FACT PATTERN

Today is March 29, 2010. You are a judge in the Family Court of New York City. On today’s docket is a hearing pursuant to §1028 of the Family Court Act regarding a one month old baby, Alexandra Davis, whom the Administration for Children’s Services took into custody two weeks ago and obtained an ex parte removal order from one of the other judges in your courthouse. Three days ago, the parents, Alexander Davis and Tonya Lewis, appeared and were assigned counsel who demanded the current expedited hearing demanding Alexandra’s immediate return to the parent’s care and custody. The legal standard requires that you determine whether such a return would place the child at imminent risk to life or health.

For this exercise, take a moment to take on the persona of a judge. You are free to use your own thoughts and opinions, take on the persona of a judge you know or imagine a judge like or unlike yourself. You will never be required to tell anyone which choice you made.

A quick look at the papers states that ACS alleges the following: In light of the parents’ young ages, their history of substance abuse, their history of domestic violence, the mother’s four hospitalizations for severe manic depression, the father’s limited mental capacities, their residence with a maternal aunt who has an extensive history with ACS, their residence in a home where many adults are see coming and going, lack of other appropriate resources, and the mother’s failure to comply with in-home services, the child would be in imminent danger from her surroundings if left with her parents.

FACT PATTERN: Continued

At the hearing, you learn the following:

1) Alexandra was born February 26, 2010, after a normal labor, and was a healthy, robust baby.

2) Until two weeks ago, Alexandra lived with her mother, Tonya Lewis, age 19, and her father, Alexander Davis, age 19, in the downtown home of her maternal aunt, Juanita Rivera. Ms. Rivera supports the family and is a certified nurse assistant at a nursing home downtown. Both of Alexandra’s parent and her maternal aunt and relatives are African-American.

3): Both parents use marijuana recreationally and tested positive for its use. Ms. Lewis stated that she used marijuana twice a month. Mr. Davis said he used it once a week.

4) Shortly before Alexandra’s birth, Ms. Lewis appeared to her gyn staff to be very depressed and behaving erratically, and she states that she “didn’t know if life was worth living.” She said that she had felt this way twice before in the last year. The gyn staff noted in its files that she appeared to show signs of possible manic depression. She was given a referral to a local mental health provider for an appointment a week later, but she did not keep the appointment.

5) During their brief hospital stay, the baby thrived. Ms. Lewis seemed to be in good spirits. Mr. Davis was at the hospital and was reported to be excited about Alexandra’s birth.

6) Ms. Lewis, Mr. Davis and Alexandra went home to live at Ms. Rivera’s house on February 1, 2010. Ms. Rivera’s three adult children, plus two of Ms. Lewis’ younger siblings live there as well.

7) Ms. Rivera took care of Ms. Lewis and her siblings when they were younger. Ms. Rivera was involved with ACS for more than five years, due to allegations of mental illness (manic depression) and substance abuse. At one point, the children, including Ms. Lewis, were adjudicated neglected and the children stayed in foster care for several months. ACS closed its case in early 2005.

8) At ACS’ insistence, a family preservation service called FPP was assigned to the family. They visited the home three times per week, to discuss parenting and substance abuse issues with Ms. Lewis.

9) ACS reported that, on first meeting, Mr. Davis seemed “limited.” He has collected SSI for some mental incapacity since birth. He graduated from high school in Pennsylvania several years ago, and moved to NYC to live with extended family members. He has known Ms. Lewis for a year. During Alexandra’s stay at home, ACS workers often noted that he was caring for the baby; one stated that he appeared to have “no limitations.”

10) On February 15, the FPP worker reported to the ACS worker that the parents had had a loud argument. She ordered him to leave the house and he left that day. He returned the next day.

11) On February 17, Ms. Lewis went the Emergency Room, saying that she felt very depressed and was thinking of hurting herself. Alexandra was at home with her great-aunt and father. The ER gave Ms. Lewis and appointment for a community psychiatric appointment on March 1.

12) The FPP worker reported to ACS that Ms. Lewis was generally cooperative. They noted that there were many adults, family and others, coming in and out of the home. On one occasion, they noted that there were three unidentified black males in a bedroom. They reported that Alexandra was happy and appeared to be well-cared for.

13) On March 10, the FPP worker asked Ms. Rivera if marijuana was being used in the home. Ms. Rivera asked the worker to leave and not to return.

14) On March 11, the FPP worker asked Ms. Lewis if she would continue to work with them in places other than Ms. Rivera’s home. Ms. Lewis said that she would think about it and meet the FPP worker tomorrow.

15) On March 12, Ms. Lewis did not appear at the arranged time and place.

16) On March 12, ACS removed Alexandra. Three days later, ACS filed a petition, *ex parte*, and was granted a remand by the Family Court.