

NYS CASES ON RELATIVE PLACEMENT
By Margaret A. Burt 6/16

Relatives Filing for Custody Before Child Freed as agst long term foster parents

In the Matter of Rodriquez, 180 AD 531, 579 N.Y.S. 2d 404 (1st Dept. 1992) Second cousin's petition for custody denied where child had been with preadoptive family for last four years.

In Re Guardianship of Tiffany Malika B., 626 N.Y.S. 2d 184 (1st Dept. 1995) Aunt's custody petition dismissed after mother's rights terminated, child with foster family whole life and bonded.

In Re Nicole E., Family Court, Bronx County, reported at NYLJ 3/21/95 at p. 27 Although the court placed three brothers with the grandmother who had been caring for them at the time of the TPR, court allowed younger sister to stay with foster parents where she had been placed her whole life for the eventual adoption by them.

Matter of Elizabeth YY v Albany DSS, 644 N.Y.S. 2d 856 (3rd Dept. 1996) Denied paternal aunt's custody petition in favor of foster parent that had child for more than 2 years even though DSS had never asked aunt to take custody earlier.

Matter of Gladys "B"., 274 AD2d 689, 710 NYS2d 725 (3rd Dept. 2000) After TPR filed against mother, maternal aunt filed for custody - court should first hear the TPR against the mother, then a dispositional hearing on adoption by foster parent vs custody by aunt; adoptive parents win - strong emotional bond, lived there since birth, happy and secure with adoptive parent, no bond with aunt who has only visited occasionally

Matter of Pleasant Edward G., 749 NYS2d 176 (2nd Dept. 2002) - Denied the grandmother's guardianship petition for foster child - child has lived whole life with foster parents and is doing well - unnecessarily disruptive to move him

Matter of DA., 18 Misc3d 200 (Family Court, Onondaga County 2007) – DSS wanted to move child from foster home to relatives after child had been in care over 2 years – court denied, child had formed a strong bond with foster mother, only mother he has ever known, child would be severely distressed – DSS ordered to start TPR

Matter of Amber B. 50 AD3d 1028, 857 NYS2d 590 (2nd Dept. 2008) – GMs Art. 6 properly dismissed where children were in care since 2002 and ACS intended to file TPRs and children wanted to be adopted in foster homes. GM not unfit but had no relationship with children before they went into care and no relationship for the first 3 years they were in care.

Matter of Jade D.S.M.A.S. ___AD3d ___, dec'd 6/22/16 (2nd Dept. 2016) – maternal gma files for custody when child has been in care for about 15 months, and that remains pending until the TPR is filed another 15 months later(!) and then court hears the custody petition with the TPR dispo and frees child for adoption by foster parent - App Div concurs saying foster parents have had child since she was 6 days old and grandmother has no right superior to foster parents chosen by the agency to adopt

Relatives Filing for Custody After Child Freed

In the Matter of Arnetta S., 186 AD 2d 519, 589 N.Y.S.2d 327 (1st Dept. 1992) Bio-aunt's petition for custody of child freed for adoption dismissed.

Matter of Catherine JJ v Charlotte II, 216 AD 2d 752, 628 NYS2d 826 (3rd Dept. 1995)
Dismissed maternal grandmother's petition for custody of child mother had surrendered.
Grandmother had her parental rights to mother terminated 15 years earlier.

Matter of Rockland DSS o/b/o Charles H., 207 AD 2d 788, 616 N.Y.S.2d 521 (2nd Dept. 1994)
Maternal grandmother's custody petition dismissed as DSS had already been granted guardianship but could file for visitation or seek adoption.

Matter of Mary Liza J. V Orange County DSS, 198 AD 2d 350, 603 N.Y.S. 2d 331 (2nd Dept. 1993) Great grandmother's petition for custody of two freed great-grandchildren dismissed where they had lived with two separate foster families for over three years.

In Re guardianship of Tiffany Malika B., 626 N.Y.S. 2d 184 (1st Dept. 1995) Dismissed aunt's custody petition in favor of foster parent adoption petition

Matter of Jennifer A., 650 N.Y.S. 2d 691 (1st Dept. 1996) Denied aunt's petition for custody over adoption petition from 67 year old foster mother, aunt had little contact, foster mother was healthy and active and had always cared for child.

Matter of Genoria, 650 N.Y.S. 2d 830 (3rd Dept. 1996) Dismissed cousin's custody petition after child had been freed - only an adoption petition can be brought regarding a freed child.

In Re Alma R., 654 N.Y.S. 2d 748 (1st Dept. 1997) Dismissed grandmother's custody petition where foster mother had cared for the child almost all of her life and was the agencies choice for adoption

Matter of Patience B., 306 AD2d 473, 761 NYS2d 304 (2nd Dept. 2003)- Dismissed aunt's petition for custody that had been filed after dispo completed on TPR, adoption is only option

Matter of David B., 768 NYS2d 618 (2nd Dept. 2003)- After mother surrendered child and foster mother petitioned for adoption, aunt appeared seeking custody - aunt had child's 5 siblings in her custody - aunt had been repeatedly asked in past if she wanted child and had said no - she had "essentially waived any right to intervene" - foster home is only home child has ever known

Moorhead v Coss 17 AD3d 725, 792 NYS2d 709 (3rd Dept. 2005) - Children had been in care for over 3 years when both parents surrendered, grandmother then filed for custody but agency wanted children to be adopted - App Div says no error for court to have dismissed custody petition as grandmother had no standing to seek custody of children who had been surrendered for adoption.

Gregory B.v ACS 800 NYS 2d 486 (Family Court, Richmond County 2005)- court gave custody of 14 year old freed child to grandfather - no adoptive resource for child

In Re Adoption of Karon J., 293 AD2d 404, 741 NYS2d 37 (1st Dept. 2002) Child had been with foster mother since birth - 5 years - when freed for adoption, foster mother files as does grandmother - child is to be adopted by foster mother and grandmother does not have special standing, fact that she could have intervened earlier does not justify giving her child now

Matter of Wesley R., 307 AD2d 360, 763 NYS2d 76 (2nd Dept. 2003) - Relatives who had adopted 4 sibs of 5th child wanted to adopt 5th child who had been mistakenly placed with non-related foster family who also wanted to adopt, foster family had child for 2 years but and child did visit with relatives - court ordered that an independent psychological eval of child needed to be done

Matter of Takylia 807 NYS2d 130 (2nd Dept. 2005) - child should be adopted by foster parents who have had child for more than 1 year - not a cousin as bio relatives have no special preference

Matter of Linda S., 50 AD3d 905, 856 NYS2d 174 (2nd Dept. 2008) – GM filed an Art. 6 while Art. 10 pending re two children in foster care, parents surrender the two children at dispo of Art. 10 conditional on foster parents adopting. Court properly dismissed GMs custody petition

Matter of Rita T. 49 AD3d 327, 854 NYS2d 344 (1st Dept. 2008) – GMs Art. 6 was properly denied where children had been in foster care most of their lives and were now freed for adoption and foster mother wanted to adopt, GM had not visited very frequently, did not understand special needs and had history of child neglect herself

Matter of Keierka H., dec'd 6/10/08 (1st Dept. 2008) – GMs request for custody of freed child denied, GM has only seen child once since placement, neglected this child and others herself, foster mother meeting child's needs and wants to adopt.

Matter of Shirley E., 63 AD3d 1231, 879 NYS2d 640 (3rd Dept. 2009)GM files for custody of the child in foster care - fact finding hearing held on the Art. 6 and denied - parents then

surrendered with the condition that the child be adopted by her foster parents - GM appealed. GM cannot override the decision of the parents to surrender the child to be adopted by someone else – GM has no special right to custody over a foster parent -should not grant custody of children who have been freed

Matter of Theresa BB., 64 AD3d 977, 882 NYS2d 580 (3rd Dept. 2009) mother died while children in foster care – GM filed for custody – then father surrendered on condition children be adopted by the foster parents – GM’s petition dismissed without a hearing – GM has no special right to custody that allows her to override the birth parent’s decision

Matter of PC v Orange County DSS 24 Misc. 3d 1232(A) (Orange County Family Court) three children freed for adoption in 2003, never adopted – all now over the age of 14 - none want to be adopted - out of state grandparents filed for custody- DSS opposed - two children abused in care, three children were in separate placements, some congregate care, not seeing each other very frequently – this may be extraordinary - ordered ICPC homestudy of grandparents

Matter of Tatyana SP., 67 AD3d 685 (2nd Dept. 2009) children freed but ordered to be moved from foster care placement to aunt’s house for adoption by her – affirmed - sound and substantial basis in the record - One dissent who would have found not supposed to be any presumption in a TPR disposition regarding any particular disposition and one child, emotionally frail, uprooted from home he has lived in since 2004 when he was three years old – should have been an independent forensic evaluation

Matter of Nestor HO., 68 AD3d 1733 (4th Dept. 2009)terminated parental rights of a father, freed child for adoption by foster parents - relatives do not have precedence over a prospective adoptive parent selected by the agency

Matter of Shelia B., 67 AD3d 610 (1st Dept. 2009) mother surrendered child for adoption and the child was adopted , proper to dismiss the grandmother’s petition for custody she can file a petition for visitation at any time.

Matter of Geneva B., 73 AD3d 406 (1st Dept. 2010) dismissed grandmother’s custody petition for grandchildren freed for adoption, no preemptive right surpassing foster parents that agency has chosen been with foster family for 8 years, foster mother says she will allow contact

Matter of Sharon V. __AD3d__, dec’d 6/9/11 (3rd Dept. 2011) grandmother’s Art. 6 custody petition denied where child freed for adoption and foster parent who has had child for over 2.5 years wants to adopt, although grandmother had had contact, child bonded to foster family who is stable and meets special needs, - also grandmother had had custody of this child and a sibling and had let them return to the mother’s home where the sibling died when the mother was not properly supervising, grandmother could visit even after adoption if child is doing ok

Matter of Carolyn S., 80 AD3d 1087 (3rd Dept. 2011) grandmother denied Art. 6 when children freed for adoption as not in children’s best interests; grandmother did have long standing

relationship with children and children loved her but she had not protected them from a neglectful mother, was inappropriate and argued with caseworker and foster parents in front of children, children bonded to foster parents and thriving, foster parents better educated

Relatives Intervening during or /right before TPR or Adoption

Ruiz v Puerto Rican Association for Community Affairs, 174 AD 2d 542, 571 N.Y.S. 2d 717 (1st Dept. 1991) Maternal grandmother sought intervention in adoption of child surrendered with express condition that grandmother not be given child - petition dismissed.

In the Matter of Chiquita J., 170 AD 2d 353, 566 N.Y.S. 2d 54 (1st Dept. 1991) Maternal grandmother allowed to intervene in dispositional hearing of TPR but court denies custody to grandparents and grants guardianship to DSS.

In the Adoption of A. By K.S., 601 N.Y.S. 2d 762 (N.Y. County Fam. Ct. 1993) Uncle's petition to adopt, filed during the TPR is dismissed and child remains in foster home.

In the Matter of Jonathan N.W., 140 Misc. 2d 216, 530 N.Y.S. 2d 501 (Surr. Ct. Nassau County 1988) Grandparents not permitted to intervene in fact-finding of TPR.

Matter of Cynthonia T., 198 AD 2d 111 (1st Dept. 1993) Maternal grandmother granted permission to intervene after TPR but has no preemptive right to custody.

Matter of Gladys "B"., 274 AD2d 689, 710 NYS2d 725 (3rd Dept. 2000) After TPR filed against mother, maternal aunt filed for custody - court should first hear the TPR against the mother, then a dispositional hearing on adoption by foster parent vs custody by aunt; adoptive parents win - strong emotional bond, lived there since birth, happy and secure with adoptive parent, no bond with aunt who has only visited occasionally

Ella J. v Iva J., 4 AD 3d 527, 771 NYS2d 719 (2nd Dept. 2004) - After child had been in care for 2 years, relative files custody petition and shortly after agency files TPR - court considered the custody petition at the time of the TPR dispo and appropriately gave child to foster parents to adopt "a nonparent relative takes no precedence for custody over adoptive parent selected by an authorized agency"

Matter of Karen AO., 6 AD3d 1100, 775 NYS2d 630(4th Dept. 2004) - TPR pending and grandmother files a custody petition, law guardian moves to dismiss custody petition, App Div says court correctly considered custody during the dispo phase of the TPR - did agree that court should not have ordered visitation with grandmother without a hearing given that law guardian objected.

In Re Zarlia Loretta J., 804 NYS2d 313 (1st Dept. 2005) - father argues in his TPR that child should go to his sister and not be adopted by foster family - no - aunt knew that child had gone into care and did not come forward, aunt knew father had serious problems

Matter of Carl G., 807 NYS 505 (4th Dept. 2005) - grandfather files for custody while TPR pending, App Div says lower court should consider the custody as part of the TPR petition although on the merits it was in child's best interests to be freed for adoption

Matter of Gordon BB 818 NYS2d 692 (4th Dept. 2006) – – if an Art. 6 filed by a relative after a TPR has been filed, correct to hear Art. 6 as an alternative to adoption in the dispo of the TPR – here court correctly gave custody to relative even though foster parents wished to adopt - although relatives have no greater right to child over adoption by foster parents, test between the two is best interests and here relative was better for child

Mu'Min v Mitchell 19 AD3d 116, 797 NYS2d 818 (4th Dept.. 2005) - Grandmother filed for custody of child in care while TPR pending, lower court dismissed custody petition and freed child for adoption - grandmother appealed custody dismissal - App Div says it is moot as child is now freed

In re Luz Maria V. 803 NYS2d 544 (1st Dept. 2005) - Grandmother files for custody of several children, some freed for adoption, one infant more recently placed, lower court gave infant to grandmother's custody and left older children to be adopted - App Div reversed on youngest child - should also be freed for adoption as in child's best interests to stay with foster mother- grandmother has no special standing at this stage

Matter of Amber B. 50 AD3d 1028, 857 NYS2d 590 (2nd Dept. 2008) – GMs Art. 6 properly dismissed where children were in care since 2002 and ACS intended to file TPRs and children wanted to be adopted in foster homes. GM not unfit but had no relationship with children before they went into care and no relationship for the first 3 years they were in care.

Matter of Deborah F., 50 AD3d 1213, 855 NYS2d 299 (3rd Dept. 2008) – GM filed for custody after TPR had been filed – custody considered in TPR dispo and denied – child should be freed for adoption instead – no presumption in favor of relatives at this point, no presumption for any dispo but what is best for child – GM had not been able to care for child when she had to go into care, also did not seek visitation with child for 1st 6 months of care, GM was not supportive re mother's neglect and danger to child, GM's kids had been in foster care, GM did nto understand child's special needs, child bonded to foster family and not to GM

Matter of Deborah EC., 63 AD3d 1724, ___NYS2d___ dec'd 6/12/09 (4th Dept. 2009) mother and father neglected -later placed in foster care, mother's rights terminated - father incarcerated until 2013- stepmother files an Art. 6 petition for custody and petitions under Art. 10 for an Art. 10 placement as an alternative- both denied – App div says “assuming arguedo” that she needed

to, the stepmother had established extraordinary circumstances and the both petitions should focused on the child's best interests - child had bonded to some degree with the stepmother but child should remain in foster care – can consider father's incarceration, life of crime and substance abuse.

Matter of Randi NN., ___AD3d___, dec'd 12/24/09 (3rd Dept. 2009) reversed a Schenectady Family Court's dismissal of a grandmother's motion to terminate the foster care placement of her grandchild - child was removed from parents, August of 2005 - caseworker called the grandmother, who had custody of two sibs - left message - three weeks later, a counselor of the grandmother's called the DSS caseworker – question of fact if counselor did tell worker that grandmother did not want custody - subsequent DSS caseworker admitted that he had never had any conversation with the grandmother - five months after the child had been placed in foster care, the grandmother filed a visitation petition and a year after the child had been in care the grandmother filed a custody petition as well as a motion under FCA §1061 to modify the court's prior order placing the child in foster care - DSS had begun termination proceedings and intended to have the child be freed and adopted. - lower court denied the grandmother's motions - appellate court criticized DSS for not following the requirements of FCA §1017 and not clearly notifying the grandmother of the removal and explaining her options for custody and foster care - placement order should be set aside where a failure to comply with the statute prejudices the relative as well as the child's rights - burden on the DSS to explain the options to the relative, it is not on the relative to ask - reversed dismissal and remanded the matter for a de novo determination if the grandmother is a suitable placement and if the child should be placed with her.

Matter of Chastity Imani Mc. 66 AD3d 782 (2nd Dept. 2009) correct to dismiss grandmother's custody petition filed at the time of the parent's TPR - standard is best interests of the child and as well as SSL §383(3) which gives preference to foster parents who have care for the child for more than a year - child with foster mother for the majority of her life, bonded, healthy and happy.

Matter of Terrance M., ___AD3d___, dec'd 7/9/10 (4th Dept. 2010) father cannot appeal court's dismissal of relative's Art. 6 petition, only relative to seek an appeal

Matter of Carolyn S., 80 AD3d 1087 (3rd Dept. 2011) -GM appealed the denial of her custody/visitation petition that had been heard in the TPR dispositions of the children's parents. Her petitions had been consolidated and heard at the same time as the TPR dispo and the lower court had freed the children for adoption by their foster parents, Art. 6 petition should be consolidated with the TPR dispo where, as here, it had been filed at the time of the TPR, not in the children's best interests to be placed in the custody of this grandmother - when the mother had neglected the children and the children had been placed with the grandmother, she had violated court orders and let the children reside with the mother -grandmother had been inappropriate in front of the children in disagreements with the caseworker and the foster parents, children have bonded with the foster parents and are happy and thriving in school; visitation is

not in the children's best interests given the grandmother's open hostility with the foster parents and her vocal opposition to the adoption.

Matter of Vanisha J., 87 AD3d 696 (2nd Dept. 2011) - dismissal of GM's Art. 6 custody petition when the court freed her grandchildren to be adopted by her foster parents. SSL § 383 (3) grants preference to foster parents who have had a child in their home for over a year and no preference is provided for relatives. The children have been in the foster parent's home for over 5 years and they had already adopted two of the children's siblings.

Matter of Chartasia H., 88 AD3d 576 (1st Dept. 2011) -denied a grandmother's petition for custody in favor of freeing a child to be adopted by a foster mother. The grandmother has no preemptive right to custody of the child and lived several hundred miles away from the child. She had only seen the child two or three times and not at all in the last several months. The child has lived with the foster mother for several years

Matter of Azmara N.G., 93 AD3d 404 (1st Dept. 2012) - dismissal of a great aunt's petition for custody in favor of freeing the children to be adopted by their foster parents, relatives do not have rights superior to foster parents who has provided a loving and stable home for most of the children's lives - great aunt lives with the bio father whose parental rights have been terminated. He has a history of violent behavior and continues to have mental health issues. The great aunt has a limited relationship with the children

Matter of Michael M., 103 AD3d 471 (1st Dept. 2013) - dismissal of a grandmother's custody petition as opposed to freeing the child for adoption by the foster mother. The foster mother met the child's special needs, wanted to adopt and had provided the child with a positive environment. The child had been with the foster mother for five years and wanted to be adopted

Matter of Sandra N., v ACS 103 AD3d 591 (1st Dept. 2013)- freed two children for adoption and denied a great grandmother's alternative petition for custody. There is no presumption that it is in the child's best interests to have custody awarded to a relative when the foster parents with whom the child has been living wish to adopt. Each of these two children has thrived in the foster home they are in where their needs have been met and where they are loved.

Matter of Joseph P.S. v NYC ACS 104 AD3d 484 (1st Dept. 2013) - grandfather was entitled to review agency information about the foster family upon his discovery demand. The grandfather had filed an Article 6 custody petition in response to the foster parent seeking to have the child freed for adoption.

Matter of Ender M. Z. P., 109 AD3d 834 (2nd Dept. 2013) - reversed the dispo of two children after the parent's were found to have permanent neglected them. The lower court had granted Art. 6 custody of the children to an uncle. However the Appellate Court found that this was error. The one child had lived with foster parents who wished to adopt and there is no presumption in a termination matter favoring biological relatives over a foster family. Although

the law favors keeping siblings together, here the lower court erred in concluding that this consideration outweighed the benefit of the child remaining with the foster family she has resided with since infancy.

Matter of North v Christine Y., 122 AD3d 864 (2nd Dept. 2014) - child was in care over 21 months and GM files Art. 6, TPR just 3 months later and so court dismissed the GMs Art. 6 petition without a hearing

Matter of Adams v ACS, 122 AD3d 840 (2nd Dept. 2014) - great aunts custody petition dismissed in dispo of TPR as relative has no precedence over foster parents that agency backs

Matter of Nyasia E.R., 10/8/14 (2nd Dept. 2014) – aunt’s request for custody in TPR dispo denied, no presumption in favor of a family member at this point, not in children’s best interests

Matter of Quida H v Sara H., 127 AD3d 971 (2nd Dept. 2015) – great aunt sought guardianship of child during TPR, was a certified foster parent herself and had been seeking placement, visiting child but child was 1`9 months old and had lived her whole life with foster parents who wanted to adopt – non parent relative has no precedence over adoptive parents agency has selected

Matter of Amari S.G.F., 132 AD3d 989 (2nd Dept. 2015) – children should be adopted by foster parents and not placed in custody of great aunt and cousin – statue gives preference to foster parents who have had child over 12 months, relative has no precedence – children doing well with foster parents

Matter of Kareem H., __Misc2d__, dec’d 5/10/16 (Kings County Family Court 2016)
In TPR dispo, court gives Art. 6 custody to an out of state great aunt, foster parents knew since the child had been in care for about a year that efforts were being made to place child with this great aunt who had “rearranged her life” to be able to travel from Oklahoma to NYC to visit the child regularly – also child would be with a cousin, further child would have permanency with custody immediately but any adoption would take awhile

Matter of Elizabeth L v Jarvis S., __Misc3d__ dec’d 6/1/16 (Kings County Family Court 2016)
Former foster parent allowed to file for Art. 6 custody as it is actually child’s great aunt and she has standing as a relative

Matter of Patricia I.H., __AD3d__ dec’d 6/29/16 (2nd Dept. 2016) after child was in care for 2 years, maternal gma filed for custody and agency filed a TPR, custody was tried with the dispo of the TPR and freed child for adoption by foster parents – on appeal App Div agreed and noted that the child had been in care for 9 years with the foster parents, bonded, happy, healthy and relative has no precedence over a foster parent (note: not clear how long the custody case was pending before the TPR....)

Can the court review “competing” adoption petitions?

Matter of Jessica N., 202 AD 2d 320, 609 N.Y.S. 2d 209 (1st Dept. 1994) Allows adoption of black handicapped foster child by white lesbian foster mother who has cared for her since birth over three years ago and denies adoption by black grandmother who is adopting sibling.

In re John C., 718 NYS2d 314 (1st Dept. 2000) Grandmother filed for custody of child in foster care, lost case and while custody petition was on appeal, child was freed for adoption; custody petition must be dismissed now - grandmother could seek to adopt

Matter of Savon Tryphenia G. 26 AD3d 821, 809 NYS2d 740 (4th Dept. 2006) - aunt files adoption petition for foster child freed for adoption, petition must be dismissed as agency must consent to the adoption and here agency did not consent

Matter of Yary 100 AD3d 200 (1st Dept. 2012)- foster mother filed to adopt the child with the agency’s consent, maternal aunt from out of state filed a guardianship petition for the child, which was dismissed as the child had been freed; aunt then responded by filing a private adoption petition. The agency moved to dismiss the aunt’s adoption as there was no agency consent and lower court denied ruling that the petition was for a private adoption which did not require the agency’s consent. Reversed. Aunt was not filing a private adoption as the child was in the care and guardianship of the agency due to the court’s prior order. Statute requires that the agency must consent to the adoption of any child in their care and guardianship. Without that consent, the court has no jurisdiction over the adoption petition and it must be dismissed. The lower court does not have jurisdiction to consider the two competing adoption petitions and make a best interests decision as the aunt’s petition is not properly even before the court. The court still of course makes a best interest analysis of the one adoption petition it does have before it – but only the foster parent’s petition. The aunt may of course challenge the agency’s refusal to grant their consent through a fair hearing and a subsequent Art. 78 if she wishes. (NOTE: The Fourth, First and Second Depts. have now all clearly ruled the same

Misc Relatives Issues re Custody and Visitation of Foster Care Children

In Re Maria Elizabeth A., 631 N.Y.S. 2d 334 (1st Dept. 1995) Not necessary to give birth mother adjournments of dispositional hearing on TPR to “look” for family members who may want to adopt.

Matter of Paula L.v John Doe., 634 N.Y.S. 2d 525 (2nd Dept. 1995) Denied grandmother’s request for visitation with child who had been adopted three years earlier.

In Re Tristram K., 804 NYS2d 83 (1st Sept. 2005) - in an Art. 10 against mother, relatives file for Art. 6 custody and lower court grants - App Div reverses lower court grant of custody saying that court had no authority to issue an Art. 6 custody order in an Article 10 dispo unless there was

parental consent or a full hearing with extraordinary circumstances and best interests findings

In Re Jacqueline Sharon L., 26 AD3d 250, 810 NYS2d 143 (1st Dept. 2006) - Children with a grandmother under an Art. 10 dispo, aunt files for custody and court grants custody to aunt as a permanency goal for the children, App Div reverses, ruling that court cannot give aunt Art. 6 custody over mother's objection without an extraordinary circumstances and best interests hearing

Matter of Debra VV 26 AD3d 714, 811 NYS2d 457 (3rd Dept. 2006) - mother has terminal illness, children are also subjects of an Art. 10 petition, aunt appears and can take children - is told by agency that she cannot have foster care status but can have Art. 6 custody - court grants custody and Art. 10 dismissed, OCFS upholds refusal to give the aunt foster parent status in fair hearing, reversed by App Div who rules that agency had obligation to help aunt get foster parent status if she did qualify for that status, given mother's illness

Matter of Felicity II 27 AD3d 790, 811 NYS2d 465 (3rd Dept. 2006) - App Div reversed lower court for granting relative Art. 6 custody after child had been in care for a while on a neglect - 3rd Dept. rules that while Art. 10 dispo to help mother gain child, court cannot grant Art. 6 custody to a non-parent (**this case now overturned by further caselaw and new statutes**)

Matter of Donna KK 7/13/06 (3rd Dept. 2006) - - if an Art. 6 is filed by relative while Art. 10 pending, correct action is to hold Art. 6 until after Art. 10 fact finding and then do Art. 6 - with appropriate extraordinary circumstances finding - comment is made that the Art. 10 finding could serve as basis for extraordinary circumstances

Matter of Matthew E 41 AD3d 1240, 839 NYS2d 87 94TH Dept. 2007) - - Erie County order granting Art. 6 custody to a grandfather of foster child in care on an Art. 10 "modified" - court failed to find extraordinary circumstances (child was in foster care due to multiple fractures at 3 months of age!) and court "impermissibly favored the grandfather based on his biological connection to the child" - court was critical that grandfather had not petitioned for 5 or 6 months after placement and had only seen child one hour per week, supervised. Said foster parent's Art. 6 custody petition should only have been dismissed "without prejudice" - no further comment made on "right" of foster parents to file an Art. 6 custody petition.

Matter of Seth Z. 45 AD3d 1208, 846 NYS2d 729 (3rd Dept. 2007) - - Third Department reverses itself in Felicity II. - child was placed in foster care upon a finding of neglect against his mother - maternal aunt and her husband wanted the child to be placed with them. They requested a FCA 1017 placement and also filed an Art. 6 petition. DSS opposed relatives - relatives were not entitled to a hearing on the 1017 request as the statute does not provide for one - the relatives were not entitled to a hearing under FCA 1028-a as the DSS took the position that they would not qualify as foster parents and the 1028-a hearing is only available to relatives who are being denied a placement for *other* reasons than failure to qualify as foster parents. The relatives in fact did not even request foster parent status. But - should have granted the relatives

a hearing on their Art. 6 custody petition. Warren County DSS relied on Felicity II arguing that the Third Department had held there that no petition of custody could be filed after an Art. 10 disposition unless the parents consents. Felicity II reversed as subsequent changes to FCA 1017(2)(a)(i) “recognize and accept an interplay between Family Court Act Articles 6 and 10”. **(note now statute essentially resolves this issue)**

Matter of Courtney B. 47 AD3d 808, 649 NYS2d 179 (2nd Dept. 2008) – Child was placed with paternal grandmother while mother completed drug court – DSS and LG then wanted child returned to mother after she completed program – father and parental GM wanted child to stay with GM – court ruled that mother has superior right to GM and the placement was only meant to be temporary and child should now be returned

Matter of Colleen F., 49 AD3d 1226, 845 NYS2d 257 (4th Dept. 2008) – Adopted child whose adoptive mother had then been criminally convicted of sexually abusing another foster child, bio aunt and uncle seek custody – child who is now 13 does not want to go with them and wants to stay with adoptive family, court says custody to relatives who had tried to obtain child 3 years earlier at time of adoption and would maintain child’s connections to bio and adopted siblings, adoptive mom in jail, adoptive dad ill and not involved in child’s care

Matter of Gabriel James Mc., 60 AD3d 1066, 877 NYS2d 126 (2nd Dept. 2009) Family Court properly held out of state GM’s Art. 6 petition for custody in abeyance until the ICPC home study was returned, mother’s motion to dismiss the custody petition was properly denied, court does not need the mother’s consent to ultimately issue a custody order if the proper findings are made.

Matter of Tristram K., 65 AD3d 894, 884 NYS2d 655 (1st Dept. 2009) Child in foster care with an aunt and uncle should be released to the permanent custody of the aunt and uncle after combined permanency and Article 6 hearing - extraordinary circumstances as mother originally had fled to China with the child -- absconding during a unsupervised visit after neglect matter - child lived with the aunt and uncle for long time, bonded with them - stable, loving and supportive home.

Matter of Brendan N. 72 AD3d 1138 (3rd Dept. 2010) paternal grandparents do not get visitation with child in care as they have no meaningful relationship with child and they do not believe that their son murdered the child’s mother, do not believe their son was violent to child’s mother

Matter of Terrance M., __AD3d__, dec’d 7/9/10 (4th Dept. 2010) father cannot appeal court’s dismissal of relative’s Art. 6 petition, only relative to seek an appeal

Matter of Keenan R v Julie L., 72 AD3d 542 (1st Dept. 2010) bio brother who is in foster care denied visitation with twin sisters who have been adopted, adoptive family did not want visits, expert proof that the sisters had anxiety re the visits, possible PTSD, not in their best interests, no real familial bond, shouldn’t force the girls and family to do visits they do not want and are

making them anxious

Matter of Faison v Nassau County DSS __AD3d__, dec'd 6/29/10 (2nd Dept. 2010) person who is grandmotherly toward child has no standing to seek court ordered visitation with child as not grandmother by blood or adoption

Matter of Arlene Y., 76 AD3d 720 (3rd Dept. 2010) grandmother denied Art. 6 custody of children in foster care, did not prove extraordinary circumstances to overcome mother's objection as mother had not been "unfit" nor had she "abandoned" nor had there been an "extended disruption of the mother's custody" – an Art. 10 is not in and of itself extraordinary circumstances – also grandmother denied knowledge of her son and her husband having sexually abused these children, moved a lot, had not arranged for school or health insurance to prepare for the children

Matter of Thurston v Skellington, 89 AD3d 1520 (4th Dept. 2011)-reversed order of Art. 6 custody to a grandmother after the child had been in foster care. DSS and the AFC had opposed the grandmother being given custody and argued that it was in the child's best interests to remain in foster care and the Appellate Court agreed. The grandmother loved the child and could provide a minimally fit home but she lacked the capacity to provide for the child's proper emotional and intellectual development.

Matter of Louis N., 98 AD3d 918 (1st Dept. 2012) - grandmother had filed for custody of the child and the court appropriately combined the Art. 10 dispositional hearing with the custody petition. The grandmother was from out of state but there was no need to comply with the ICPC as the court ultimately gave the grandmother Art. 6 custody. There was proof that extraordinary circumstances warranted granting the grandmother custody.

Matter of Alexandra D. v Santos, 97 AD3d 746 (2nd Dept. 2012)- DRL§ 71 permits a sibling to file for visitation with a whole or half sibling. Where the petitioner is a minor, then a "proper person" may seek the relief on the child's behalf; . petition brought by a brother and sister who wish to have visitation with a half brother and as such have standing to commence a proceeding. The sibling's attorney is a proper person to file the petition on their behalf.

Matter of Khaliah T., 99 AD3d 537 (1st Dept. 2012) paternal grandmother's Art. 6 petition for custody of her grandchild was properly dismissed, filed the petition when the child had been removed from the mother by ACS and was in the temporary care of the maternal grandmother under ACS supervision, paternal grandmother had complained to ACS about the maternal grandmother's care of the child but that issue had been investigated and unfounded, not permitted to testify to the child's hearsay statements given that there was no corroboration.

Matter of Roberts v Lacross, 99 AD3d 1065 (3rd Dept. 2012)- dismissed grandmother's petition for visitation, did not establish standing, did not allege a sufficient existing relationship with the

child, only showing that she had sent the child birthday and holiday cards.

Matter of Antoinette McK., v ACS __AD3d__ dec'd 6/13/13 (1st Dept. 2013)- dismissed a grandmother's petition for custody and/or visitation of her grandchild who was in foster care. The grandmother lived with the child's mother who had been found to "have a depraved indifference" to the child and the grandmother refused to acknowledge the mother's issues.

Matter of Ruth L., v Clemese Theresa J. 104 AD3d 554 (1st Dept. 2013) - custody to a paternal grandmother based on, among other things, the extraordinary circumstances of the mother's extensive history of neglect and abuse of her nine previous children including the death of one of her children left unattended in a bathtub and the termination of her parental rights to all of the others.

Matter of Jessica B. v Robert B., 104 AD3d 1077 (3rd Dept. 2013) - petition filed by an older sister seeking visitation for herself and her brother of another sister, the Third Department remanded the matter back to the lower court to hold a *Lincoln* hearing to ascertain the wishes of the younger sister regarding the visitation request by her siblings. The younger sister was in the custody of an uncle and the older sister and brother lived in Massachusetts with the brother being in the care of the Dept. of Children and Families there

Matter of Marcus CC., __AD3d__ dec'd 6/20/13 (3rd Dept. 2013)- custody to a grandmother based on extraordinary circumstances. The child was now 14 years old and had lived with the grandmother some 10 years. The mother was not capable of caring for the child and the father knew this but he did not seek custody of the child until he mother had been arrested and there was a neglect petition pending against her.

Matter of Gunner T., __Misc3d __ dec'd 6/5/14 (Clinton County Family Court 2014) - child had been in a foster home for approximately five months on a pending Art. 10 petition, DSS provided the foster parents with the required ten day notice that they would be moving the child to a great uncle's home. The uncle had become certified as a foster parent. The AFC filed a motion in Family Court seeking an order that the child could not be moved. Although the court must give preference to a relative, the court need not place with a relative if in the court's decision, this is not in the child's best interests as here.

Matter of Kaitlyn B., 84 AD3d 1363 (2nd Dept. 2011) –relatives sought to be licensed as a foster care placement, filed for a FCA § 1028-a hearing - properly denied the hearing as untimely. The child had already been in care for 14 months.

Matter of Paige G., 119 AD3d 683 (2nd Dept. 2014) – child should go to out of state GM where ICPC is favorable and child had been with GM except for last 6 months

Matter of Erick X v Keri Y., 138 AD3d 1202(3rd Dept. 2016) – because the grandparents had FCA 1017 custody under mom’s Art. 10 when NR father filed for Art. 6 custody, the grandparents did not have to show “extraordinary circumstances” like they would have had the grandparents had Art. 6 custody

Matter of Demetria FF., __AD3d__, dec’d 6/9/16 (3rd Dept. 2016) – out of state uncle filed to intervene in Art. 10 case and lower court dismissed motion to intervene as case was “resolved” – reversed by the App Div as kids still in care and case not over as ongoing perm hearings happening

