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

Decided and Entered: December 9, 2004 95590

In the Matter of BRENDEN O.,
Alleged to be a Permanently
Neglected Child.

CORTLAND COUNTY DEPARTMENT OF
SOCIAL SERVICES, MEMORANDUM AND ORDER
Appellant;

INGRID P.,
Respondent.

Calendar Date: October 20, 2004

Before: Peters, J.P., Mugglin, Rose, Lahtinen and Kane, JJ.

Margaret McCarthy, Cortland County Department of Social Services, Cortland, for appellant.

Theodore J. Stein, Woodstock, for respondent.

Karen L. Howe, Law Guardian, Cortland.

Lahtinen, J.

Appeal from an order of the Family Court of Cortland County (Ames, J.), entered January 22, 2004, which, inter alia, granted petitioner's application, in a proceeding pursuant to Social Services Law § 384-b, to adjudicate respondent's child to be permanently neglected, and suspended judgment for a period of one year.

Family Court found that respondent had permanently neglected her child (born in 1999) and, following the

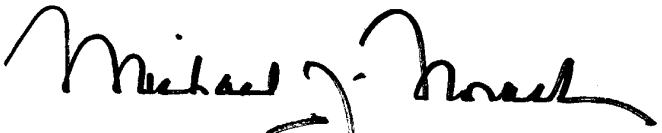
dispositional hearing, the court suspended judgment for one year with numerous conditions. Petitioner appealed, contending that a suspended judgment was inappropriate under the circumstances and that respondent's parental rights should have been terminated. While the appeal was pending, the suspended judgment was revoked and respondent's parental rights terminated. Petitioner nevertheless has pursued the appeal.

"In general an appeal will be considered moot unless the rights of the parties will be directly affected by the determination of the appeal . . ." (Matter of Hearst Corp. v Clyne, 50 NY2d 707, 714 [1980]; see Matter of Jerry XX. [Nora S.], 243 AD2d 988, 989 [1997]). An exception to the mootness doctrine occurs where an issue is "likely to recur, typically evades review, and raises a substantial and novel question" (Saratoga County Chamber of Commerce v Pataki, 100 NY2d 801, 811 [2003], cert denied ___ US ___, 124 S Ct 570 [2003]; see Matter of Hearst Corp. v Clyne, supra at 714-715; Matter of Elmore v Mills, 296 AD2d 704, 706 [2002]; Kingston Area Sanitation Serv. v City of Kingston, 270 AD2d 541, 542 [2000]). Initially, we are not persuaded that an appeal by a county department of social services from a suspended judgment will typically evade review. A preference is available for appeals such as this one (see CPLR 5521 [b]; 12 Weinstein-Korn-Miller, NY Civ Prac ¶ 5521.03; cf. Matter of Schulz v State of New York, 175 AD2d 356, 357 [1991], lv denied 78 NY2d 862 [1991]) and there is no basis to conclude that a parent will generally violate the conditions of a suspended judgment and do so almost immediately (as this respondent did), resulting in the judgment being revoked long before the suspension term expires. Indeed, we have recently had before us the merits of an appeal filed by a department of social services from a suspended judgment (see Matter of Zachary CC. [Penelope CC.], 301 AD2d 714 [2003]). Further, the issues advanced by petitioner are neither novel nor so substantial as to merit an exception to the mootness doctrine (see Matter of Hearst Corp. v Clyne, supra at 714 n 1; Matter of Debra AA. v Broome County Dept. of Social Servs., 291 AD2d 757, 758 [2002]).

Peters, J.P., Mugglin, Rose and Kane, JJ., concur.

ORDERED that the appeal is dismissed, as moot, without costs.

ENTER:



Michael J. Novack
Clerk of the Court