

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

Decided and Entered: July 6, 2006

98209

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In the Matter of REBECCA KK.,  
Alleged to be an Abused  
and Neglected Child.

CORTLAND COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

MEMORANDUM AND ORDER

Respondent;

DOUGLAS KK.,

Appellant.

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Calendar Date: June 6, 2006

Before: Cardona, P.J., Mercure, Peters, Spain and  
Carpinello, JJ.

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Sandra M. Colatosti, Albany, for appellant.

Ingrid Olsen Tjensvold, Cortland County Department of  
Social Services, Cortland, for respondent.

Christopher A. Pogson, Law Guardian, Binghamton.

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Appeal from an order of the Family Court of Cortland County  
(Campbell, J.), entered March 1, 2005, which granted petitioner's  
application, in a proceeding pursuant to Family Ct Act article  
10, to adjudicate respondent's child to be severely abused,  
abused and neglected.

Respondent is the father of Rebecca KK. (born in 1993). In  
August 2002, he pleaded guilty to the crime of attempted sodomy  
in the first degree after admitting to repeated sexual abuse of  
the child, and was sentenced to five years in prison to be

followed by five years of postrelease supervision. He thereafter consented to the termination of petitioner's supervision of him and to a protective order barring all contact with the child until she is 18 years old. The order, however, allowed respondent to seek modification upon his successful completion of a sex offender treatment program. Accordingly, petitioner requested a permanent order of protection, alleging that the child was severely abused, abused and neglected. Family Court granted petitioner's subsequent motion for summary judgment based upon respondent's criminal conviction and adjudicated the child to be severely abused, abused and neglected. Following a dispositional hearing, Family Court relieved petitioner of the obligation to make reasonable efforts to reunite respondent and the child, and continued the order of protection.

Respondent now appeals<sup>1</sup> and his appellate counsel seeks to be relieved of her assignment in the appeal on the ground that there are no nonfrivolous issues to be raised. Because, upon our review of the record, we find at least one potentially nonfrivolous issue that is arguable on the merits, we grant counsel's request and new appellate counsel will be assigned to address any nonfrivolous issues that the record may disclose (see Matter of Darin J. v Tylene S., 298 AD2d 630, 632 [2002]; see generally People v Stokes, 95 NY2d 633 [2001]).

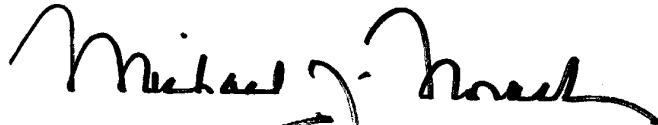
Cardona, P.J., Mercure, Peters, Spain and Carpinello, JJ., concur.

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<sup>1</sup> Although respondent improperly appealed from the decision entered in connection with the fact-finding order rather than the order itself, we exercise our discretion to treat the premature notice of appeal as valid in the interest of justice (see Matter of Isaiah O. v Andrea P., 287 AD2d 816, 817 n [2001]; see also O'Brien v O'Brien, 16 AD3d 1015, 1016 n 2 [2005]).

ORDERED that the decision is withheld, application to be relieved of assignment granted and new counsel to be assigned.

ENTER:



Michael J. Novack  
Clerk of the Court