

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

1071

CAF 14-01933

PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, NEMOYER, AND TROUTMAN, JJ.

IN THE MATTER OF ANTHONY L., JR.

STEBUEN COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

LISA P., RESPONDENT-APPELLANT,
AND ANTHONY L., RESPONDENT.

DAVISON LAW OFFICE PLLC, CANANDAIGUA (MARY P. DAVISON OF COUNSEL), FOR
RESPONDENT-APPELLANT.

JESSICA M. PEASLEE, BATH, FOR PETITIONER-RESPONDENT.

VIVIAN CLARA STRACHE, ATTORNEY FOR THE CHILD, BATH.

Appeal from an order of the Family Court, Steuben County (Marianne Furfure, A.J.), entered October 1, 2014 in a proceeding pursuant to Family Court Act article 10. The order, among other things, adjudged that respondent Lisa P. had neglected the subject child.

It is hereby ORDERED that said appeal from the order insofar as it concerns disposition is unanimously dismissed and the order is affirmed without costs.

Memorandum: In this neglect proceeding pursuant to Family Court Act article 10, respondent mother appeals from an order of disposition that continued the placement of the subject child in the care and custody of petitioner, Steuben County Department of Social Services, until the completion of the next permanency hearing in October 2014. Although the mother's challenge to the disposition is moot inasmuch as it is undisputed that superseding permanency orders have since been entered (*see Matter of Alexander M. [Michael M.]*, 83 AD3d 1400, 1401, *lv denied* 17 NY3d 704; *see generally Matter of Kady J. [Kelly M.H.]*, 109 AD3d 1158, 1161), her appeal also brings up for review the order of fact-finding determining that she neglected the child (*see Matter of Bradley M.M. [Michael M.-Cindy M.]*, 98 AD3d 1257, 1258).

We reject the mother's contention that the evidence is legally insufficient to establish neglect. Family Court Act § 1046 (a) (iii) provides, with an exception not relevant here, that "proof that a person repeatedly misuses a drug or drugs" to the extent that such misuse "has or would ordinarily have the effect of producing in the user thereof," *inter alia*, a substantial state of stupor or

intoxication, or a substantial impairment of judgment, is "prima facie evidence that a child of . . . such person is a neglected child." The statute thus creates a presumption of neglect in cases of repeated drug misuse, which eliminates the need for proof that the respondent's conduct resulted in at least an imminent danger of impairment to the child's physical, mental, or emotional condition (see *Matter of Samaj B. [Towanda H.-B.-Wade B.]*, 98 AD3d 1312, 1313; *Matter of Nasim W. [Keala M.]*, 88 AD3d 452, 453; cf. Family Ct Act § 1012 [f] [i]).

Here, we agree with petitioner and the Attorney for the Child that the evidence at the fact-finding hearing established a prima facie case of neglect under Family Court Act § 1046 (a) (iii) based on the mother's misuse of prescription medication (see *Matter of Madison PP. [Tina QQ.]*, 88 AD3d 1102, 1103, *lv denied* 18 NY3d 802; see generally *Samaj B.*, 98 AD3d at 1313). In particular, there was evidence that the mother had been prescribed, among other things, morphine for fibromyalgia; that she admitted to a caseworker that she "had been taking more than prescribed"; that she often slurred her speech as though intoxicated in conversations with petitioner's employees; that she fell asleep during the afternoon at a time when the two-year-old child was awake and she was his sole caretaker; that the child's father did not believe the child to be safe alone with her overnight; and that she once bought and smoked marijuana to deal with the effects of morphine withdrawal. We note that Family Court declined to credit the mother's testimony "to any degree," and that its credibility determinations are entitled to great deference (see *Matter of Holly B. [Scott B.]*, 117 AD3d 1592, 1592).

To the extent that the presumption set forth in Family Court Act § 1046 (a) (iii) may not have been the basis for the court's finding of neglect, we conclude that we are not precluded from affirming the order based on that presumption inasmuch as "the authority of this Court to review the facts is as broad as that of Family Court" (*Matter of David R.*, 39 AD3d 1187, 1188). In view of our determination, we do not address the mother's remaining challenges to the sufficiency of petitioner's proof.