

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

Decided and Entered: November 29, 2007

502204

In the Matter of MADISON UU.
and Another, Alleged to be
Neglected Children.

SULLIVAN COUNTY DEPARTMENT OF
SOCIAL SERVICES,
Appellant;

MEMORANDUM AND ORDER

REBECCA UU.,
Respondent.

Calendar Date: October 12, 2007

Before: Cardona, P.J., Mercure, Crew III, Mugglin and Rose, JJ.

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

Isabelle Rawich, South Fallsburg, for respondent.

Gail B. Rubenfeld, Law Guardian, Monticello.

Crew III, J.

Appeal from an order of the Family Court of Sullivan County
(Ledina, J.), entered February 9, 2007, which dismissed
petitioner's application, in a proceeding pursuant to Family Ct
Act article 10, to adjudicate respondent's children to be
neglected.

Respondent is the biological mother of two children,
Madison (born in 2003) and Nicholas (2006). In January 2006,
when Nicholas was approximately one week old, authorities were

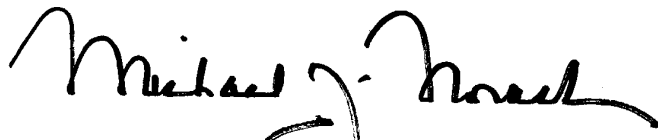
summoned to respondent's residence in response to a complaint that Nicholas had been injured during the course of an altercation between respondent and Nicholas's father. Following an investigation, petitioner commenced the instant proceeding seeking to adjudicate respondent's children to be neglected. A fact-finding hearing ensued, at the conclusion of which Family Court dismissed petitioner's application, finding that petitioner failed to tender sufficient proof to demonstrate that respondent indeed neglected her children. This appeal by petitioner ensued.

We affirm. In light of the conflicting evidence regarding the manner in which Nicholas was injured, together with the minor nature of the injury sustained, we decline to disturb Family Court's determination that the record as a whole is insufficient to support a finding of neglect within the meaning of Family Ct Act § 1012 (f) (i). As there is insufficient proof of neglect as to Nicholas, it necessarily follows that there can be no finding of derivative neglect as to Madison.

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

ORDERED that the order is affirmed, without costs.

ENTER:



Michael J. Novack
Clerk of the Court