

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

Decided and Entered: April 27, 2006

98584

In the Matter of DANA XX. and
Others, Alleged to be
Neglected Children.

BROOME COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Respondent;

MEMORANDUM AND ORDER

STEPHANIE XX.,

Respondent.

BRIAN YY.,

Appellant.

Calendar Date: March 29, 2006

Before: Crew III, J.P., Spain, Carpinello, Rose and Kane, JJ.

Kelly M. Corbett, Ithaca, for appellant.

Kuredin V. Eytina, Broome County Department of Social
Services, Binghamton, for Broome County Department of Social
Services, respondent.

Spain, J.

Appeal from an order of the Family Court of Broome County
(Connerton, J.), entered March 29, 2005, which granted
petitioner's application, in a proceeding pursuant to Family Ct
Act article 6, for an order of protection.

The children who are the subject of the underlying Family
Ct Act article 10 proceeding were born to respondent (hereinafter

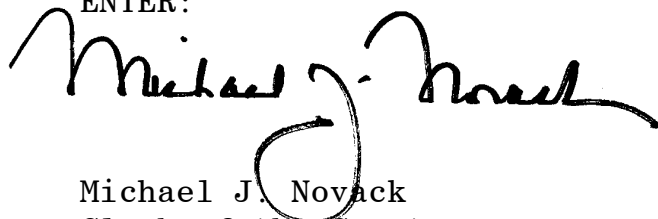
the mother) in 1993, 1995 and 1997. The mother and Brian YY., a nonparty, have a child together who is not the subject of this appeal. Petitioner filed a neglect petition against the mother, alleging, among other things, domestic violence and substance abuse by Brian YY. in the home. Family Court sustained the petition but suspended the judgment on numerous conditions, including that the mother consent to an order of protection requiring her to prevent contact between Brian YY. and the children named in the petition. Brian YY. now appeals from the order of protection that ensued.

Appellate counsel for Brian YY. seeks to be relieved of his assignment on the ground that there are no nonfrivolous issues to pursue on appeal (see Anders v California, 386 US 738 [1967]; People v Stokes, 95 NY2d 633 [2001]). Upon our review of the record and submissions, we agree. With respect to the protective order, Brian YY. was not a party to that proceeding, did not seek to intervene despite having notice of the proceeding, and the order does not direct him to do or refrain from doing anything. Moreover, the order was issued with the consent of the children's mother, and she has not appealed from that order. Under these circumstances, Brian YY. is not an aggrieved party and, accordingly, has no basis to appeal from said order of protection (see CPLR 5511; Matter of William XX. v Broome County Dept. of Social Servs., 11 AD3d 735, 736 [2004]).

Crew III, J.P., Carpinello, Rose and Kane, JJ., concur.

ORDERED that the appeal is dismissed, without costs, and application to be relieved of assignment granted.

ENTER:

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

Michael J. Novack
Clerk of the Court