

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

824

CAF 09-00969

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, LINDLEY, AND PINE, JJ.

IN THE MATTER OF SERENITY P. AND AARON P.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

SHAMEKA P., RESPONDENT-APPELLANT.

EVELYNE A. O'SULLIVAN, EAST AMHERST, FOR RESPONDENT-APPELLANT.

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

DAVID C. SCHOPP, ATTORNEY FOR THE CHILDREN, THE LEGAL AID BUREAU OF
BUFFALO, INC., BUFFALO (CHARLES D. HALVORSEN OF COUNSEL), FOR SERENITY
P. AND AARON P.

Appeal from an order of the Family Court, Erie County (Patricia A. Maxwell, J.), entered April 16, 2009 in a proceeding pursuant to Family Court Act article 10. The order adjudicated the subject children to be neglected.

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

Memorandum: Respondent mother appeals from an order adjudicating two of her children to be neglected based on her failure to provide adequate supervision for them (see Family Ct Act § 1012 [f] [i] [B]). Contrary to the contention of the mother, Family Court was entitled to draw "the strongest inference [against her] that the opposing evidence permits" based on her failure to testify at the fact-finding hearing (*Matter of Nassau County Dept. of Social Servs. v Denise J.*, 87 NY2d 73, 79; see *Matter of Lavountae A.*, 57 AD3d 1382, *affd* 12 NY3d 832; *Matter of Jenny N.*, 262 AD2d 951). Also contrary to the mother's contention, petitioner met its burden of establishing by a preponderance of the evidence that the children were neglected (see generally § 1046 [b] [i]). "It is well established that 'a finding of neglect may be appropriate even when a child has not been actually impaired, in order to protect that child and prevent impairment' " (*Lavountae A.*, 57 AD3d at 1382, quoting *Denise J.*, 87 NY2d at 79), and that "[a] single incident 'where the parent's judgment was strongly impaired and the child exposed to a risk of substantial harm' can sustain a finding of neglect" (*Matter of Kayla W.*, 47 AD3d 571, 572; see *Matter of Ashanti R.*, 66 AD3d 1031). Here, the court properly found that the two children, ages one and three, were in imminent risk of harm when the mother left them unattended in a vehicle for at least

15 minutes while she went grocery shopping (*see Matter of Samuel D.-C.*, 40 AD3d 853, 853-854).

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court