

Appeals Court Rejects Judge Sosa Ruling to Return Child to Mother Who Killed Other Son

An appeals court yesterday unanimously reversed a Manhattan Family Court ruling that returned custody of a 5-year-old boy to a woman who had pleaded guilty to fatally beating another of her sons.

The 4-to-0 decision by the Appellate Division of the State Supreme Court overturned a ruling last year by Judge Gloria Sosa-Lintner, who ordered the boy, Umer, returned to his mother, Humarani Aziz Khan, 31.

The appellate judges said that because Mrs. Khan had refused to accept blame for the death of her 18-month-old son, Zubair, it was an abuse of discretion for Judge Sosa-Lintner to return Umer, now 6, to her custody.

Mrs. Khan's lawyer, Alan Kudisch, said he would appeal. "The Appellate Division judges substituted their judgment for that of the Family Court judge who saw the witnesses," Mr. Kudisch said.

The decision was applauded by Nicholas Scoppetta, the Commissioner of the city's Administration for Children's Services, who had criticized Judge Sosa-Lintner's decision to return Umer to his mother.

"We can now take the appropriate steps to insure that this child remains with his current foster family, who have provided a safe, stable nurturing home," Mr. Scoppetta said.

Mrs. Khan was charged with second-degree murder after Zubair died of head injuries in December 1994. At one point she told the police she had hit the boy and he hit a wall, and at another time she said he had fallen in a bathtub.

The police did not charge her husband, Naeem Khan, 32, but an abuse and neglect petition was filed in Family Court against both parents.

Mrs. Khan pleaded guilty in 1995 to second-degree manslaughter and was sentenced to time served while awaiting trial, plus three years of probation.

After the plea, Judge Sosa-Lintner ordered unsupervised visits with Umer to begin in May 1998 and trial custody of the boy in July 1998. The Appellate Division stayed that order pending appeal, but allowed supervised visits.

Umer and his parents see each other once a week for four hours under the supervision of the Jewish Child Care agency. The boy is in foster care with a family that is not related to or acquainted with the Khans.

Yesterday's ruling means that the parents will not soon get custody of Umer. Rather, the case is back in Family Court before Judge Sosa-Lintner.

"The first step toward rehabilitation is a sincere admission of the wrongdoing," the appeals court wrote. But Mrs. Khan, they said, continues to deny she caused her toddler's death.

"Zubair died as a result of head trauma," the court wrote. "The mother admitted to police that she hit Zubair on the head and repeatedly banged his head against the wall, causing his fatal injuries.

"The child had old bruises and marks from prior injuries which were not explained. The autopsy concluded that the death was not accidental and that the injuries were caused by blunt impacts to the head."

The judges said Mrs. Khan's failure to accept blame for Zubair's death "does not augur well for the future treatment of Umer K. and accordingly, we reverse his discharge to the mother.

"Since the mother has continued to deny the reality of the problem facing her, this disposition by the court was an abuse of discretion."