

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

Decided and Entered: April 7, 2005

95751

In the Matter of JAMES P. and
Others, Neglected Children.

BROOME COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Respondent;

MEMORANDUM AND ORDER

JAMES Q.,

Appellant,
et al.,
Respondent.

(And Another Related Proceeding.)

Calendar Date: February 22, 2005

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

Stone & Stone, Vestal (Michelle E. Stone of counsel), for
appellant.

Philomena M. Stamato, Broome County Department of Social
Services, Binghamton, for Broome County Department of Social
Services, respondent.

Kane, J.

Appeals from three orders of the Family Court of Broome
County (Pines, J.), entered March 8, 2004, which, inter alia,
granted petitioner's application, in a proceeding pursuant to
Family Ct Act article 10, to extend petitioner's supervision of
the subject children.

Respondent James Q. (hereinafter respondent) is the father of two children and the stepfather of another child. Petitioner has been involved with the family since 1999 due to proven abuse and neglect by respondent. The children were returned from petitioner's care to the mother's care, but with continued supervision of the family by petitioner. An order of protection prohibited contact with the children, but provided respondent with limited supervised visitation at the county jail where he was incarcerated. Petitioner commenced this proceeding to extend the order of supervision and orders of protection. The mother sought to terminate the children's visitation with respondent. After a hearing, Family Court, among other things, extended the order of supervision and granted orders of protection against respondent. Under those orders, respondent is prohibited from any contact with his stepson until the child's 18th birthday and prohibited from contact with his children, except for screened letters, for one year. Respondent appeals, alleging ineffective assistance of counsel. We affirm.

To establish entitlement to a new hearing based on ineffective assistance of counsel, respondent must demonstrate that he was deprived of meaningful representation and that he suffered actual prejudice as a result of counsel's deficient representation (see Matter of Leo UU. [Leonard UU.], 288 AD2d 711, 713 [2001], lv denied 97 NY2d 609 [2002]; Matter of Matthew C. [Donna C.], 227 AD2d 679, 682-683 [1996]). He has failed to meet that burden. Counsel represented respondent in Family Court for over two years prior to this hearing and was fully familiar with the family history and circumstances. Respondent alleges that counsel was ineffective because he did not present certain documentary evidence or subpoena requested witnesses. Admission into evidence of certificates of completion from several classes, including parenting, anger management and substance abuse programs, was not necessary. Counsel elicited from petitioner's caseworker that respondent had, indeed, completed several such classes.

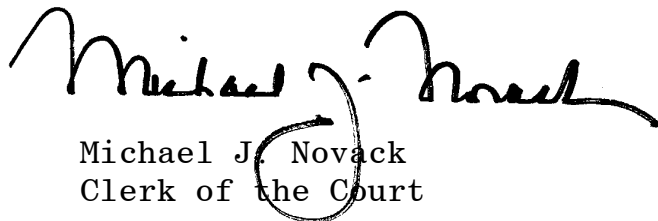
The failure to call particular witnesses that a client requests does not necessarily constitute ineffective assistance (see Matter of Thompson v Gibeault, 305 AD2d 873, 875 [2003]; Matter of Hudson v Hudson, 279 AD2d 659, 668 [2001]). There is

no indication in this record that the testimony of the witnesses would be favorable to respondent. In fact, there is significant evidence that the testimony would be detrimental, suggesting that respondent's requested witnesses would verify that he participated in certain services, but that he failed to benefit from those services. For instance, within two weeks after he completed a substance abuse program, respondent, while drinking, engaged in conduct that resulted in his conviction of the crime of sodomy in the second degree. Under the circumstances, respondent failed to prove that counsel's representation was less than meaningful or that counsel's actions somehow prejudiced him (see Matter of Matthew C. [Donna C.], supra at 683).

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

ORDERED that the orders are affirmed, without costs.

ENTER:



Michael J. Novack
Clerk of the Court

