

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

1600

TP 09-01245

PRESENT: HURLBUTT, J.P., SMITH, FAHEY, AND CARNI, JJ.

IN THE MATTER OF RHONDA MANGUS, PETITIONER,

V

MEMORANDUM AND ORDER

NIAGARA COUNTY DEPARTMENT OF SOCIAL SERVICES
AND NEW YORK STATE OFFICE OF CHILDREN AND
FAMILY SERVICES, RESPONDENTS.

LAW OFFICES OF ANTHONY S. PECORARO, WILLIAMSVILLE (ANTHONY S. PECORARO
OF COUNSEL), FOR PETITIONER.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (ZAINAB A. CHAUDHRY OF
COUNSEL), FOR RESPONDENT NEW YORK STATE OFFICE OF CHILDREN AND
FAMILY SERVICES.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Niagara County [Ralph A. Boniello, III, J.], entered June 17, 2009) to review a determination of respondent New York State Office of Children and Family Services. The determination denied the request of petitioner to amend to unfounded an indicated report of child maltreatment with respect to her son, maintained in the New York State Central Register of Child Abuse and Maltreatment, and to seal that amended report.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the amended petition is dismissed.

Memorandum: Petitioner contends that the New York State Office of Children and Family Services (respondent) erred in refusing to amend to unfounded an indicated report of child maltreatment with respect to her son, maintained in the New York State Central Register of Child Abuse and Maltreatment, and to seal that amended report. We reject that contention. " 'At an administrative expungement hearing, a report of child . . . maltreatment must be established by a fair preponderance of the evidence' " (*Matter of Saporito v Carrion*, 66 AD3d 912, 912). " 'Our review . . . is limited to whether the determination was supported by substantial evidence in the record on the petitioner[']s application for expungement' " (*id.*; see *Matter of Hattie G. v Monroe County Dept. of Social Servs.*, 48 AD3d 1292, 1293). We conclude on the record before us that respondent's determination that respondent Niagara County Department of Social Services established by a fair preponderance of the evidence at the fair hearing that petitioner maltreated the subject child is supported by

substantial evidence (see *Hattie G.*, 48 AD3d at 1293; see generally *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 181-182). Contrary to the further contention of petitioner, who proceeded pro se at the fair hearing, she was not entitled to assigned counsel at the hearing and thus her contention with respect to the denial of due process based on the lack of representation lacks merit (see generally *Matter of Brown v Lavine*, 37 NY2d 317).

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court