

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

1344

TP 12-01111

PRESENT: CENTRA, J.P., FAHEY, SCONIERS, VALENTINO, AND MARTOCHE, JJ.

IN THE MATTER OF MEREDITH REYNOLDS, PETITIONER,

V

MEMORANDUM AND ORDER

NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES, NEW YORK STATE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT AND ONTARIO COUNTY DEPARTMENT OF SOCIAL SERVICES, RESPONDENTS.

TREVETT CRISTO SALZER & ANDOLINA P.C., ROCHESTER (ERIC M. DOLAN OF COUNSEL), FOR PETITIONER.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (ALLYSON B. LEVINE OF COUNSEL), FOR RESPONDENTS NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES AND NEW YORK STATE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT.

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, Ontario County [William F. Kocher, A.J.], entered May 29, 2012) to review a determination of respondents. The determination denied petitioner's request that a report maintained in the New York State Central Register of Child Abuse and Maltreatment indicating petitioner for maltreatment be amended to unfounded and sealed.

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

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul the determination denying her request to amend to unfounded an indicated report of child maltreatment of her son and her boyfriend's son, maintained at respondent New York State Central Register of Child Abuse and Maltreatment, and seeking to seal that amended report. We reject petitioner's contention that respondent Ontario County Department of Social Services (DSS) failed to sustain its burden at the fair hearing of establishing that she committed an act of maltreatment. "At an administrative expungement hearing, a report of child . . . maltreatment must be established by a fair preponderance of the evidence" (*Matter of Mangus v Niagara County Dept. of Social Servs.*, 68 AD3d 1774, 1774, lv denied 15 NY3d 705 [internal quotation marks omitted]). "Our review . . . is limited to whether the determination was supported by substantial evidence in the record on the petitioner[']s application for expungement" (*id.*

[internal quotation marks omitted]; see *Matter of Hattie G. v Monroe County Dept. of Social Servs., Children's Servs. Unit*, 48 AD3d 1292, 1293). We conclude on the record before us that the determination that DSS established by a fair preponderance of the evidence at the fair hearing that petitioner maltreated the subject children is supported by substantial evidence (see *Mangus*, 68 AD3d at 1775; cf. *Hattie G.*, 48 AD3d at 1293; see generally *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 181-182).

Entered: December 28, 2012

Frances E. Cafarell
Clerk of the Court