

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

Decided and Entered: February 26, 2009

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505213

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In the Matter of NICHOLAS JJ.,  
Alleged to be a Juvenile  
Delinquent.

JONATHAN WOOD, as Tompkins  
County Attorney,  
Respondent;

MEMORANDUM AND ORDER

NICHOLAS JJ.,  
Appellant.

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Calendar Date: February 11, 2009

Before: Mercure, J.P., Rose, Lahtinen, Malone Jr. and  
Kavanagh, JJ.

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Tracy A.D. Laughlin, Cherry Valley, for appellant.

Jonathan Wood, County Attorney, Ithaca (Stephen B. Flash of  
counsel), for respondent.

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Mercure, J.P.

Appeals (1) from an order of the Family Court of Tompkins  
County (Sherman, J.), entered April 21, 2008, which, in a  
proceeding pursuant to Family Ct Act article 3, denied  
respondent's motion to vacate an order restoring the matter to  
the calendar, and (2) from an order of said court, entered June  
4, 2008, which granted petitioner's application, in a proceeding  
pursuant to Family Ct Act article 3, to adjudicate respondent a  
juvenile delinquent.

Petitioner commenced this juvenile delinquency proceeding in 2007. After respondent admitted to one count of the petition, Family Court ordered an adjournment in contemplation of dismissal (hereinafter ACD). One of the terms of the ACD required respondent to "[a]bstain from disruptive behavior in the home and in the community" through May 2008. In February 2008, petitioner moved to restore the matter to Family Court's calendar, alleging among other things that respondent's ongoing insubordinate behavior at school had violated that term. Family Court restored the matter and respondent appeals from the denial of his oral application to vacate the order of restoration. Family Court then adjudicated respondent a juvenile delinquent and placed him on probation for one year. Respondent appeals from that order as well. His appeals were consolidated by order of this Court.

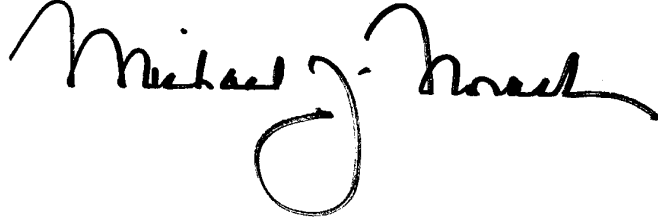
We affirm. Turning first to respondent's unsuccessful motion to vacate, Family Court was authorized to restore the matter to the calendar upon petitioner's motion (see Family Ct Act § 315.3 [1]). Respondent concedes that he had problems in school. As such, Family Court had "a legitimate basis for concluding that" respondent violated a term of the ACD and appropriately declined to vacate the order of restoration (Matter of Edwin L., 88 NY2d 593, 603 [1996]; see Matter of Jamel A., 19 AD3d 689, 691 [2005]).

While respondent also claims a violation of Family Ct Act § 735, he failed to raise this argument before Family Court and it is not preserved for our review (see Matter of Richard W., 226 AD2d 941, 942 [1996], lv denied 88 NY2d 808 [1996]). As for the disposition itself, respondent concedes that an extension of supervision was appropriate and, given his attempts to minimize his role in the events that led to the present proceeding and the evident need to monitor his school behavior, Family Court properly placed him on probation (see Matter of Brooke II., 45 AD3d 1234, 1235 [2007]; Matter of Jesse L., 37 AD3d 998, 999 [2007]; Matter of Jessie GG., 190 AD2d 916, 916-917 [1993]).

Rose, Lahtinen, Malone Jr. and Kavanagh, JJ., concur.

ORDERED that the orders are affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, prominent loop at the end of the last name.

Michael J. Novack  
Clerk of the Court