

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CAF 07-02411

PRESENT: MARTOCHE, J.P., CENTRA, CARNI, AND GORSKI, JJ.

IN THE MATTER OF MORGAN P.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

CHRISTINA P., RESPONDENT-APPELLANT.

ALAN BIRNHOLZ, EAST AMHERST, FOR RESPONDENT-APPELLANT.

JOSEPH T. JARZEMBEK, BUFFALO, FOR PETITIONER-RESPONDENT.

MICHELE A. BROWN, LAW GUARDIAN, BUFFALO, FOR MORGAN P.

Appeal from an order of the Family Court, Erie County (Michael F. Griffith, J.), entered December 28, 2007 in a proceeding pursuant to Family Court Act article 10. The order, inter alia, adjudged that the subject child is a neglected child.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Respondent mother contends that Family Court erred in finding that she neglected her daughter. We note at the outset that, although the appeal was improperly taken from Family Court's initial order with respect to custody rather than the subsequent order of fact-finding and disposition, we exercise our discretion to treat the notice of appeal as valid and deem the appeal as taken from the subsequent order (*see Matter of Danielle S. v Larry R.S.*, 41 AD3d 1188; *see also* CPLR 5520 [c]). We conclude that petitioner established by a preponderance of the evidence that the mother failed to "exercise a minimum degree of care in providing the child with proper supervision or guardianship" (*Nicholson v Scoppetta*, 3 NY3d 357, 368). Petitioner established that the mother "coached" the child to allege that the child was sexually abused by her grandfather and thus repeatedly subjected the child to unnecessary medical examinations and extreme anxiety based upon those unfounded allegations of sexual abuse (*see generally Matter of Amanda B. v Anthony B.*, 13 AD3d 1126, 1127).

Entered: March 20, 2009

JoAnn M. Wahl
Clerk of the Court