

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

Decided and Entered: December 20, 2007

501842

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In the Matter of JESSICA P. and  
Others, Alleged to be  
Neglected Children.

COLUMBIA COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

MEMORANDUM AND ORDER

Respondent;

ANGELA Q. ,

Appellant,  
et al.,  
Respondent.

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Calendar Date: November 14, 2007

Before: Crew III, J.P., Peters, Spain, Carpinello and  
Muglin, JJ.

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Alexander W. Bloomstein, Hillsdale, for appellant.

James P. Carlucci, Hudson, for Columbia County Department  
of Social Services, respondent.

Marlene Moberly, Law Guardian, Freehold.

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Carpinello, J.

Appeal from an order of the Family Court of Columbia County  
(Czajka, J.), entered November 22, 2006, which granted  
petitioner's application, in a proceeding pursuant to Family Ct  
Act article 10, to adjudicate respondent Angela Q.'s children to  
be neglected.

Respondent Angela Q. (hereinafter the mother) has three children. Her oldest is a girl born in 1994. For most of this child's life, she resided with the mother and her maternal grandmother, respondent Dorothea G. (hereinafter the grandmother), as well as the grandmother's boyfriend (hereinafter the stepgrandfather) in the grandparents' home. In May 2006, the mother moved out, without the children, amid a dispute over rent. Shortly thereafter, the child revealed that the stepgrandfather had been sexually abusing her for quite some time.

All three children were immediately removed from the grandparents' home and placed in foster care. This Family Ct Act article 10 neglect proceeding was then commenced by petitioner against both the mother and the grandmother. Following fact-finding and dispositional hearings, Family Court adjudicated the children to be neglected and placed them in petitioner's custody. Only the mother appeals.

The mother argues that petitioner failed to present sufficient evidence of neglect. We are unpersuaded. As noted by this Court, "[t]he case law makes clear that a child may be adjudicated to be neglected within the meaning of Family Ct Act § 1012 (f) (i) when a parent 'knew or should have known of circumstances which required action in order to avoid actual or potential impairment of the child' and failed to act accordingly" (Matter of Mary MM., 38 AD3d 956, 957 [2007], quoting Matter of Alaina E., 33 AD3d 1084, 1086 [2006]). Here, long before the oldest child revealed that her stepgrandfather was sexually abusing her, the mother was aware that another family member had accused him of raping her when she was only 17 years old. The mother herself had also been exposed to his unwanted sexual advances and was afraid to be alone with him. Most notably, the mother had specific concerns and suspicions about the stepgrandfather's relationship with the subject child, prompting her to twice ask the child "if anything bad was happening between [them]." Despite her suspicions about the child's sexual abuse, her knowledge of the prior alleged rape and her own fear of the stepgrandfather, the mother not only continued to live in the house with him and the children, but also permitted the stepgrandfather to be alone with the child and to even bathe her (compare Matter of Christian F., 42 AD3d 716 [2007]). A

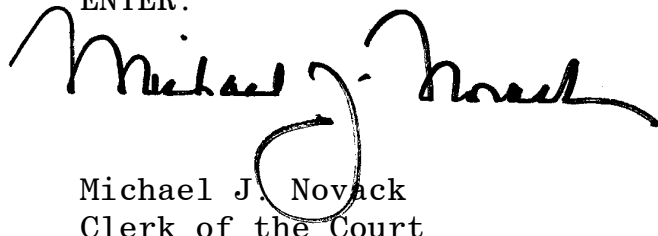
reasonable and prudent parent in similar circumstances would not have done so (see Nicholson v Scoppetta, 3 NY3d 357, 370-371 [2004]). Thus, Family Court's decision adjudicating the children to be neglected is supported by a sound and substantial basis in the record (see Matter of Mary MM., supra; Matter of Vivian OO., 34 AD3d 1111 [2006], lv denied 8 NY3d 808 [2007]; Matter of Alaina E., supra).

The mother also claims that the child's sexual abuse allegations were not sufficiently corroborated. Importantly, however, the mother was charged only with neglect (not sexual abuse) and, in defending such allegations, she did not dispute that the child was sexually abused by the stepgrandfather (see generally Matter of Angelina AA., 211 AD2d 951 [1995], lv denied 85 NY2d 808 [1995]). Moreover, Family Court's finding of neglect was not premised on these conceded acts of sexual abuse as reported by the child; rather, its finding was based on testimony that the mother failed to take any steps to protect this child despite her fears and suspicions about the stepgrandfather. Thus, we are not persuaded that the statutory requirement concerning corroboration was even implicated in this proceeding (see Family Ct Act § 1046 [a] [vi]). In any event, even if implicated, we are satisfied that the child's out-of-court statements were sufficiently corroborated.

Crew III, J.P., Peters, Spain and Mugglin, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Michael J. Novack  
Clerk of the Court