



GRANDMOTHER, BASED UPON HER PAST CARE OF THE CHILDREN, WAS THE FUNCTIONAL EQUIVALENT OF A PARENT WHO HAD STANDING TO APPLY FOR A HEARING TO DETERMINE WHETHER THE CHILDREN SHOULD BE RETURNED TO HER, FAMILY COURT REVERSED (SECOND DEPT).

The Second Department, reversing Family Court, determined grandmother's application for a hearing to determine whether the children should be returned to her should have been granted. The children were removed from grandmother's care and placed in a foster home. Grandmother's application for a hearing was denied on the ground she did not have standing. But the Second Department held that grandmother met the definition of a person legally responsible for the care of the children based upon the level of care she had provided when the children were placed with her:

Family Court Act § 1028(a) provides that "[u]pon the application of the parent or other person legally responsible for the care of a child temporarily removed under this part . . . the court shall hold a hearing to determine whether the child should be returned," with two exceptions not relevant here

... [T]he evidence submitted in support of the paternal grandmother's application is sufficient to support a determination that she is a person legally responsible for the care of the children. The evidence demonstrated that the children lived with the paternal grandmother for months at a time, during which time she purchased food and clothes for the children, did their laundry, fed them, brought them to and from school, church, and extracurricular activities, acted as the contact person for the school in case the children were ill or injured, and attended medical appointments with them. These actions, parental in nature and over an extended period of time, support a determination that the paternal grandmother was the functional equivalent of a parent to the children Thus, the paternal grandmother was entitled to a hearing pursuant to Family Court Act § 1028, and the Family Court's denial of her application deprived the paternal grandmother of her due process rights [Matter of Kavon A. \(Kavon A.-Monetta A.\), 2021 NY Slip Op 01972, Second Dept 3-31-21](#)