

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: February 19, 2004

93838

In the Matter of DYLAN Y.,
Alleged to be an Abused
Child.

CHEMUNG COUNTY DEPARTMENT OF
SOCIAL SERVICES,
Respondent;

MEMORANDUM AND ORDER

ROBERT Y.,
Appellant.

Calendar Date: January 14, 2004

Before: Crew III, J.P., Carpinello, Rose, Lahtinen and Kane, JJ.

Mitch Kessler, Cohoes, for appellant.

Adam M. Gee, Chemung County Department of Law, Elmira, for
respondent.

Paul A. Sartori, Law Guardian, Elmira.

Carpinello, J.

Appeal from an order of the Family Court of Chemung County
(Buckley, J.), entered March 20, 2003, which granted petitioner's
application, in a proceeding pursuant to Family Ct Act article
10, to adjudicate respondent's child to be abused.

In June 2002, respondent's son, then six years old,
disclosed to his mother and stepfather that respondent showed him
a movie depicting naked men and children and also inserted a
pencil into his rectum. An investigation into the allegations

ensued which ultimately resulted in the filing of the instant abuse and neglect proceeding by petitioner. After a fact-finding hearing, the petition was sustained and Family Court adjudicated the child to be an abused child. Respondent appeals.

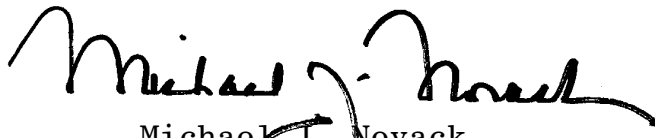
Family Court's determination that respondent sexually abused his son is supported by a preponderance of the evidence (see Family Ct Act 1046 [b] [i]; Matter of Philip M. [Lorene P.], 82 NY2d 238, 243-244 [1993]). To be sure, a child's unsworn, out of court statements may be received into evidence at a fact-finding hearing and will, if properly corroborated, support a finding of abuse (see Family Ct Act § 1046 [a] [vi]; Matter of Nicole V., 71 NY2d 112, 117-118 [1987]). Here, the child disclosed to several individuals that respondent inserted a pencil into his rectum while the two were alone in a closet in respondent's house. Contrary to respondent's contention, these statements were sufficiently corroborated by the expert testimony of a highly qualified, board-certified pediatrician specializing in child abuse and forensic pediatrics who examined and interviewed the child (see Matter of Jaclyn P. [Robert P.], 86 NY2d 875, 878 [1995], cert denied sub nom. Papa v Nassau County Dept. of Social Servs., 516 US 1093 [1996]; Matter of Zachary Y. [Randy AA.], 287 AD2d 811 [2001]), as well as the child's in camera testimony (see Matter of Christine F. [Gary F.], 74 NY2d 532, 536-537 [1989]; Matter of Nathaniel TT. [Leonard UU.], 265 AD2d 611 [1999], lv denied 94 NY2d 757 [1999]).

Respondent's remaining contentions, including the claim that he received ineffective assistance of counsel, have been reviewed and rejected as without merit.

Crew III, J.P., Rose, Lahtinen and Kane, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Michael J. Novack
Clerk of the Court

