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

Decided and Entered: February 22, 2007 500019

In the Matter of CHEYENNE QQ.
and Others, Alleged to be
Neglected Children.

FRANKLIN COUNTY DEPARTMENT OF
SOCIAL SERVICES, MEMORANDUM AND ORDER
Respondent;

DONNA RR.,
Appellant.

Calendar Date: January 12, 2007

Before: Cardona, P.J., Mercure, Carpinello, Mugglin and Lahtinen, JJ.

Matthew B. Tully, Albany, for appellant.

Jonathan C. Wool, Franklin County Department of Social Services, Malone, for respondent.

Maria Lally Clark, Law Guardian, Valatie.

Lahtinen, J.

Appeal from an order of the Family Court of Franklin County (Main Jr., J.), entered November 10, 2005, which, inter alia, granted petitioner's application, in a proceeding pursuant to Family Ct Act article 10, to adjudicate respondent's children to be neglected.

Petitioner commenced this proceeding alleging neglect and excessive punishment of respondent's four daughters (born between

1989 and 1995) by respondent and her paramour. The detailed petition alleged, among other things, that forms of punishment used on the children included requiring them to eat their meals and go to the bathroom in the woods outside the home (including in winter and regardless of weather conditions), making them sleep on a cement basement floor, and shooting at the children with a BB gun. At the commencement of the fact-finding hearing, respondent consented (without admitting any specific allegations) to a finding that she had neglected her children. Family Court, among other things, temporarily placed two of the children in petitioner's care pending a permanency hearing scheduled for February 2006. Respondent appeals asserting that Family Court failed to adequately warn her of the potential consequences of her consent.

The appeal is dismissed since it is "from an order entered upon consent and no appeal lies from such an order" (Matter of Forbus v Stolfi, 300 AD2d 852, 852 [2002], lv dismissed 99 NY2d 642 [2003]; see Matter of Jerome Marcel T. [Demetria W.], 28 AD3d 780, 781 [2006]; Matter of John I. [Lisa J.], 6 AD3d 991, 991-992 [2004], lv denied 3 NY3d 602 [2004]). Respondent's challenge to the sufficiency of Family Court's notice of consequences should have been pursued by motion to vacate in that court (see Family Ct Act § 1051 [f]; cf. Matter of Jeffrey X. [Gerald X.], 283 AD2d 687, 688 [2001]). Were we to address the merits, we would find respondent's argument unavailing. Moreover, we note that, while not in the record, petitioner states in its brief (and respondent does not contest) that the matter is now moot since two permanency hearings (one resolved by consent and the other contested) have been conducted.

Cardona, P.J., Mercure, Carpinello and Mugglin, JJ., concur.

ORDERED that the appeal is dismissed, without costs.

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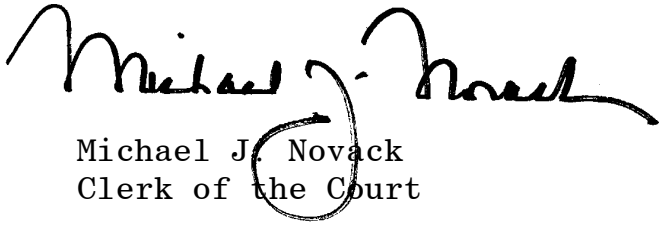

Michael J. Novack
Clerk of the Court