County father abandoned his child. He made one phone call to her, saw her once at the paternal grandmother's funeral and wrote one letter to DSS. These contacts were not enough to defeat the petition. Even though the father was incarcerated, he was not relieved from responsibility to communicate with the child or DSS.

Matter of Crystal M., 49 AD3d 1312, 856 NYS2d 376 (4th Dept. 2008)

The Fourth Department affirmed a termination of a father's rights from Erie County Family Court. The father's sole contact during the 6 month period was to call the caseworker about visitation. The caseworker informed the father that he should obtain a copy of the order of supervised visitation and that she would arrange the visits as per the order. This did not constitute preventing or discouraging the father from visitation as she was simply complying with the court order.

Matter of Rakim D.D.S., 50 AD3d 1521, 856 NYS2d 754 (4th Dept. 2008)

The Fourth Department reviewed and affirmed a Erie County father's termination on abandonment grounds. The father, who was incarcerated, wrote one letter to the agency asking about the children and asking for their address. The caseworker wrote back providing the agency address and indicating she would deliver and cards or letters to the children. The father did not contact her again although she sent him additional

letters. Although the father testified that he sent letters for the children to the mother, the lower court did not find that credible.

MENTAL ILLNESS and RETARDATION TPRs

Matter of Alexander James R., 48 AD3d 820, 853 NYS2d 136 (2nd Dept. 2008)

The Second Department upheld a Queens County Family Court termination of a mother's rights on mental illness grounds. The agency's expert testified that the mother had anxiety disorder, panic disorder and borderline personality disorder. She also abused drugs. The mother's treating psychiatrist agreed with the diagnoses but testified for the mother that under the right circumstances she would "have a chance" of being "effective" as a parent. This mere possibility is not enough. The mother was not entitled to an adjournment to obtain more expert testimony as she had already had plenty of time to do that. The court did not need to hold a dispositional hearing.

Matter of Jenna KK., 50 AD3d 1216, 855 NYS2d 700 (3rd Dept. 2008)

The Third Department concurred with Clinton County Family Court that the father of three children was mentally ill to the extent that he could not parent the children safely for the foreseeable future. The court appointed psychologist met with the father and reviewed his files and documents. He administered two diagnostic tests and spoke with the caseworkers, the father's probation officer and the psychologist at the father's sex offender program. The father has delusional disorder, pedophilia and personality disorder, is anti social, paranoid and narcissistic. His mental illness affects his judgment such that he could hold unwarranted grudges against the children and act in a controlling matter as well as disregard the safety of the children as evidenced by criminal convictions for sex offenses and domestic violence. The father cannot accept responsibility for prior criminal acts. The court was permitted to draw an adverse inference from the father's failure to testify and no contradictory expert evidence was offered.

Matter of Barbara Anne B., 51 AD3d 1018, 859 NYS2d 248 (2nd Dept. 2008)

The Kings County Family Court affirmed the termination of a mothers rights on the grounds of mental retardation. It was not error to fail to appoint a guardian ad litem for the mother as the record demonstrated that she was capable of understanding the proceedings and assisting her attorney in defending her rights.

PERMANENT NEGLECT

Matter of Angel A., 48 AD3d 800, 853 NYS2d 147 (2nd Dept. 2008)

A Richmond County mother's rights were terminated properly. The agency had offered diligent efforts in that they provided visitation, scheduled service plan reviews twice a year, offered referrals to drug treatment programs and assisted in trying to locate suitable housing. The mother did not complete drug treatment and failed to find suitable housing.

Matter of Leah Tanisha AN., 48 AD3d 801, 853 NYS2d 145 (2nd Dept. 2008)

The Second Department upheld a Richmond County termination against both parents. The agency had offered diligent efforts to the mother in that they provided visitation, scheduled service plan reviews twice a year, offered referrals to drug treatment programs and assisted in trying to locate suitable housing. The mother did not complete drug treatment and failed to find suitable housing. The agency provided the father with referrals to several anger management programs and he failed to complete any within the time frame.

Matter of Maelee N., 48 AD3d 929, 851 NYS2d 701 (3rd Dept. 2008)

The Third Department affirmed a Broome County termination of a mother's rights. The child had been placed in care shortly after birth due to the mother's neglect. The agency offered diligent efforts consisting of parenting classes, anger management classes, nutrition classes, a parenting aide and transportation. The DSS also had the mother's IQ tested and provided a substance abuse evaluation as well as counseling and employment assistance. The mother was given a three hour supervised visit in her home on a weekly basis. The mother does have an average IQ and no discernible substance abuse problem and she participated in many of the services – including two rounds of parenting classes. However, she did not adequately benefit from the services offered. Even though the agency offered her help for two years, she continued to have difficulty with basic parenting, would lose her temper, and did not maintain a suitable home or steady employment. She failed to plan for the child. A suspended judgment did not need to be considered since in the 10 months between the fact finding and the disposition of the TPR, the mother showed no improvement. Between the two hearings she moved 4 times, twice to locations that were not even suitable for visitation. She continued her pattern of not improving her parenting abilities. The child was bonded with the foster parents who wanted to adopt.

Matter of Myles N., 49 AD3d 381, 854 NYS2d 353 (1st Dept. 2008)

The First Department concurred with New York County Family Court that a father had permanently neglected the child where he failed to acknowledge or gain insight into his domestic violence which had caused the placement in care. The agency had made

diligent efforts. The agency's progress notes only covered 11 months but the testimony did describe the requisite one year period. The child had lived in the foster home for his entire 6 years and was bonded to the foster mother and her children.

Matter of Gerald BB., 51 AD3d 1081, 857 NYS2d 314 (3rd Dept. 2008)

The Third Department found that Schenectady County Family Court had properly terminated the parental rights of a mother to her three young children. DSS offered diligent efforts with parenting classes and substance abuse programs. They sent the mother written reports of the children's status and repeatedly attempted to engage her in discussions about the children's future. They arranged visits for her, even when she was incarcerated. The mother failed to plan for the children in that she failed to participate in meetings with DSS, failed to cooperate with DSS and refused to sign releases or participate in any drug screening. She was incarcerated on two occasions while the children were in foster care and she continued to abuse drugs and alcohol, testing positive on one occasion. She was late and had poor visits with the children, failed to bond with them or create a wholesome relationship with them. She continued to live with the father who had a substance abuse problem as well. The children all have special needs which the mother refuses to recognize. The children are not bonded to the mother and the extensive stay in foster care is inhibiting their bond to prospective adoptive parents. An aunt filed for custody after the fact finding and before the disposition and that petition was dismissed after the court freed the children for adoption. The Third Department opined that it would have been better practice to hear the custody petition within the dispositional hearing but that the dismissal was not error given that the court had heard from the aunt at length in the fact finding. The Appellate Court found it "disturbing" that the aunt had not even known the children well enough to know that they had been placed in foster care for over 2 years.

Matter of Eric L. II., 51 AD3d 1400, 857 NYS2d 851 (4th Dept. 2008)

The Fourth Department affirmed a Cattaraugus County Family Court termination of an incarcerated father's rights. The father had been produced at the fact finding but was not brought from prison for the dispositional hearing. The Fourth Department found that it would have been "preferable" for the court to have ordered him brought to the court room or at least to have him participate by phone, but the error was not fatal. The father's attorney vigorously presented his clients' defense that the agency had not looked diligently for relatives for the child's placement. As to the merits of the matter, DSS had provided the father with many things prior to his incarceration - supervised visitation, mental health and substance abuse counseling, parenting classes and allowed his attendance at the child's medical appointments. The father did not meaningfully participate in any of the counseling services or parenting. After he was incarcerated, the father sent a letter to the caseworker that he would like his relatives to be assessed as possible resources and the caseworker wrote back asking for contact information. A brother that was offered as a resource had already been determined to

be unsuitable. The father never replied to the agency's letter. Since the father failed to cooperate with the caseworker thereafter, the agency was not obligated to demonstrate that they had engaged in diligent efforts toward reunification for the period of time that the father was in jail as per SSL § 384-b (7)(f)(5).

Matter of Dante Devon A., 52 AD3d 241, 859 NYS2d 168 (1st Dept. 2008)

New York County Family Court properly terminated the parental rights of a father. The father did not complete the service plan in that he did not submit to drug testing and did not obtain needed training on dealing with the child's medical condition. The father's failure to get the child needed medical help was the issue that had caused the child's placement in care. He also did not visit the child regularly. The agency had provided diligent efforts to offer these services. The child had lived half his life with the foster mother, who was a paternal aunt. The foster mother had cared for the medical issues; the child improved academically and in his behavior. The child has a good relationship with the other children in the home. It is not in the best interests of the child to offer a suspended judgment but instead to free the child to be adopted by the aunt.

Matter of Vashaun P., 53 AD3d 712, __NYS2d__ (3rd Dept. 2008)

In an appeal of a termination of two children that was combined with an appeal of a derivative neglect on a newborn, the Third Department ruled that the mother's two older children were properly freed for adoption. The older children had been in care since 2005 and the mother still had not located proper shelter and did not participate in services. She maintained only sporadic contact with the children and moved from Columbia County to NYC while the children were in care. She failed to provide information about her location for over 8 months. DSS also attempted to assist her with housing services, employment and visitation and she failed to follow through on those services. DSS was not obligated to relocate the children to a foster home in NYC given how long they had been residing with the current foster family

TPR DISPOSITIONS

Matter of Rita T., 49 AD3d 327, 854 NYS2d 344 (1st Dept. 2008)

Bronx County Family Court properly denied a grandmother's petition for custody. The children had been properly cared for by their foster mother for most of their lives and the foster mother intended to adopt them. The grandmother had not visited the children very frequently and did not understand their special needs. Further the grandmother had been found to have neglected two of the children in the past and she admitted that it was her intent to ultimately return the children to their mother, whose rights had been terminated.

Matter of Shaquill Dywon M., 50 AD3d 1142, 856 NYS2d 670 (2nd Dept. 2008)

Although agreeing that permanent neglect had been correctly adjudicated against a Kings County mother, the Second Department reversed the disposition of termination of her rights, indicating that the lower court should have issued a suspended judgment. Although the mother was chronically late and missed visits, she made great progress in completing her service plan. She obtained public assistance income, completed a 22 week parenting course and located a suitable two bedroom apartment. She was cooperative with the caseworker who acknowledged that she was in compliance and had substantially completed what had been asked of her. The Appellate Court remanded the matter for a new dispositional hearing for the lower court to assess if progress had continued for the year that the matter had been on appeal or if it had not continued to improve such that the current best interests warranted a termination.

Matter of Deborah F., 50 AD3d 1213, 855 NYS2d 299 (3rd Dept. 2008)

The Third Department reviewed an Albany County Family Court decision freeing a child for adoption and denying the grandmother's request for custody. The child had been placed in foster care after the mother had left him with the grandmother. The grandmother had called CPS after caring for the child for three weeks saying that she could no longer care for the child. Six months after the child had been removed from the grandmother and placed in foster care, the grandmother sought visitation and was court ordered to have one half hour of visitation every other week. The child remained in foster care for over two years and had been with his current foster placement for over a year when the DSS began TPR proceedings. The grandmother then filed for custody of the child. The mother admitted to permanent neglect and the court held a dispositional hearing in which it also considered the custody petition. The Third Department affirmed the freeing of the child for adoption by the foster parent. There is no presumption in favor of any particular disposition in a TPR and a blood relative does not take precedence over a family selected by the agency. The grandmother had not sought visitation with the child for over 6 months after he was placed in care. The grandmother had a history of allowing the mother to have access to the child even knowing the mother's history of violent outbursts. The grandmother knew the mother used excessive corporal punishment and did not supervise the boy and yet the grandmother intended to allow the mother access to the child. The grandmother's own children had been in foster care and she failed to accept any responsibility for that. Further the grandmother did not attend to the child's special needs and claimed his ADHD was due to his not being with biological family. In contrast the child has stabilized in foster care, his special needs have reduced and he is doing well in school. The child is significantly attached to the foster parent and her children and not bonded to the grandmother.

Matter of Bert M., 50 AD3d 1509, 856 NYS2d 758 (4th Dept. 2008)

The Fourth Department reviewed an appeal from Jefferson County Family Court regarding the revocation of a suspended judgment and the freeing of 2 children for adoption. The parents maintained on appeal that the DSS had not engaged in diligent efforts to assist them. The Appellate Court refused to consider the issue of what diligent efforts had been made for the time period prior to the parents having consented to the adjudicated of permanent neglect. They did review the actions of the DSS subsequent to the adjudication during the term of the suspended judgment. (Note: Although the court reviewed the actions of DSS during the suspended judgment period, the court made no comment that “diligent efforts” are required to be proven in a violation of suspended judgment and it is well settled that such proof is not necessary) The DSS had provided the parents with a “co parent” who assisted them with the care of their home and arranged supervised visitation. Services to assist with personal hygiene, employment, budgeting, parenting as well as counseling were offered to the parents. The parents did not address or overcome the problems that had caused the placement of the children. Mere attendance at the required programs, without progress is not sufficient to fulfill a suspended judgment.

However, the Fourth Department did remand the matter for a new dispositional hearing on the question of the court ordering “post termination contact” with the parents. The Appellate Court commented that the hearing had been held prior to the ***Kahlil S.*** decision (**35 AD3d 1164 (4th Dept. 2006)**) The lower court must consider in a permanent neglect termination if the children’s best interests warrant ongoing contact with the birth parents whose parental rights are terminated.

Matter of Raine QQ., 51 AD3d 1106, 857 NYS2d 333 (3rd Dept. 2008)

Chenango County Family Court correctly terminated the parental rights of a mother. A suspended judgment was not in the child’s best interests. The child had been in foster care for over 4 years and each time that the mother had progressed to unsupervised visitation, she relapsed and used alcohol while caring for the child, Although she was currently sober at the dispositional stage, she had numerous chances to redeem herself and had not done so consistently. The child’s current foster parents are not interested in adopting him but the child is aware of the adoption plan and accepted it. The child should not be kept in limbo but given a chance for a sense of stability. Since this was a contested hearing and not a voluntary surrender, the court had no authority to order post termination visitation (no mention of contrary 4th Dept. ***Kahlil S.*** decision)

Matter of Shdell Shakell L., 51 AD3d 1027, 858 NYS2d 779 (2nd Dept. 2008)

The Second Department agreed with the Richmond County Family Court that the mother had violated the terms of her suspended judgment but reversed the termination

ruling that the court should have instead considered extending the suspended judgment. The mother was making progress in her residential drug treatment program and had a loving relationship with the child. She visited him regularly and called him every night. The child did not want to be adopted. The matter was remanded for a new dispositional hearing.

Matter of Kesierika H., 52 AD3d 264, __NYS2d__ (1st Dept. 2008)

The First Department concurred with Bronx County Family Court's denial of a grandmother's petition for custody. The foster mother provided a positive environment for the child and wants to adopt. She was meeting the child's special needs. The grandmother has only seen the child once since her placement in foster care and the court had previously found the grandmother to be neglectful of her grandchildren, including this child.

Matter of Samuel Fabien G., 52 AD3d 713, __NYS2d__ (2nd Dept. 2008)

While the Second Department agreed with Kings County Family Court that a father had permanently neglected his children, they reversed the dispositional adjudication of termination and remanded for a new dispositional hearing. The Appellate Court agreed with the children's attorney's position that new facts showed that the termination may not be in the children's best interests. The Second Department stated that such new facts and allegations can be properly considered by the court on such an appeal. The children now do not have an adoptive resource. Since they are both now 12 years of age and one child has expressed a clear desire to return to the father's home, the current best interests of the children may not be termination and the lower court should proceed with a new dispositional hearing.

UNWED FATHERS RIGHTS

Matter of Anthony R., 48 AD3d 1175, 850 NYS2d 779 (4th Dept. 2008)

Erie County Family Court erred in dismissing a father's petition for custody of a child freed for adoption from the mother without first holding a hearing on the child's best interests. The father did have an order of filiation but he acknowledged that he was a "notice" father and not a consent father. DSS had withdrawn its TPR against the father only when he had acknowledged that he was only a "notice" father. However a notice father can still seek custody and the court should have held a hearing to determine the best interests of the child.

Matter of Vanessa Ann G L., 50 AD3d 1036, 856 NYS2d 657 (2nd Dept. 2008)

The Second Department reversed Nassau County Family Court's determination that an unwed father's consent was not necessary for the child to be adopted. The child was placed in foster care at birth due to the mother's drug problems. The father was unaware of the child's birth. When the child was a year old and while still in foster care, the father filed and established paternity. Thereafter he paid child support, visited the child, attended requested parenting classes and petitioned for custody. When the child was three years old, the DSS petitioned to terminate the father's rights. While the petition was pending, the mother died. At that point, DSS then argued that the father's termination need not be continued as he was not in fact a parent whose consent was necessary. It was stipulated that after the adjudication and for the most recent two years, the father had paid child support, visited weekly, had completed two parenting courses, found a new apartment and had done all the agency had requested. However the agency argued that since the father had not sought to establish paternity for the first year of the child's life, he was not a consent father. The lower court agreed with the agency that the father was not a consent father finding that he had not promptly expressed a willingness to assume full custody of the child for over a year after the child had been born and placed. However, the placement of the child was not for purposes of adoption, it was for purposes of attempting reunification with the mother and therefore the court applied the wrong legal test. This child was not placed for adoption until long after the father had become actively involved in seeking custody of the child. The father therefore meets the standards of a consent father and the child cannot be adopted unless the father surrenders or the agency can prove some grounds to terminate his parental rights.

Matter of Seasia D., 10 NY3d 879 (2008)

The Court of Appeals reversed Second Department in a private adoption matter. The mother of the infant who was the subject of the adoption was herself a 14 year old foster child who was then adopted by her foster mother. The Appellate Division had ruled that the mother's extrajudicial surrender of her infant was invalid as the baby's mother had been told by her adoptive mother that the baby could not live in the home and that she, the mother, would be placed back in foster care if she did not give up the baby. The Court of Appeals ruled that the mother never testified that she felt forced to surrender the baby, she did not ask the court to withdraw her extrajudicial surrender and she indicated that she wanted to surrender the baby and would redo surrender paperwork if that needed to be done. The Court of Appeals also disagreed with the Appellate Division's decision that the father was a "consent" father. He was also a teenager but the Court of Appeals held that he did not assert his interest in the child promptly. Despite his claim that the mother's family did not like him and his fear that the mother would pursue a claim the sexual contact was not consensual (she was 13 years old and he was 17) he could have and should have done more to show his intent to care for the infant. The testimony only showed that the father had lots of "excuses" for his failure to assert paternal interest. He relocated out of state with his family, he did not file with the putative father registry and he claimed that he was told incorrectly that he could not file

for paternity until the baby was born. He also did not offer to pay the mother's medical expenses claiming that Medicaid covered them and that he was in high school and not working. The only offers of help to the birth mother came from his family in that they offered to purchase her some maternity clothes and made some phone calls to her home. Even if these actions were attributable to the father, they were insubstantial. (Note: You can review more details about his attempts to be involved regarding the infant in the Appellate decision reported at **46 AD3d 878, 848 NYS2d 361 (2nd Dept. 2007)**)

Matter of R. 52 AD3d 609, __NYS2d__ (2nd Dept. 2008)

Queens County Family Court's order that a putative father be given notice of an adoption proceeding was reversed on appeal. Since the alleged father was given notice at the time of the mother's termination as per SSL § 384-c, he need not be noticed again for the adoption pursuant to DRL §111-a(1) and the lower court erred in so ordering.

ADOPTIONS and SURRENDERS

Matter of Jenny A., 50 AD3d 1583, 857 NYS2d 845 (4th Dept. 2008)

After surrendering her children to DSS, a Cayuga County mother filed for custody of them claiming she had been coerced into signing the surrenders. The Fourth Department affirmed the dismissal of her petition. The caseworker did inform the mother that a TPR would be filed against her if she did not surrender the children but this was not coercion. It was "accurate, albeit unpleasant" information that in fact the mother needed to make an informed decision. Further the mother's claim that she signed the surrender believing that she would still be allowed to see the children was not proven. The only condition of the surrender was that the children would be adopted by their foster parents and there was no agreement for any contact.

ROLE OF CHILD'S ATTORNEY

Naomi C v Russell A. 48 AD3d 203, 850 NYS2d 415 (1st Dept. 2008)

A New York County private custody matter was dismissed without a hearing as sufficient grounds had not been alleged to modify the prior decision. This was affirmed on appeal. The First Department ruled that the court erred in asking the child's attorney on the record to discuss the position of the 10 year old child, the subject of the matter. The lower court did stop the petitioner's attorney from "cross examining" the law guardian about the child's position but the court should not have sought the child's

hearsay opinion about the matter in the first place. This behavior makes the child's attorney an unsworn witness which is not appropriate.

Matter of Delaney v Galeano 50 AD3d 1035, 857 NYS2d 586 (2nd Dept. 2008)

In a private custody matter, the Second Department dismissed an appeal brought by the law guardian. The 14 year old child does not want the matter appealed and this child is capable of a knowing, voluntary and considered judgment and the attorney must be directed by the wishes of the child.

MISCELLANEOUS

Matter of Antowa McD., 50 AD3d 507, 856 NYS2d 516 (1st Dept. 2008)

The First Department reversed Bronx County Family Court's denial of a motion to find a child eligible for long term foster care to enable the child to apply for special immigrant juvenile status. The child had been sent from Jamaica to live with her father by her mother when the child was four years old. The father then left the child with an aunt and abandoned the child. The mother would not take the child back home o Jamaica. The lower court did grant the aunt guardianship of the child who was now 9 years old but erred in refusing to make factual findings that the child had been neglected and abandoned by her parents and therefore was eligible for long term foster care and that is was not in her best interests to be returned to Jamaica. This finding would have permitted the child to file and attempt to seek special immigrant juvenile status and allow her to remain in the aunt's loving and nurturing home.

Matter of Vanessa D. 51 AD3d 790, 858 NYS2d 687 (2nd Dept. 2008)

The Second Department refused to rule on the issue of Family Court jurisdiction over a motion to determine a child eligible for special immigrant juvenile status. A guardianship petition was filed in Kings County Family Court and the lower court dismissed the petition ruling that the court had no subject matter jurisdiction. On appeal, the Second Department found that the child was no longer a minor and therefore the guardianship petition must be dismissed. Although some guardianships in Surrogate Court can extend to the child's 21st birthday, no such statutory authority exists in Family Court. The Second Department stated "even if the Family Court initially erred in denying the petition" that the court was precluded from remitting the matter for a determination on the merits given the child's age. The court stopped short of actually ruling if Family Court did have subject matter jurisdiction over special immigrant juvenile status matters.

Matter of Brian L., 51 AD3d 488, 859 NYS 2d 8 (1st Dept. 2008)

Several very significant legal rulings were made in this ongoing matter involving the responsibility for ACS to pay for sex reassignment surgery for a foster child. Upon the most recent remand for a more detailed fact finding, New York County Family Court had then ordered ACS to pay for the surgery. The First Department reversed. Numerous advocacy groups joined in the appeal. ACS argued issues concerning the child's medical coverage, the Family Court's authority and that the young adult was in fact not ready for the procedure. The First Department first ruled that the Medicaid limitations on processes that are covered did not limit what ACS needed to provide to foster children. The fact that Medicaid did not approve a particular procedure is not dispositive of the question of ACS having responsibility to provide whatever medical care a child needed. However, although ACS is responsible for providing all foster children with needed medical care, the Family Court does not have authority to order ACS to provide any particular medical procedure. The commissioners of public welfare have authority to provide necessary medical care for foster children. Neither FCA 255 nor 1015-a give Family Court any authority to order a local district to provide specific medical or surgical care to a child. ACS' refusal to pay for the treatment can only be reviewed should the petitioner file a CPLR Art. 78 proceeding and prove that the failure to pay for the surgery is arbitrary and capricious and had no rational basis.

Matter of Brittny MM., 51 AD3d 1303, 858 NYS2d 815 (3rd Dept. 2008)

The Third Department ruled that a PINs probation disposition can extend for a period beyond the child's 18th birthday as there is no age limitation in the statute. Since the legislature could not have meant to allow probation beyond 18 without the judicial authority to enforce the order, a violation of a PINs probation can be filed beyond the child's 18th birthday but the court is then limited to a disposition that it could have granted at the time the order of probation was entered.

Matter of Anonymous v NYS OCFS 53 AD3d 810, ___NYS2d___ (3rd Dept. 2008)

A mother brought an Art. 78 action against OCFS. She was the subject of an unfounded SCR report and she then requested that the matter be expunged pursuant to SSL § 422 (5) c. OCFS refused to expunge the unfounded report. The mother brought this action to compel them to expunge the unfounded report. The court dismissed the petition as the matter was not timely served. However, the court did comment that if it would have reached the merits, they would have ruled that the mother's claims about what had occurred did not rise to the required level of clear and convincing evidence that affirmatively refuted any maltreatment.

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Cal. No. 1271

2007-2008 Regular Sessions

I N S E N A T E

April 23, 2007

Introduced by Sens. KRUGER, DeFRANCISCO -- (at request of the Office of Children and Family Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Social Services, Children and Families in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the family court act, the domestic relations law and the surrogate`s court procedure act, in relation to the legal powers of custodians and guardians of children

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 661 of the family court act, as amended by chapter
2 232 of the laws of 1988, is amended to read as follows:
3 S 661. Jurisdiction. {The} WHEN INITIATED IN THE family
court, SUCH
4 COURT has like jurisdiction and authority TO DETERMINE as
{is now
5 conferred on} county and surrogates courts {as concerns} IN
PROCEEDINGS

6 REGARDING the guardianship of the person of a minor OR INFANT
AND PERMA-
7 NENT GUARDIANSHIP OF A CHILD. {The} SUCH JURISDICTION SHALL
APPLY AS
8 FOLLOWS:
9 (A) GUARDIANSHIP OF THE PERSON OF A MINOR OR INFANT. WHEN
MAKING A
10 DETERMINATION REGARDING THE GUARDIANSHIP OF THE PERSON OF A
MINOR OR
11 INFANT, THE provisions of the surrogate`s court procedure
act shall
12 apply to the extent they are applicable to guardianship of the
person of
13 a minor OR INFANT and do not conflict with the specific
provisions of
14 this act. FOR PURPOSES OF APPOINTMENT OF A GUARDIAN OF THE
PERSON
15 PURSUANT TO THIS PART, THE TERMS INFANT OR MINOR SHALL INCLUDE
A PERSON

EXPLANATION--Matter in ITALICS (underscored) is new; matter in
brackets
{ } is old law to be omitted.

LBD09815-07-8

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1 WHO IS LESS THAN TWENTY-ONE YEARS OLD WHO CONSENTS TO THE
APPOINTMENT OR
2 CONTINUATION OF A GUARDIAN AFTER THE AGE OF EIGHTEEN.
3 (B) PERMANENT GUARDIANSHIP OF A CHILD. WHERE THE
GUARDIANSHIP AND
4 CUSTODY OF A CHILD HAVE BEEN COMMITTED TO AN AUTHORIZED AGENCY
PURSUANT
5 TO SECTION SIX HUNDRED FOURTEEN OF THIS ARTICLE, OR
SECTION THREE
6 HUNDRED EIGHTY-THREE-C, SECTION THREE HUNDRED EIGHTY-FOUR OR
SECTION
7 THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW, OR
WHERE BOTH
8 PARENTS OF A CHILD WHOSE CONSENT TO THE ADOPTION OF THE CHILD
WOULD HAVE
9 BEEN REQUIRED PURSUANT TO SECTION ONE HUNDRED ELEVEN OF THE
DOMESTIC
10 RELATIONS LAW OR WHO WERE ENTITLED TO NOTICE OF AN ADOPTION
PROCEEDING
11 PURSUANT TO SECTION ONE HUNDRED ELEVEN-A OF THE DOMESTIC
RELATIONS LAW
12 ARE DEAD, THE COURT MAY APPOINT A PERMANENT GUARDIAN OF A
CHILD IF THE
13 COURT FINDS THAT SUCH APPOINTMENT IS IN THE BEST INTERESTS OF
THE CHILD.
14 THE PROVISIONS OF THE SURROGATE`S COURT PROCEDURE ACT SHALL
APPLY TO THE
15 EXTENT THAT THEY ARE APPLICABLE TO A PROCEEDING FOR

APPOINTMENT OF A

16 PERMANENT GUARDIAN OF A CHILD AND DO NOT CONFLICT WITH THE SPECIFIC

17 PROVISIONS OF THIS ACT. SUCH PERMANENT GUARDIAN OF A CHILD SHALL HAVE

18 THE RIGHT AND RESPONSIBILITY TO MAKE DECISIONS, INCLUDING ISSUING ANY

19 NECESSARY CONSENTS, REGARDING THE CHILD'S PROTECTION, EDUCATION, CARE

20 AND CONTROL, HEALTH AND MEDICAL NEEDS, AND THE PHYSICAL CUSTODY OF THE

21 PERSON OF THE CHILD, AND MAY CONSENT TO THE ADOPTION OF THE CHILD.

22 PROVIDED, HOWEVER, THAT NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED

23 TO LIMIT THE ABILITY OF A CHILD TO CONSENT TO HIS OR HER OWN MEDICAL

24 CARE AS MAY BE OTHERWISE PROVIDED BY LAW.

25 S 2. The family court act is amended by adding a new section 657 to

26 read as follows:

27 S 657. CERTAIN PROVISIONS RELATING TO THE GUARDIANSHIP AND CUSTODY OF

28 CHILDREN BY PERSONS WHO ARE NOT THE PARENTS OF SUCH CHILDREN. (A)

29 NOTWITHSTANDING ANY PROVISION OF THE LAW TO THE CONTRARY, A PERSON

30 POSSESSING A LAWFUL ORDER OF GUARDIANSHIP OR CUSTODY OF A MINOR CHILD,

31 WHO IS NOT THE PARENT OF SUCH CHILD, MAY ENROLL SUCH CHILD IN PUBLIC

32 SCHOOL IN THE APPLICABLE SCHOOL DISTRICT WHERE HE OR SHE AND SUCH CHILD

33 RESIDE. UPON APPLICATION FOR ENROLLMENT OF A MINOR CHILD BY A GUARDIAN

34 OR CUSTODIAN WHO IS NOT THE PARENT OF SUCH CHILD, A PUBLIC SCHOOL SHALL

35 ENROLL SUCH CHILD FOR SUCH TIME AS THE CHILD RESIDES WITH THE GUARDIAN

36 OR CUSTODIAN IN THE APPLICABLE SCHOOL DISTRICT, UPON VERIFICATION THAT

37 THE GUARDIAN OR CUSTODIAN POSSESS A LAWFUL ORDER OF GUARDIANSHIP OR

38 CUSTODY FOR SUCH CHILD AND THAT THE GUARDIAN OR CUSTODIAN AND THE CHILD

39 PROPERLY RESIDE IN THE SAME HOUSEHOLD WITHIN THE SCHOOL DISTRICT.

40 (B) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, PERSONS

41 POSSESSING A LAWFUL ORDER OF CUSTODY OF A CHILD WHO ARE NOT A PARENT OF

42 SUCH CHILD SHALL HAVE THE SAME RIGHT TO ENROLL AND RECEIVE COVERAGE FOR

43 SUCH CHILD IN THEIR EMPLOYER BASED HEALTH INSURANCE PLAN AND TO ASSERT

44 THE SAME LEGAL RIGHTS UNDER SUCH EMPLOYER BASED HEALTH

INSURANCE PLANS

45 AS PERSONS WHO POSSESS LAWFUL ORDERS OF GUARDIANSHIP OF THE
PERSON FOR A
46 CHILD PURSUANT TO RULE TWELVE HUNDRED TEN OF THE CIVIL PRACTICE
LAWS AND
47 RULES, ARTICLE SEVENTEEN OF THE SURROGATE`S COURT PROCEDURE ACT,
OR PART
48 4 OF THIS ARTICLE.

49 S 3. The domestic relations law is amended by adding a new
section 74

50 to read as follows:

51 S 74. CERTAIN PROVISIONS RELATING TO THE CUSTODY OF
CHILDREN BY

52 PERSONS WHO ARE NOT THE PARENTS OF SUCH CHILDREN. 1.
NOTWITHSTANDING

53 ANY PROVISION OF LAW TO THE CONTRARY, A PERSON POSSESSING A
LAWFUL ORDER

54 OF GUARDIANSHIP OR CUSTODY OF A MINOR CHILD, WHO IS NOT THE
PARENT OF

55 SUCH CHILD, MAY ENROLL SUCH CHILD IN PUBLIC SCHOOL IN THE
APPLICABLE

56 SCHOOL DISTRICT WHERE HE OR SHE AND SUCH CHILD RESIDE. UPON
APPLICATION

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1 FOR ENROLLMENT OF A MINOR CHILD BY A GUARDIAN OR CUSTODIAN
WHO IS NOT

2 THE PARENT OF SUCH CHILD, A PUBLIC SCHOOL SHALL ENROLL SUCH
CHILD FOR

3 SUCH TIME AS THE CHILD RESIDES WITH THE GUARDIAN OR
CUSTODIAN IN THE

4 APPLICABLE SCHOOL DISTRICT, UPON VERIFICATION THAT THE
GUARDIAN OR

5 CUSTODIAN POSSESS A LAWFUL ORDER OF CUSTODY FOR SUCH CHILD AND
THAT THE

6 GUARDIAN OR CUSTODIAN AND THE CHILD PROPERLY RESIDE IN THE
SAME HOUSE-

7 HOLD WITHIN THE SCHOOL DISTRICT.

8 2. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY,
PERSONS

9 POSSESSING A LAWFUL ORDER OF CUSTODY OF A CHILD WHO ARE NOT A
PARENT OF

10 SUCH CHILD SHALL HAVE THE RIGHT TO ENROLL AND RECEIVE COVERAGE
FOR SUCH

11 CHILD IN THEIR EMPLOYER BASED HEALTH INSURANCE PLAN AND TO
ASSERT THE

12 SAME LEGAL RIGHTS UNDER SUCH EMPLOYER BASED HEALTH INSURANCE
PLANS AS

13 PERSONS WHO POSSESS LAWFUL ORDERS OF GUARDIANSHIP OF THE
PERSON FOR A

14 CHILD PURSUANT TO RULE TWELVE HUNDRED TEN OF THE CIVIL PRACTICE
LAWS AND

15 RULES, ARTICLE SEVENTEEN OF THE SURROGATE`S COURT PROCEDURE ACT,
OR PART

16 FOUR OF ARTICLE SIX OF THE FAMILY COURT ACT.

17 S 4. Section 1701 of the surrogate`s court procedure act, as amended
18 by chapter 167 of the laws of 1976, is amended to read as follows:

19 S 1701. Power of court

20 The court has power over the property of an infant and is authorized

21 and empowered to appoint a guardian of the person or of the property or

22 of both of an infant whether or not the parent or parents of the infant

23 OR CHILD are living. WHERE THE GUARDIANSHIP AND CUSTODY OF A CHILD HAVE

24 BEEN COMMITTED TO AN AUTHORIZED AGENCY PURSUANT TO SECTION SIX HUNDRED

25 THIRTY-ONE OF THE FAMILY COURT ACT, OR SECTION THREE HUNDRED

26 EIGHTY-THREE-C, SECTION THREE HUNDRED EIGHTY-FOUR OR SECTION THREE

27 HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW, OR WHERE BOTH PARENTS

28 OF THE CHILD WHOSE CONSENT TO THE ADOPTION OF THE CHILD WOULD HAVE BEEN

29 REQUIRED PURSUANT TO SECTION ONE HUNDRED ELEVEN-A OF THE DOMESTIC

30 RELATIONS LAW ARE DEAD, THE COURT MAY APPOINT A PERMANENT GUARDIAN OF A

31 CHILD IF THE COURT FINDS THAT SUCH APPOINTMENT IS IN THE BEST INTERESTS

32 OF THE CHILD.

33 S 5. Section 1702 of the surrogate`s court procedure act, subdivision

34 1 as amended by chapter 286 of the laws of 1973, is amended to read as

35 follows:

36 S 1702. Jurisdiction

37 1. Where an infant has no guardian the court may appoint a guardian of

38 his person or property, or of both, in the following cases:

39 {1.} (A) Where the infant is domiciled in that county or has sojourned

40 therein immediately preceding the application.

41 {2.} (B) Where the infant is a non-domiciliary of the state but has

42 property situate in that county.

43 2. WHERE AN INFANT OR CHILD HAS NO GUARDIAN, THE COURT MAY APPOINT A

44 PERMANENT GUARDIAN FOR THE CHILD IN ACCORDANCE WITH THE PROVISIONS OF

45 SECTION SEVENTEEN HUNDRED ONE OF THIS ARTICLE WHERE THE INFANT IS DOMI-

46 CILED IN THAT COUNTY OR WHERE SUCH CHILD IS IN THE CARE OR CUSTODY OF AN

47 AUTHORIZED AGENCY, AS DEFINED IN SUBDIVISION TEN OF SECTION THREE

48 HUNDRED SEVENTY-ONE OF THE SOCIAL SERVICES LAW, AND SUCH

AUTHORIZED

49 AGENCY HAS ITS PRINCIPAL OFFICE IN THAT COUNTY.

50 S 6. Section 1703 of the surrogate`s court procedure act, as amended

51 by chapter 514 of the laws of 1993, is amended to read as follows:

52 S 1703. Petition for appointment; by whom made

53 A petition for the appointment of a guardian of the person or proper-

54 ty, or both, of an infant may be made by any person {in} ON behalf of

55 the infant or if the infant be over the age of {14} FOURTEEN years, it

56 may be made by the infant. A petition for appointment as a guardian of

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1 the property of an infant may also be made by the public administrator

2 of the county in which the infant resides where no one else is available

3 to serve as guardian. The court may grant such a petition of the public

4 administrator upon its certification that all other efforts to appoint a

5 guardian have been exhausted. A PETITION FOR APPOINTMENT AS A PERMANENT

6 GUARDIAN OF AN INFANT OR CHILD MAY BE BROUGHT BY ANY PERSON ON BEHALF OF

7 THE INFANT OR CHILD.

8 S 7. Subdivisions 2 and 3 of section 1704 of the surrogate`s court

9 procedure act, subdivision 3 as amended by chapter 666 of the laws of

10 1976, are amended and a new subdivision 8 is added to read as follows:

11 2. The names of the father and the mother WHOSE CONSENT TO THE

12 ADOPTION OF A CHILD WOULD HAVE BEEN REQUIRED PURSUANT TO SECTION ONE

13 HUNDRED ELEVEN OF THE DOMESTIC RELATIONS LAW OR WHO WAS ENTITLED TO

14 NOTICE OF AN ADOPTION PROCEEDING PURSUANT TO SECTION ONE HUNDRED

15 ELEVEN-A OF THE DOMESTIC RELATIONS LAW, and whether or not they are

16 living OR HAVE HAD THEIR PARENTAL RIGHTS TERMINATED PURSUANT TO SECTION

17 THREE HUNDRED EIGHTY-THREE-C, SECTION THREE HUNDRED EIGHTY-FOUR OR

18 SECTION THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW OR

19 SECTION SIX HUNDRED THIRTY-ONE OF THE FAMILY COURT ACT, and if living,

20 their domiciles, the name and address of the person with whom

the infant
21 resides and the names and addresses of the nearest distributees
of full
22 age who are domiciliaries, if both father and mother are dead.
23 3. Whether the infant has had at any time a guardian appointed
by will
24 or deed or an acting guardian in socage or {a guardian of
the person
25 appointed} GUARDIANSHIP AND CUSTODY COMMITTED pursuant to
{section 384}
26 SECTION THREE HUNDRED EIGHTY-THREE-C, THREE HUNDRED
EIGHTY-FOUR or
27 {section 384-b} THREE HUNDRED EIGHTY-FOUR-B of the social
services law
28 OR SECTION SIX HUNDRED THIRTY-ONE OF THE FAMILY COURT ACT.
29 8. IN ADDITION, THE PETITION FOR APPOINTMENT OF A PERMANENT
GUARDIAN
30 OF AN INFANT OR CHILD SHALL INCLUDE:
31 (A) AN ASSESSMENT TO BE PERFORMED BY THE LOCAL SOCIAL
SERVICES
32 DISTRICT, WHICH SHALL CONTAIN:
33 (I) THE FULL NAME AND ADDRESS OF THE PERSON SEEKING TO
BECOME THE
34 GUARDIAN;
35 (II) THE ABILITY OF THE GUARDIAN TO ASSUME PERMANENT CARE
OF THE
36 CHILD;
37 (III) THE CHILD`S PROPERTY AND ASSETS, IF KNOWN;
38 (IV) THE WISHES OF THE CHILD, IF APPROPRIATE;
39 (V) THE RESULTS OF THE CRIMINAL HISTORY RECORD CHECK WITH THE
DIVISION
40 OF CRIMINAL JUSTICE SERVICES OF THE GUARDIAN AND ANY PERSON
EIGHTEEN
41 YEARS OF AGE OR OLDER RESIDING IN THE GUARDIAN`S HOUSEHOLD
CONDUCTED BY
42 THE OFFICE OF CHILDREN AND FAMILY SERVICES PURSUANT TO
SUBDIVISION TWO
43 OF SECTION THREE HUNDRED SEVENTY-EIGHT-A OF THE SOCIAL SERVICES
LAW IF
44 SUCH A CRIMINAL HISTORY RECORD CHECK HAS BEEN COMPLETED;
45 (VI) THE RESULTS OF A SEARCH OF THE STATEWIDE CENTRAL
REGISTER OF
46 CHILD ABUSE AND MALTREATMENT RECORDS REGARDING THE GUARDIAN
AND ANY
47 PERSON EIGHTEEN YEARS OF AGE OR OLDER RESIDING IN THE
GUARDIAN`S HOUSE-
48 HOLD, INCLUDING WHETHER SUCH PERSON HAS BEEN THE SUBJECT OF AN
INDICATED
49 REPORT CONDUCTED PURSUANT TO SUBPARAGRAPH (E) OF PARAGRAPH (A)
OF SUBDI-
50 VISION FOUR OF SECTION FOUR HUNDRED TWENTY-TWO OF THE SOCIAL
SERVICES
51 LAW, IF SUCH A SEARCH HAS BEEN CONDUCTED; AND
52 (VII) THE RESULTS OF ALL INSPECTIONS AND ASSESSMENTS OF THE
GUARDIAN`S
53 HOME AND THE CHILD`S PROGRESS WHILE PLACED IN THE HOME, IF ANY;

54 (B) A CERTIFIED COPY OF THE ORDER OR ORDERS TERMINATING THE
PARENTAL
55 RIGHTS OF THE CHILD`S PARENTS OR APPROVING THE SURRENDER OF THE
CHILD OR
56 THE DEATH CERTIFICATES OF THE CHILD`S PARENTS, AS APPLICABLE;

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1 (C) THE RECOMMENDATION OF THE AUTHORIZED AGENCY INVOLVED, IF
ANY; AND

2 (D) THE SUITABILITY, ABILITY AND COMMITMENT OF THE PERMANENT
GUARDIAN

3 TO ASSUME FULL LEGAL RESPONSIBILITY FOR THE CHILD AND RAISE THE
CHILD TO

4 ADULTHOOD.

5 S 8. Subdivision 1 of section 1706 of the surrogate`s court
procedure

6 act, as amended by chapter 518 of the laws of 2006, is amended
to read

7 as follows:

8 1. Where process is not issued or upon the return of
process, the

9 court shall ascertain the age of the infant, the amount of
his OR HER

10 personal property, the gross amount of the rents and profits of
his OR

11 HER real estate during his OR HER minority and the
sufficiency of the

12 security offered by the proposed guardian. WITH RESPECT TO
APPLICATIONS

13 FOR APPOINTMENT AS A PERMANENT GUARDIAN OF A CHILD, THE
PERMANENT GUARD-

14 IAN SHALL HAVE THE RIGHT AND RESPONSIBILITY TO MAKE DECISIONS,
INCLUDING

15 ISSUING ANY NECESSARY CONSENTS, REGARDING THE CHILD`S
PROTECTION, EDUCA-

16 TION, CARE AND CONTROL, HEALTH AND MEDICAL NEEDS, AND THE
PHYSICAL

17 CUSTODY OF THE PERSON OF THE CHILD, AND MAY CONSENT TO THE
ADOPTION OF

18 THE CHILD. PROVIDED, HOWEVER, THAT NOTHING IN THIS SUBDIVISION
SHALL BE

19 CONSTRUED TO LIMIT THE ABILITY OF A CHILD TO CONSENT TO HIS OR
HER OWN

20 MEDICAL CARE AS MAY BE OTHERWISE PROVIDED BY LAW. If the infant
is over

21 the age of {14} FOURTEEN years the court shall ascertain
his OR HER

22 preference for a suitable guardian. Notwithstanding any other
section of

23 law, where the infant is over the age of eighteen, the
infant shall

24 consent to the appointment of a suitable guardian.

25 S 9. Section 1707 of the surrogate`s court procedure act,
subdivision

26 1 as amended by chapter 477 of the laws of 2000 and

subdivision 2 as
27 amended by chapter 518 of the laws of 2006, is amended to
read as
28 follows:
29 S 1707. Decree appointing guardian; term of office
30 1. If the court be satisfied that the interests of the infant
will be
31 promoted by the appointment of a guardian or by the issuance
of tempo-
32 rary letters of guardianship of his OR HER person or of his OR
HER prop-
33 erty, or of both, it must make a decree accordingly. IF THE
COURT DETER-
34 MINES THAT APPOINTMENT OF A PERMANENT GUARDIAN IS IN THE BEST
INTERESTS
35 OF THE INFANT OR CHILD, THE COURT SHALL ISSUE A DECREE
APPOINTING SUCH
36 GUARDIAN. The same person may be appointed guardian of both the
person
37 and the property of the infant or the guardianship of the
person and of
38 the property may be committed to different persons. The
court may
39 appoint a person other than the parent of the infant or the
person nomi-
40 nated by the petitioner. When the court is informed that the
infant, a
41 person nominated to be a guardian of such infant, the
petitioner, or any
42 individual eighteen years of age or over who resides in the home
of the
43 proposed guardian is a subject of or another person named in
an indi-
44 cated report, as such terms are defined in section four hundred
twelve
45 of the social services law, filed with the statewide register
of child
46 abuse and maltreatment pursuant to title six of article six
of the
47 social services law or is or has been the subject of or the
respondent
48 in or a party to a child protective proceeding commenced under
article
49 ten of the family court act which resulted in an order finding
that the
50 child is an abused or neglected child the court shall
obtain such
51 records regarding such report or proceeding as it deems
appropriate and
52 shall give the information contained therein due consideration
in its
53 determination.
54 2. The term of office of a guardian of the person or
property so
55 appointed expires when the infant attains majority, unless the
infant

56 consents to the continuation of or appointment of a guardian
after his

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6

1 or her eighteenth birthday, in which case such term of office
expires on

2 his or her twenty-first birthday, or after such other shorter
period as

3 the court establishes upon good cause shown; except that the
term of

4 office of a guardian of the person of an infant expires
upon the

5 infant`s marriage prior to attaining majority. THE
APPOINTMENT OF A

6 PERMANENT GUARDIAN OF A CHILD SHALL EXPIRE WHEN THE INFANT
OR CHILD

7 REACHES THE AGE OF EIGHTEEN YEARS, UNLESS THE INFANT OR CHILD
CONSENTS

8 TO THE CONTINUATION OF A GUARDIAN AFTER HIS OR HER EIGHTEENTH
BIRTHDAY,

9 IN WHICH CASE SUCH TERM OF OFFICE EXPIRES ON HIS OR HER
TWENTY-FIRST

10 BIRTHDAY, OR UNLESS VACATED BY THE COURT PRIOR TO THE INFANT OR
CHILD`S

11 EIGHTEENTH OR TWENTY-FIRST BIRTHDAY IF THE COURT FINDS THAT
BASED UPON

12 CLEAR AND CONVINCING EVIDENCE THE GUARDIAN FAILED TO OR IS
UNABLE,

13 UNAVAILABLE OR UNWILLING TO PROVIDE PROPER CARE AND CUSTODY
OF THE

14 INFANT OR CHILD, OR THAT THE GUARDIANSHIP IS NO LONGER IN
THE BEST

15 INTERESTS OF THE INFANT OR CHILD.

16 S 10. This act shall take effect on the ninetieth day after
it shall

17 have become a law.

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Cal. No. 1276

IN SENATE

April 4, 2008

Introduced by Sen. KRUGER -- (at request of the Office of Children and Family Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the family court act, in relation to concurrent guardianship, custody and child protective proceedings

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subparagraphs (i) and (ii) of paragraph (a) of subdivision 2 of section 1017 of the family court act, as amended by section 10 of part A of chapter 3 of the laws of 2005, are amended to read as follows:

4 (i) {place the child in the} GRANT AN ORDER OF custody {of} OR GUARDIANSHIP TO such non-respondent parent, other relative or other suitable person pursuant to {article six of this act and conduct such other and further investigations as the court deems necessary} SECTION ONE THOU-

8 SAND FIFTY-FIVE-B OF THIS ARTICLE; or
9 (ii) place the child DIRECTLY in the custody of such non-respondent parent, other relative or other suitable person pursuant to this article during the pendency of the proceeding or until further order of the court, whichever is earlier and conduct such other and further investi-

13 gations as the court deems necessary; or
14 S 2. Subdivision 3 of section 1017 of the family court act
is renum-
15 bered subdivision 4 and a new subdivision 3 is added to read as
follows:
16 3. AN ORDER PLACING A CHILD WITH A RELATIVE OR OTHER SUITABLE
PERSON
17 PURSUANT TO THIS SECTION MAY NOT BE GRANTED UNLESS THE RELATIVE
OR OTHER
18 SUITABLE PERSON CONSENTS TO THE JURISDICTION OF THE COURT. THE
COURT MAY
19 PLACE THE PERSON WITH WHOM THE CHILD HAS BEEN DIRECTLY
PLACED UNDER
20 SUPERVISION DURING THE PENDENCY OF THE PROCEEDING. SUCH
SUPERVISION
21 SHALL BE PROVIDED BY A CHILD PROTECTIVE AGENCY, SOCIAL SERVICES
OFFICIAL
22 OR DULY AUTHORIZED AGENCY. THE COURT ALSO MAY ISSUE A TEMPORARY
ORDER OF
23 PROTECTION UNDER SUBDIVISION (F) OF SECTION ONE THOUSAND
TWENTY-TWO,
24 SECTION ONE THOUSAND TWENTY-THREE OR SECTION ONE THOUSAND
TWENTY-NINE OF

EXPLANATION--Matter in ITALICS (underscored) is new; matter in
brackets
{ } is old law to be omitted.

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1 THIS ARTICLE. AN ORDER OF SUPERVISION ISSUED PURSUANT TO THIS
SUBDIVI-
2 SION SHALL SET FORTH THE TERMS AND CONDITIONS THAT THE RELATIVE
OR SUIT-
3 ABLE PERSON MUST MEET AND THE ACTIONS THAT THE CHILD PROTECTIVE
AGENCY,
4 SOCIAL SERVICES OFFICIAL OR DULY AUTHORIZED AGENCY MUST TAKE TO
EXERCISE
5 SUCH SUPERVISION.
6 S 3. Subdivision (a) of section 1052 of the family court act,
as added
7 by chapter 962 of the laws of 1970, paragraph (v) as amended by
chapter
8 1039 of the laws of 1973, is amended to read as follows:
9 (a) At the conclusion of a dispositional hearing under this
article,
10 the court shall enter an order of disposition{;} DIRECTING ONE
OR MORE
11 OF THE FOLLOWING:
12 (i) suspending judgment in accord with section one thousand
fifty-
13 three OF THIS PART; or
14 (ii) releasing the child to the custody of his parents or
other person

15 legally responsible in accord with section one thousand
fifty-four OF
16 THIS PART; or
17 (iii) placing the child in accord with section one thousand
fifty-five
18 OF THIS PART; or
19 (iv) making an order of protection in accord with one thousand
fifty-
20 six OF THIS PART; or
21 (v) placing the respondent under supervision in accord with
section
22 one thousand fifty-seven OF THIS PART; OR
23 (VI) GRANTING CUSTODY OF THE CHILD TO RELATIVES OR SUITABLE
PERSONS
24 PURSUANT TO SECTION ONE THOUSAND FIFTY-FIVE-B OF THIS PART.
25 HOWEVER, THE COURT SHALL NOT ENTER AN ORDER OF DISPOSITION
COMBINING
26 PLACEMENT OF THE CHILD UNDER PARAGRAPH (III) OF THIS SUBDIVISION
WITH A
27 DISPOSITION UNDER PARAGRAPH (I) OR (II) OF THIS SUBDIVISION.
AN ORDER
28 GRANTING CUSTODY OF THE CHILD PURSUANT TO PARAGRAPH (VI) OF THIS
SUBDI-
29 VISION SHALL NOT BE COMBINED WITH ANY OTHER DISPOSITION
UNDER THIS
30 SUBDIVISION.
31 S 4. Subdivision (a) of section 1055 of the family court
act, as
32 amended by chapter 12 of the laws of 2006, is amended to
read as
33 follows:
34 (a) (I) For purposes of section one thousand fifty-two of
this part
35 the court may place the child in the custody of a relative
or other
36 suitable person PURSUANT TO THIS ARTICLE, or of the local
commissioner
37 of social services or of such other officer, board or
department as may
38 be authorized to receive children as public charges, or a duly
author-
39 ized association, agency, society or in an institution suitable
for the
40 placement of a child. The court may also place the child in the
custody
41 of the local commissioner of social services and may direct such
commis-
42 sioner to have the child reside with a relative or other
suitable person
43 who has indicated a desire to become a foster parent for the
child and
44 further direct such commissioner, pursuant to regulations of the
office
45 of children and family services, to commence an
investigation of the
46 home of such relative or other suitable person within twenty-

four hours

47 and thereafter expedite approval or certification of such relative or

48 other suitable person, if qualified, as a foster parent. If such home is

49 found to be unqualified for approval or certification, the local commis-

50 sioner shall report such fact to the court forthwith so that the court

51 may make a placement determination that is in the best interests of the

52 child.

53 (II) AN ORDER PLACING A CHILD DIRECTLY WITH A RELATIVE OR OTHER SUIT-

54 ABLE PERSON PURSUANT TO THIS PART MAY NOT BE GRANTED UNLESS THE RELATIVE

55 OR OTHER SUITABLE PERSON CONSENTS TO THE JURISDICTION OF THE COURT. THE

56 COURT MAY PLACE THE PERSON WITH WHOM THE CHILD HAS BEEN DIRECTLY PLACED

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3

1 UNDER SUPERVISION OF A CHILD PROTECTIVE AGENCY, SOCIAL SERVICES OFFICIAL

2 OR DULY AUTHORIZED AGENCY DURING THE PENDENCY OF THE PROCEEDING. THE

3 COURT ALSO MAY ISSUE AN ORDER OF PROTECTION UNDER SECTION ONE THOUSAND

4 FIFTY-SIX OF THIS PART. AN ORDER OF SUPERVISION ISSUED PURSUANT TO THIS

5 SUBDIVISION SHALL SET FORTH THE TERMS AND CONDITIONS THAT THE RELATIVE

6 OR SUITABLE PERSON MUST MEET AND THE ACTIONS THAT THE CHILD PROTECTIVE

7 AGENCY, SOCIAL SERVICES OFFICIAL OR DULY AUTHORIZED AGENCY MUST TAKE TO

8 EXERCISE SUCH SUPERVISION.

9 S 5. The family court act is amended by adding a new section 1055-b to

10 read as follows:

11 S 1055-B. CUSTODY OR GUARDIANSHIP WITH RELATIVES OR SUITABLE PERSONS

12 PURSUANT TO ARTICLE SIX OF THIS ACT. (A) AT THE CONCLUSION OF THE DISPO-

13 SITIONAL HEARING UNDER THIS ARTICLE THE COURT MAY ENTER AN ORDER OF

14 DISPOSITION GRANTING CUSTODY OR GUARDIANSHIP OF THE CHILD TO A RELATIVE

15 OR SUITABLE PERSON UNDER ARTICLE SIX OF THIS ACT IF:

16 (I) THE RELATIVE OR SUITABLE PERSON HAS FILED A PETITION FOR CUSTODY

17 OR GUARDIANSHIP OF THE CHILD PURSUANT TO ARTICLE SIX OF THIS ACT; AND

18 (II) THE COURT FINDS THAT GRANTING CUSTODY OR GUARDIANSHIP OF THE

19 CHILD TO THE RELATIVE OR SUITABLE PERSON IS IN THE BEST
INTERESTS OF THE
20 CHILD AND THAT THE SAFETY OF THE CHILD WILL NOT BE JEOPARDIZED
IF THE
21 RESPONDENT OR RESPONDENTS UNDER THE CHILD PROTECTIVE
PROCEEDING ARE NO
22 LONGER UNDER SUPERVISION OR RECEIVING SERVICES; AND
23 (III) THE COURT FINDS THAT GRANTING CUSTODY OR GUARDIANSHIP
OF THE
24 CHILD TO THE RELATIVE OR SUITABLE PERSON UNDER ARTICLE SIX OF
THIS ACT
25 WILL PROVIDE THE CHILD WITH A SAFE AND PERMANENT HOME; AND
26 (IV) ALL PARTIES TO THE CHILD PROTECTIVE PROCEEDING CONSENT
TO THE
27 GRANTING OF CUSTODY OR GUARDIANSHIP UNDER ARTICLE SIX OF THIS
ACT; OR
28 (V) AFTER A CONSOLIDATED DISPOSITIONAL HEARING ON THE CHILD
PROTECTIVE
29 PETITION AND THE PETITION UNDER ARTICLE SIX OF THIS ACT;
30 (A) IF A PARENT OR PARENTS FAIL TO CONTEST THE GRANTING OF
CUSTODY OR
31 GUARDIANSHIP UNDER ARTICLE SIX OF THIS ACT THE COURT FINDS THAT
EXTRAOR-
32 DINARY CIRCUMSTANCES EXIST THAT SUPPORT GRANTING AN ORDER OF
CUSTODY OR
33 GUARDIANSHIP UNDER ARTICLE SIX OF THIS ACT; OR
34 (B) IF A PARTY OTHER THAN THE PARENT OF PARENTS FAIL TO
CONSENT TO THE
35 GRANTING OF CUSTODY OR GUARDIANSHIP UNDER ARTICLE SIX OF THIS
ACT, THE
36 COURT FINDS THAT GRANTING CUSTODY OR GUARDIANSHIP OF THE CHILD
TO THE
37 RELATIVE OR SUITABLE PERSON IS IN THE BEST INTERESTS OF THE
CHILD.
38 (B) AN ORDER MADE IN ACCORDANCE WITH THE PROVISIONS OF THIS
SECTION
39 SHALL SET FORTH THE REQUIRED FINDINGS AS DESCRIBED IN
SUBDIVISION (A) OF
40 THIS SECTION AND SHALL CONSTITUTE THE FINAL DISPOSITION OF
THE CHILD
41 PROTECTIVE PROCEEDING. NOTWITHSTANDING ANY OTHER PROVISION OF
LAW, THE
42 COURT SHALL NOT ISSUE AN ORDER OF SUPERVISION NOR MAY THE COURT
REQUIRE
43 THE LOCAL DEPARTMENT OF SOCIAL SERVICES TO PROVIDE
SERVICES TO THE
44 RESPONDENT OR RESPONDENTS WHEN GRANTING CUSTODY OR GUARDIANSHIP
PURSUANT
45 TO ARTICLE SIX OF THIS ACT UNDER THIS SECTION.
46 (C) AS PART OF THE ORDER GRANTING CUSTODY OR GUARDIANSHIP
PURSUANT TO
47 ARTICLE SIX OF THIS ACT, THE COURT MAY REQUIRE THAT THE LOCAL
DEPARTMENT
48 OF SOCIAL SERVICES AND THE LAW GUARDIAN FOR THE CHILD RECEIVE
NOTICE OF
49 AND BE MADE PARTIES TO ANY SUBSEQUENT PROCEEDING TO MODIFY THE

ORDER OF

50 CUSTODY OR GUARDIANSHIP GRANTED PURSUANT TO THE ARTICLE SIX
PROCEEDING.

51 (D) AN ORDER ENTERED IN ACCORDANCE WITH THIS SECTION SHALL
CONCLUDE

52 THE COURT`S JURISDICTION OVER THE PROCEEDING HELD PURSUANT TO
THIS ARTI-

53 CLE AND THE COURT SHALL NOT MAINTAIN JURISDICTION OVER THE
PARTIES FOR

54 THE PURPOSES OF PERMANENCY HEARINGS HELD PURSUANT TO ARTICLE
TEN-A OF

55 THIS ACT.

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4

1 S 6. The family court act is amended by adding a new section
1089-a to

2 read as follows:

3 S 1089-A. CUSTODY OR GUARDIANSHIP WITH RELATIVES OR SUITABLE
PERSONS

4 PURSUANT TO ARTICLE SIX OF THIS ACT. (A) WHERE THE PERMANENCY
PLAN IS

5 PLACEMENT WITH A FIT AND WILLING RELATIVE, THE COURT MAY ISSUE
AN ORDER

6 OF CUSTODY OR GUARDIANSHIP IN RESPONSE TO A PETITION FILED BY A
RELATIVE

7 OR SUITABLE PERSON SEEKING CUSTODY OR GUARDIANSHIP OF THE
CHILD UNDER

8 ARTICLE SIX OF THIS ACT AT A PERMANENCY HEARING HELD PURSUANT
TO THIS

9 ARTICLE AND TERMINATE THE ORDER PURSUANT TO ARTICLE TEN OF THIS
ACT IF:

10 (I) THE COURT FINDS THAT GRANTING CUSTODY OR GUARDIANSHIP OF
THE CHILD

11 TO THE RELATIVE OR SUITABLE PERSON IS IN THE BEST INTERESTS OF
THE CHILD

12 AND THAT THE TERMINATION OF THE ORDER PLACING THE CHILD
PURSUANT TO

13 ARTICLE TEN OF THIS ACT WILL NOT JEOPARDIZE THE SAFETY OF THE
CHILD; AND

14 (II) THE COURT FINDS THAT GRANTING CUSTODY OR
GUARDIANSHIP OF THE

15 CHILD TO THE RELATIVE OR SUITABLE PERSON WILL PROVIDE THE CHILD
WITH A

16 SAFE AND PERMANENT HOME; AND

17 (III) THE PARENTS, THE LAW GUARDIAN FOR THE CHILD, THE LOCAL
DEPART-

18 MENT OF SOCIAL SERVICES, AND THE FOSTER PARENT OF THE CHILD WHO
HAS BEEN

19 THE FOSTER PARENT FOR THE CHILD FOR ONE YEAR OR MORE CONSENT
TO THE

20 ISSUANCE OF AN ORDER OF CUSTODY OR GUARDIANSHIP UNDER
ARTICLE SIX OF

21 THIS ACT AND THE TERMINATION OF THE ORDER OF PLACEMENT PURSUANT
TO ARTI-

22 CLE TEN OF THIS ACT; OR

23 (IV) AFTER A CONSOLIDATED HEARING ON THE PERMANENCY OF THE
CHILD AND
24 THE PETITION UNDER ARTICLE SIX OF THIS ACT;
25 (A) IF A PARENT OF PARENTS FAIL TO CONSENT TO THE GRANTING OF
CUSTODY
26 OR GUARDIANSHIP UNDER ARTICLE SIX OF THIS ACT, THE COURT
FINDS THAT
27 EXTRAORDINARY CIRCUMSTANCES EXIST THAT SUPPORT GRANTING AN
ORDER OF
28 CUSTODY OR GUARDIANSHIP UNDER ARTICLE SIX OF THIS ACT; OR
29 (B) IF THE LOCAL DEPARTMENT OF SOCIAL SERVICES, THE LAW
GUARDIAN FOR
30 THE CHILD, OR THE FOSTER PARENT OF THE CHILD WHO HAS BEEN
THE FOSTER
31 PARENT FOR THE CHILD FOR ONE YEAR OR MORE FAIL TO CONSENT TO THE
GRANT-
32 ING OF CUSTODY OR GUARDIANSHIP UNDER ARTICLE SIX OF THIS ACT,
THE COURT
33 FINDS THAT GRANTING CUSTODY OR GUARDIANSHIP OF THE CHILD TO THE
RELATIVE
34 OR SUITABLE PERSON IS IN THE BEST INTERESTS OF THE CHILD.
35 (B) AN ORDER MADE IN ACCORDANCE WITH THE PROVISIONS OF THIS
SECTION
36 SHALL SET FORTH THE REQUIRED FINDINGS AS DESCRIBED IN
SUBDIVISION (A) OF
37 THIS SECTION AND SHALL RESULT IN THE TERMINATION OF ANY ORDERS
IN EFFECT
38 PURSUANT TO ARTICLE TEN OF THIS ACT OR PURSUANT TO THIS
ARTICLE.
39 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COURT SHALL NOT
ISSUE AN
40 ORDER OF SUPERVISION NOR MAY THE COURT REQUIRE THE LOCAL
DEPARTMENT OF
41 SOCIAL SERVICES TO PROVIDE SERVICES TO THE RESPONDENT OR
RESPONDENTS
42 WHEN GRANTING CUSTODY OR GUARDIANSHIP PURSUANT TO ARTICLE SIX
OF THIS
43 ACT IN ACCORDANCE WITH THIS SECTION.
44 (C) AS PART OF THE ORDER GRANTING CUSTODY OR GUARDIANSHIP TO
THE RELA-
45 TIVE OR SUITABLE PERSON PURSUANT TO ARTICLE SIX OF THIS ACT,
THE COURT
46 MAY REQUIRE THAT THE LOCAL DEPARTMENT OF SOCIAL SERVICES AND
THE LAW
47 GUARDIAN FOR THE CHILD RECEIVE NOTICE OF AND BE MADE
PARTIES TO ANY
48 SUBSEQUENT PROCEEDING TO MODIFY THE ORDER OF CUSTODY OR
GUARDIANSHIP
49 GRANTED PURSUANT TO THE ARTICLE SIX PROCEEDING.
50 (D) ANY ORDER ENTERED PURSUANT TO THIS SECTION SHALL
CONCLUDE THE
51 COURT`S JURISDICTION OVER THE ARTICLE TEN PROCEEDING AND THE
COURT SHALL
52 NOT MAINTAIN JURISDICTION OVER THE PROCEEDING FOR FURTHER
PERMANENCY
53 HEARINGS.

54 S 7. This act shall take effect on the one hundred eightieth
day after
55 it shall have become a law.

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NYS Office of Children and Family Services/BT
and the University at Buffalo Law School

“Updates in Legal Issues in Child Protective Services”

Trainer: **Margaret Burt**

Location Site: _____

Date: October 6, **2008**

Time: 9:30am - 12pm

*You must sign in and provide a mailing address to receive a certificate of attendance. Certificates will be mailed to the address provided below. **PLEASE PRINT CLEARLY!***

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