

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

Decided and Entered: November 23, 2005

97745

In the Matter of AMANDA TT.,
Alleged to be a Permanently
Neglected Child.

RENSSELAER COUNTY DEPARTMENT OF
SOCIAL SERVICES,
Respondent;

MEMORANDUM AND ORDER

EDGAR TT.,
Appellant.

(And Another Related Proceeding.)

Calendar Date: October 13, 2005

Before: Cardona, P.J., Mugglin, Rose and Kane, JJ.

Eugene P. Grimmick, Troy, for appellant.

Louis H. Quinlan, Rensselaer County Department of Social
Services, Troy, for respondent.

Charles W. Thomas, Law Guardian, Troy.

Mugglin, J.

Appeals from two orders of the Family Court of Rensselaer
County (Griffin, J.), entered March 2, 2005, which granted
petitioner's applications, in two proceedings pursuant to Social
Services Law § 384-b, to adjudicate respondent's children to be
permanently neglected, and terminated respondent's parental
rights.

In this appeal from a permanent neglect finding, respondent, the father of Amanda and Joseph, makes four arguments. There is no merit to his first argument that the children have not been in the care of petitioner for more than one year because they were voluntarily placed (see Social Services Law § 384-b [7] [a]). Petitioner received the children pursuant to a voluntary placement agreement with their mother in February 2001. This proceeding was commenced on January 31, 2003. Contrary to respondent's arguments, the statute makes no distinction between children taken from a parent and children voluntarily placed by a parent.

Next, we likewise find no merit to respondent's contention that petitioner failed to prove that it made "diligent efforts to encourage and strengthen the parental relationship" (Social Services Law § 384-b [7] [a]) between respondent and his children. Despite respondent's incarceration throughout much of the relevant time period, petitioner arranged for visitation between the children and respondent at the jail and made repeated contact with respondent to set up appointments for him to receive mental health evaluations, alcohol dependency treatment and a batterers' intervention program. Although respondent was evaluated and the programs were recommended, he completed none despite the fact that they were appropriately tailored to address his specific problems which were preventing reunification with his children (see Matter of Anthony S. [Edward QQ.], 291 AD2d 747, 747-748 [2002]; Matter of Jennie KK. [Nancy LL.], 239 AD2d 666, 668 [1997], lv denied 90 NY2d 807 [1997]).

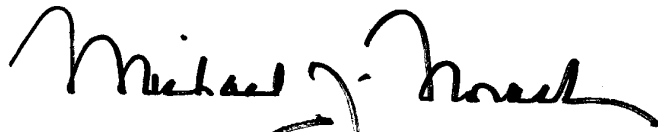
Next, respondent argues, in the alternative, that if petitioner has adequately established its compliance with the above threshold issues, the adjudication of permanent neglect was nevertheless erroneous since he established the existence of an adequate plan for the future of the children (see Social Services Law § 384-b [7] [a]). The record belies this claim as it shows his only plan was to place the children with his brother and sister-in-law. Moreover, the record reflects his absolute failure to make contact with the children or petitioner, either for six months before or during the pendency of the permanent neglect proceeding.

Lastly, while respondent was entitled to be represented by effective counsel in these proceedings (see Family Ct Act § 262 [a] [iv]; Matter of Thompson v Gibeault, 305 AD2d 873, 875 [2003]), we are unpersuaded that, "'viewed in totality and as of the time of the representation'" (People v Henry, 95 NY2d 563, 565 [2000], quoting People v Baldi, 54 NY2d 137, 147 [1981]), he was not afforded "'meaningful representation'" (People v Henry, supra at 565, quoting People v Benevento, 91 NY2d 708, 712 [1998]).

Cardona, P.J., Rose and Kane, JJ., concur.

ORDERED that the orders are affirmed, 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