

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

Decided and Entered: January 4, 2007

98921

In the Matter of PETER GG.
and Others, Neglected
Children.

COLUMBIA COUNTY DEPARTMENT OF
SOCIAL SERVICES,

MEMORANDUM AND ORDER

Respondent;

PETER HH.,

Appellant.

Calendar Date: November 21, 2006

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

Charles E. Inman, Public Defender, Hudson (Jessica Howser
of counsel), for appellant.

Margaret E. Donnelly, Columbia County Department of Social
Services, Hudson (James A. Carlucci of counsel), for respondent.

Mugglin, J.

Appeal from an order of the Family Court of Columbia County
(Czajka, J.), entered May 4, 2005, which, inter alia, granted
petitioner's application, in a proceeding pursuant to Family Ct
Act article 10, to extend the placement of respondent's children.

Respondent's three children were previously adjudicated as
neglected children and placed in the custody of petitioner. The
present appeal is from an order which extended their placement
until May 15, 2005, rendering this appeal moot (see Matter of

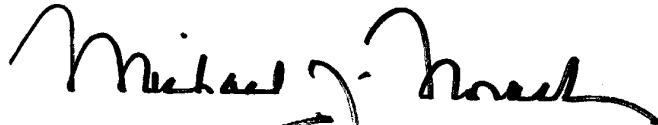
Marcel S. [Julie V.], 15 AD3d 808, 809 [2005]; Matter of Thomas JJ. [Shirley KK.], 14 AD3d 953, 954-955 [2005]; Matter of Miguel HH. [Twila II.], 285 AD2d 692, 692-693 [2001]). Respondent's present argument – that Family Court's finding that he is mildly mentally retarded constitutes a permanent and significant stigma which might indirectly affect his status in any future termination proceeding – is not sufficient to invoke an exception to the mootness doctrine (see Matter of Hearst Corp. v Clyne, 50 NY2d 707, 714-715 [1980]). In such a proceeding, this issue is reviewable because clear and convincing evidence must establish both mental retardation and that such condition, presently or for the foreseeable future, renders the individual unable to provide proper and adequate care for the child in question (see Matter of Adam NN. [Jennifer NN.], 33 AD3d 1187, 1188 [2006]; Matter of Henry W. [Henry MM.], 31 AD3d 940, 941-942 [2006], lvs denied 7 NY3d 711 [2006]; Matter of Melissa LL. [Linda LL.], 30 AD3d 705, 707 [2006], lvs denied 7 NY3d 710 [2006]). Notably, a previous proceeding seeking to terminate respondent's parental rights was dismissed because the evidence failed to appropriately establish that respondent could not adequately address his mental retardation as it pertained to the care of his children (Matter of Peter GG. [Eva GG.], 33 AD3d 1104, 1104 n [2006]).

Lastly, respondent's attempt to challenge Family Court's determination that he violated the order of supervision is not properly before us as no appeal was taken from that order (see CPLR 5515 [1]; see also Symbax, Inc. v Bingaman, 219 AD2d 552, 554 [1995]). Moreover, that order expired May 4, 2006, and is also moot.

Cardona, P.J., Mercure, Crew III and Lahtinen, J.J., concur.

ORDERED that the appeal is dismissed, as moot, without costs.

ENTER:



Michael J. Novack
Clerk of the Court