

FAMILY COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

In the Matter of  M [REDACTED]  A Child Under Eighteen Years of Age Alleged to be Neglected by  ADILIA [REDACTED] RAYMOND [REDACTED]	<b>Docket No.: NN-13052-11</b>  <b>ORDER TO SHOW CAUSE</b>  (Judge: Margaret McGowan)
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Upon the annexed affirmation of Nicholas A. Dubrowsky, Esq. an attorney for the Subject Child, M [REDACTED], dated October 10, 2011, and all prior papers and proceedings heretofore had herein, it is hereby

**ORDERED** that Petitioner, New York City Administration for Children’s Services (“ACS”). show cause at Part 4 of this Court, located at the courthouse at 151-20 Jamaica Avenue, Jamaica, New York 11432, on \_\_\_\_\_, 2011 at 9:30/2:30 a.m./p.m. or as soon thereafter as counsel can be heard, for an Order directing M [REDACTED] to remain in the temporary custody of her current foster parents, Ms. Albanette [REDACTED] and Mr. Curtis [REDACTED] unless, or until, Harlem Dowling’s (“the Agency”) administrative decision is before a court of competent jurisdiction that Orders otherwise.

**IT IS ORDERED** that pending a hearing on this matter the following interim relief is granted to the Subject Child through her attorney:

Until the agency can be heard, M [REDACTED] shall remain with Albanette [REDACTED] and Curtis [REDACTED], her current foster parents.

**IT IS FURTHER ORDERED** that personal service of a copy of this Order, or a facsimile transmission with a follow up phone call to ensure receipt together with the papers upon which it is granted, upon the attorneys named above on or before \_\_\_\_\_, 2011 be deemed good and sufficient service.

Dated: Jamaica, New York  
October 11, 2011

E N T E R:

\_\_\_\_\_  
Honorable Margaret McGowan, JFC

To:

Queens Family Court Clerk's Office  
151-03 Jamaica Ave. 5<sup>th</sup> Floor  
Jamaica, NY 11432



Agency Attorney  
151-03 Jamaica Ave., 3<sup>rd</sup> Floor  
Jamaica, NY 11432

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NICHOLAS STEVENS DUBROWSKY, ESQ., an attorney licensed to practice before the Courts of this State, affirms the following under penalty of perjury pursuant to Section 2106 of the New York Civil Practice Law & Rules:

1 I am the attorney for the Subject Child M [REDACTED] herein. I am familiar with the facts and circumstances surrounding this matter and make this affirmation in support of the Order to Show Cause. I make the following statements upon information and belief, statutory authority and the relevant case law unless stated otherwise.

I **Procedural and Factual History:**

1 On June 27, 2011, ACS filed an Article 10 petition naming Adila [REDACTED] and Raymond [REDACTED] as respondents, and M [REDACTED] (“M [REDACTED]”) as the subject child. Within the petition, ACS attests to M [REDACTED] testing positive for cocaine at birth and soon after experiencing withdrawal symptoms. Moreover, paragraph II also asserts that the respondent mother tested positive for cocaine, and made admission to drug use a week prior to giving birth to M [REDACTED].

- 2 Perhaps even more striking are the allegations conveying a demonizing pattern of the respondent mother's parental inadequacy, including failure to comply with mental health services (including therapy and a prescribed drug regimen), drug abuse, failure to plan for her other children. The Family Court recently freed M's sibling, S, for adoption; two of the respondent mother's children from a separate father not named in this case are adopted; and the sixth child resides with her non-respondent father.
- 3 After the this Court granted ACS' request –supported by the Attorney for the Child- for a remand it placed M on June 28, 2011 with Ms. Albanette and Mr. Curtis. ACS through its licensed foster care Agency, Harlem Dowling (“the Agency”) told both foster parents that the placement was temporary and that M's sibling S was already in care, would likely be freed for adoption.
- 4 Nonetheless, when M was placed in their care, the Agency asked the foster parents whether they were willing to become pre-adoptive resources for her and they agreed.
- 5 Furthermore, soon after obtaining temporary custody of M, the Agency decided to remove S from his foster mother of 15 months Daisy. Conspicuously, an internal (OSI) investigation of Daisy's foster home ran parallel with the decision to remove S from her home.
- 6 Ms. informed the Agency that she and her husband wanted to adopt S to keep the siblings together. What is more, Ms. attended an independent review of S's placement as an interested party in August. She, again, restated her willingness to adopt S in an effort to reunite him and M.
- 7 On September 7, 2011 Ms. and Mr. received notice that the agency intended to remove M from their home to place her with Ms. Rosa, Daisy's daughter. The official reason offered by the agency was “sibling

reunification.<sup>1</sup> Ms. [REDACTED] and Mr. [REDACTED] sought an independent review of the agency's decision by the Office of Advocacy (O.C.A). That review took place on September 29, 2011.<sup>2</sup>

8 According to Ms. [REDACTED], during the September 29 review the nature of the parties discussed briefly the OSI investigation. Linda [REDACTED], foster care supervisor at Harlem Dowling, addressed the reason for an internal investigation of Daisy [REDACTED] and alluded to a *fracture discovered in S [REDACTED]'s leg during a visit to his Doctor*. Because: 1.) these investigations are confidential; and 2.) I am not S [REDACTED]'s attorney I do not know anything further about the extent or cause of that injury.

9 Regardless, the agency decided not to return S [REDACTED] to Daisy [REDACTED]'s custody or consider her an adoptive resource. Rather, during M [REDACTED]'s placement with Ms. [REDACTED] the agency certified Daisy [REDACTED]'s Daughter, Rosa, as a foster parent. Once Rosa [REDACTED] received certification, The Agency moved to place M [REDACTED] with her brother S [REDACTED].

## II **Removing M [REDACTED] From Her Current Placement Is Not In The Child's Best Interest:**

### A *Sibling Reunification should have been sought immediately because it is Presumptively in the Children's Best Interest*

1 Section 1027-A of the Family Court Act requires a social services official to place a child immediately with his or her siblings (or half-siblings) already placed in the care and custody of ACS immediately upon removal. More significantly, the statute presumes

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<sup>1</sup> **See Attachment 1**

<sup>2</sup> See Attachment 2; Attorney for the Child's, M [REDACTED], position regarding removal from her current foster home.

sibling unification to be in the best interest of the child, unless that placement would be contrary to the child’s health, safety or welfare. *See NY CLS Family Ct Act § 1027-a.*<sup>3</sup> Even so, in cases where immediate placement is unavailable the official must provide or arrange to provide placement within 30 days. *See Id.*

2 ACS placed M on June 28, 2011 in a separate foster home from her brother S , and M remained in that foster home 30 days after her initial placement. In fact, the Agency gave notice to Ms. [REDACTED] on September 7, 2011, well over two months since M ’s placement. Accordingly, since the Agency separated the siblings for over thirty days, it seems reasonable to conclude that it was not in the best interests to place the siblings together.

B *M ’s Current Foster Parents are (and have been) Willing to Adopt S to Prevent Sibling Separation:*

1 Contrary to the decision reached at the independent review<sup>4</sup>, § 371 of the Social Services Law defines a “foster parent”, but does not define foster home. *See NY CLS Soc Serv § 371.* This distinction is not trivial; while the agency contends that Rosa [REDACTED] “has been caring for S considerably longer than Ms. [REDACTED] has been caring for M ”, she has not done so in a licensed capacity as a foster parent.<sup>5</sup> Under OCFS’ foster care

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<sup>3</sup> OCFS’ regulations provide requirements that are even more detailed for a social service worker, obligating a consultation, or an evaluation by, a licensed psychologist, psychiatrist, other physician or social worker before determining placement as contrary to the welfare of one or more children in care. *See 18 NYCRR § 431.10*

<sup>4</sup> See Attachment 2 pg. 5

<sup>5</sup> See Attachment 2, pg. 5

regulations for foster care that justification is incorrect. Ms. [REDACTED] and Mr. [REDACTED] have been caring for M [REDACTED] longer than Rosa [REDACTED] has been caring for S [REDACTED].<sup>6</sup>

2 Even though Social Services Law §383(3) establishes preference for adoption for “foster parent or parents” if they cared for a child continuously for a period of twelve months or more, that preference vanished for Daisy [REDACTED] alone once the Agency removed S from her care. *See NY CLS Soc Serv § 383*. Currently, although not memorialized by statute, Ms. [REDACTED] and Mr. [REDACTED] should have preference.

3 What is more, because O.C.A. explicitly mentions “the [REDACTED]” family (as opposed to Rosa [REDACTED]) in its “Decision After Independent Review”, the investigation of Daisy De La conducted by OSI should be provided to M [REDACTED]’s attorney. This information is relevant because the Agency apparently determined enough risk removing M [REDACTED]’s brother from the [REDACTED] family. As a corollary, even in cases of unfounded reports to the State Central Register regarding a child, those reports may be made available to the Attorney for the child’s sibling. *See 18 NYCRR § 443.2*

4 While it might be argued that the Family Court lacks jurisdiction to contravene an Agency’s placement decision, it is important to note that is note a key distinction. The difference is that in this case the relief sought by the Family Court comes under its exclusive jurisdiction in Article 10 proceedings, specifically determining the best interests of the subject child. Admittedly, the Supreme Court retains jurisdiction though a special proceeding under Article 78 to question whether the Agency acted in an arbitrary or capricious manner. Rather, the pertinent question here is whether it is in M [REDACTED]’s best interests to be removed from her current foster home. The Family Court Act

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<sup>6</sup> 18 NYCRR § 443.2

authorizes the Court to “direct that such a commissioner have the child reside in a *specific foster* home where the court determines that such placement is in the child’s best interests.” *NY CLS Family Ct Act § 1017*.

5 Assuredly, S [REDACTED]’s removal from Daisy [REDACTED]—where he resided for 15 months—begs the question: If the Agency’s concern is the family bond developed over 15 months between S [REDACTED] and the [REDACTED]’s then why did it find it necessary, after an OSI investigation, to remove S [REDACTED] from that home. Moreover, how can the Agency now contend that the [REDACTED]’s (not Rosa alone) provide a safe environment in the best interests for M [REDACTED] now, when only a few months ago it was imperative to remove a child from their home?

**WHEREFORE**, the Subject Child, through her attorney, requests this Court find that it is in the best interests of M [REDACTED] to remain in the care and custody of Ms. Albanette [REDACTED] and Mr. Curtis [REDACTED] until their administrative remedies challenging ACS and Harlem Dowling’s decision to remove her from her current foster home are exhausted and further relief as may seem just and proper.

Dated: October 11, 2011  
Jamaica, New York

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NICHOLAS S. DUBROWSKY  
Attorney for Petitioner  
Administration for Children’s Services  
151-20 Jamaica Ave., Room 364A  
Jamaica, New York 11432  
(718) 725-3010



