

Recent Evidentiary Issues in Permanency Hearings
12/2014

Margaret A. Burt

Matter of Rebecca KK, 61 AD3d 1035 (3rd Dept. 2009) – error for court to not consult with 14 year old child or to ask AFC specifically what child’s position on goal is; see also Matter of Dakota F., 92 AD3d 1097 (3rd Dept. 2012) – error to not ask AFC about 6 year old child’s position; Matter of Julian P., 106 AD3d 1383 (3rd Dept. 2013) – error to not ask AFC what children’s position was where oldest child is 6 year old

Matter of Ayela S., 80 AD3d 767 (2nd Dept. 2011) – foster mother cannot be subject to contempt for failing to bring children to visitation with birth mother, agency is responsible

Matter of Jacelyn TT., 80 AD3d 1119 (3rd Dept. 2011) - family court has authority to change child’s goal even if no party asks for it

Matter of Christopher G., 82 AD3d 1549 (3rd Dept. 2011) – if court did not give agency permission in last order to do a final discharge of the child upon 10 days notice, then any discharge done by the agency was a trial discharge

Matter of Sean S., 85 AD3d 1575 (4th Dept. 2011) – family court erred in changing goals of 16 and 15 year olds to adoption when they did not want to be adopted; youth and foster parents were not present in court to say this but AFC was and had advised the court, the goal should be APPLA; see also Matter of Jose T., 87 AD3d 1335 (4th Dept. 2011); Matter of Lavelle W., 88 AD3d 1300 (4th Dept. 2011)

Matter of Thurston v Skellington, 89 AD3d 1520 (4th Dept. 2011) - minimally fit grandmother not a proper placement for child in foster care, test is best interests

Matter of Dakota F., 92 AD3d 1097 (3rd Dept. 2012) – court cannot order two goals for child, a concurrent plan can be described but not ordered as a 2nd goal; Matter of Julian P., 106 AD3d 1383 (3rd Dept. 2013) – cannot order separate goals for a mother and a father, particulars where one is reunification and one is TPR – does not even make sense

Matter of Carlos G., 96 AD3d 632 (1st Dept. 2012) – mother never signed the consent to have Referee “hear and determine” but she implicitly agreed as she participated in the hearing with no objection; also court should not delay perm hearing for one sib to put matter with other sibs when cases are at different stages in any event.

Matter of John B. v Patrice S. NYLJ 7/27/12 (Nassau County Family Court 2012) – cannot give children goal of guardianship to foster parents over parental objection – would defeat whole purpose of foster care

Matter of Gloria DD., 99 AD3d 1044 93rd Dept. 2012) – after adjudication of neglect, placement and retention of child in care is based on best interests and not imminent risk as per FCA §§ 1072 (a), 1052 (a) (iii) and 1055 (a)(i)

Matter of Angel P., 39 Misc3d 264 (Clinton County Family Court 2013) – court ordered DSS to give father a SCRAM device as father hoped it would help with his sobriety. DSS had argued that they only had 20 devices and they were all being used – court ruled that the DSS cannot put arbitrary limits on available services

Matter of Nicole A., dec’d 3/19/13 (Bronx Family Court 2013) – ACS argued that the court did not have authority to order a trial discharge over ACS objection but court ruled otherwise

Matter of John H., 56 AD3d 1024 and 60 AD3d 1168 (3rd Dept. 2009) – discovery in a permanency hearing situation; can make discover demands at any time as permanency hearings mean court has ongoing jurisdiction; all CPLR Art. 31 discovery devices are available; FCA § 1038 says Art. 31 applies and these are not “special proceedings” under CPLR § 408; contract agency for the foster care placement is not a party with whom discovery can be sought

Matter of Tiana G., 84 AD3d 1375 (2nd Dept. 2011) – family court does not need to adjourn an Art. 10 because a criminal case is pending, also DA is not a necessary party

Matter of Roselyn S. 82 AD3d 1249 (2nd Dept. 2011) – family court does not have authority to compel respondent to attend a dispo hearing

Matter of Kevin MH., 102 AD3d 690 (2nd Dept. 2013) – court erred in dismissing DSS petition for extension of supervision without holding a hearing

Matter of Alazaya I.B. 109 AD3d 1147 (4th Dept. 2013) –family court should not leave issue of mods of visitation to be decided by DSS, counselor’s and AFCs

Matter of V.P., 41 Misc 3d 926 (Family Court, Kings County 2013) – a foster care agency has no standing – they are a “non-party” and cannot bring a motion to request that the court order ACS to do something – here agency wanted ACS to be ordered to do an ICPC referral for an out of state relative

Matter of Kenneth S., 115 AD3d 961 (2nd Dept. 2014) - cannot give “final order of custody “to a non respondent father in an Art. 10 proceeding if he did not file an Art. 6 custody petition

Matter of Gunner T., ___ Misc3d ___ dec’d 6/5/14 (Clinton County Family Court 2014) -child had been in a foster home for approximately five months on a pending Art. 10 petition, DSS provided the foster parents with a the required ten day notice that they would be moving the child to a great uncle’s home. The uncle had become certified as a foster parent. The Family Court ruled that it did have authority to designate a specific foster home for a child in care under FCA §1017 (2) (b) where the language says that the court can order that the child “reside in a specific certified foster home”. Although the court must give preference to a relative, the court need not place with a relative if in the court’s decision, this is not in the child’s best interests.