

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

Decided and Entered: February 24, 2005

95829

In the Matter of MARCEL S.
and Others, Neglected
Children.

COLUMBIA COUNTY DEPARTMENT OF
SOCIAL SERVICES,
Respondent;

MEMORANDUM AND ORDER

JULIE V.,
Appellant.

Calendar Date: January 19, 2005

Before: Crew III, J.P., Peters, Spain, Rose and Lahtinen, JJ.

Daniel Gartenstein, Kingston, for appellant.

James A. Carlucci, Hudson, for respondent.

Ann M. Weaver, Law Guardian, Red Hook.

Lahtinen, J.

Appeal from an order of the Family Court of Columbia County (Czajka, J.), entered March 9, 2004, which granted petitioner's application, in a proceeding pursuant to Family Ct Act article 10, to extend the placement of respondent's children.

Respondent's four children were removed from her home in December 2002, and were adjudicated to be neglected by Family Court in May 2003 based upon her failure to adhere to an order of protection directing her to keep the children away from her then husband, a known sex offender. The children were placed in

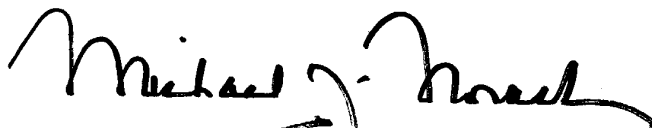
petitioner's custody and, in October 2003, petitioner filed a request for an extension of placement. Respondent consented to the extension for her two oldest children, but a hearing was held regarding the two younger children, Samantha T. (born in 1992) and Jordan U. (born in 1996). Family Court extended the placement as to Samantha and Jordan until December 16, 2004. Respondent appeals.

Since the order from which respondent appeals expired on December 16, 2004, this appeal is moot (see Matter of John I. [Lisa J.], 6 AD3d 991, 991 [2004], lv denied 3 NY3d 602 [2004]; Matter of Jeran PP. [Joanne PP.], 6 AD3d 994, 995 [2004]; Matter of Miguel HH. [Twila II.], 285 AD2d 692, 692 [2001]). Nevertheless, if the merits were properly before us, we would affirm. While Family Court noted that respondent was making progress, there was ample evidence in the record – including testimony from a psychologist who had met with the children – to support Family Court's determination that it was not yet in the best interests of Samantha and Jordan to return them to respondent's custody and petitioner had otherwise met its burden in the extension application (see Matter of William G. [Patricia G.], 233 AD2d 702, 704 [1996]).

Crew III, J.P., Peters, Spain and Rose, JJ., concur.

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

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is fluid and cursive, with a large loop at the end.

Michael J. Novack
Clerk of the Court