

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

Decided and Entered: October 25, 2007

501812

In the Matter of FELICIA N.
and Others, Alleged to be
Severely Abused and Neglected
Children.

SULLIVAN COUNTY DEPARTMENT OF
FAMILY SERVICES,
Appellant;

MEMORANDUM AND ORDER

MAURICE N.,
Respondent.

Calendar Date: September 11, 2007

Before: Crew III, J.P., Mugglin, Rose, Lahtinen and Kane, JJ.

Michael C. Ross, Sullivan County Department of Family
Services, Monticello, for appellant.

Glenn Kroll, Bloomingburg, for respondent.

Isabelle Rawich, Law Guardian, South Fallsburg.

Rose, J.

Appeal from an order of the Family Court of Sullivan County
(Meddaugh, J.), entered July 26, 2006, which dismissed
petitioner's application, in a proceeding pursuant to Family Ct
Act article 10, to adjudicate respondent's children to be
severely abused and neglected.

Petitioner commenced a proceeding pursuant to Family Ct Act
article 10 alleging that respondent had committed sexual offenses

as defined in Penal Law article 130 and that his daughter (born in 1994) is a severely abused child within the meaning of Social Services Law § 384-b (8). After a hearing at which only respondent and the investigator who took a statement from the child testified, Family Court found insufficient corroboration of the child's out-of-court statements to establish either severe abuse or abuse, and dismissed the petition.

As limited by its brief on appeal, petitioner argues not that there was clear and convincing evidence to support a finding of severe abuse, but only that abuse was proven by a preponderance of the evidence. We cannot agree that even the lesser standard of proof was met here. While "[a] child's unsworn out-of-court statement relating to abuse or neglect may be introduced into evidence at a fact-finding hearing and, if sufficiently corroborated, will support a finding of abuse or neglect" (Matter of Stephen GG., 279 AD2d 651, 652 [2001]), Family Court has "'considerable discretion to decide whether the child's out-of-court statements describing incidents of abuse or neglect have, in fact, been reliably corroborated and whether the record as a whole supports a finding of abuse'" (Matter of Christina F., 74 NY2d 532, 536 [1989], quoting Matter of Nicole V., 71 NY2d 112, 119 [1987]; see Matter of Richard SS., 29 AD3d 1118, 1121 [2006]).

Here, petitioner attempted to corroborate the child's statement through the testimony of the investigator regarding admissions allegedly made by respondent. Due to inconsistencies in the investigator's account of those admissions, as well as respondent's adamant denials that he had either made the alleged admissions or committed the alleged acts, Family Court discredited the investigator's testimony. Where, as here, Family Court is primarily confronted with issues of credibility, its factual findings must be accorded great weight on appeal (see Matter of Frank Y., 11 AD3d 740, 742 [2004]; Matter of Joshua QQ., 290 AD2d 842, 843 [2002]). Inasmuch as the discredited testimony was the only record evidence corroborating the child's out-of-court statements, we find no basis to disturb Family Court's decision.

Crew III, J.P., Mugglin, Lahtinen and Kane, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Michael J. Novack
Clerk of the Court