

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

Decided and Entered: December 3, 2009

506014

In the Matter of NEVAEH SS.
and Others, Alleged to be
Permanently Neglected
Children.

CHEMUNG COUNTY DEPARTMENT OF
SOCIAL SERVICES,
Respondent;

VALERIE L.,
Appellant.

(Proceeding No. 1.)

MEMORANDUM AND ORDER

In the Matter of NEVAEH SS.
and Another, Alleged to be
Permanently Neglected
Children.

CHEMUNG COUNTY DEPARTMENT OF
SOCIAL SERVICES,
Respondent;

JAMES SS.,
Appellant.

(Proceeding No. 2.)

Calendar Date: October 14, 2009

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

John J. Raspante, New Hartford, for Valerie L., appellant.

Abbie Goldbas, Utica, for James SS., appellant.

Samuel D. Castellino, Elmira, for respondent.

Kelly M. Corbett, Law Guardian, Fayetteville.

Mercure, J.P.

Appeals from two orders of the Family Court of Chemung County (Hayden, J.), entered November 6, 2008 and November 21, 2008, which granted petitioner's applications, in two proceedings pursuant to Social Services Law § 384-b, to adjudicate the subject children to be permanently neglected, and terminated respondents' parental rights.

Respondent Valerie L. (hereinafter the mother) is the mother of Misty UU. (born in 1996). The mother and respondent James SS. (hereinafter the father) are also the parents of Nevaeh SS. and Joshua SS. (born in 2005 and 1999, respectively). Respondents were repeatedly found to have neglected the subject children, as well as their older siblings, and have received services over many years. Ultimately, the subject children were removed from the home in May 2006. Since that time, Nevaeh has resided with a foster family, while Misty and Joshua have resided in group homes.

In 2008, petitioner commenced these two proceedings and, following fact-finding and dispositional hearings, Family Court determined that the children were permanently neglected and terminated respondents' parental rights. Respondents appeal, challenging only the dispositional orders. Specifically, the mother argues that Family Court erred in denying her application for a suspended judgment, and the father asserts that the court erred in terminating his rights with respect to Joshua. We disagree.

Turning first to the mother's claim, we note that "[t]he Legislature created the option of a suspended judgment in a termination proceeding so as to allow 'a brief grace period designed to prepare the parent to be reunited with the child'

should such a 'second chance . . . [be] in the child's best interests'" (Matter of Joshua BB., 27 AD3d 867, 869 [2006], quoting Matter of Michael B., 80 NY2d 299, 311 [1992]; see Family Ct Act § 631). Nevertheless, upon a finding of permanent neglect, "there is no presumption that any particular disposition, including the return of a child to a parent, promotes such interests" (Matter of Angelica VV., 53 AD3d 732, 733 [2008]; see Matter of Joshua BB., 27 AD3d at 869).

Here, although the mother had successfully completed one drug rehabilitation program and remained compliant with another, she had been in treatment for only three months at the time of the dispositional hearing despite a history of using cocaine and receiving services from petitioner for the past 12 years. Indeed, there was evidence that the mother continued to relapse while in treatment shortly before the filing of the permanent neglect petition. In addition, the mother stated her intention to return to the father's home despite his untreated cocaine addiction, and she continued to deny that the father had a drug problem. Moreover, it is undisputed that Neveah is in a pre-adoptive foster home, and the other children thrived in their respective placements during the period that respondents had limited contact. In light of this evidence and according deference to Family Court's determination given its opportunity to assess the demeanor and credibility of the witnesses, we cannot say that the court abused its discretion in terminating the mother's parental rights rather than granting a suspended judgment (see Matter of Carlos R., 63 AD3d 1243, 1246 [2009], lv denied 13 NY3d 704 [2009]; Matter of Laelani B., 59 AD3d 880, 882 [2009]; Matter of Angelica VV., 53 AD3d at 733; Matter of Joshua BB., 27 AD3d at 869).

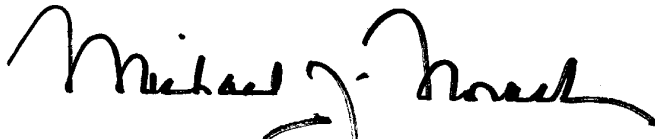
Similarly, we reject the father's argument that Family Court erred in terminating his parental rights with respect to Joshua because he is unlikely to be adopted. First, Joshua's Law Guardian indicates that since the time of the dispositional hearing, Joshua has been matched with a pre-adoptive family, undercutting the main premise of the father's argument. In any event, the father has refused to address his substance abuse problems, engage in meaningful treatment to any extent or exercise consistent visitation with Joshua. Accordingly,

termination of his parental rights to Joshua was proper here (see Matter of Angelica VV., 53 AD3d at 733; Matter of Raine QQ., 51 AD3d 1106, 1106-1107 [2008], lv denied 10 NY3d 717 [2008]; cf. Matter of Amber AA., 301 AD2d 694, 697-698 [2003]).

Rose, Lahtinen, Malone Jr. and Garry, 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 fluid and cursive, with a large loop under the "J".

Michael J. Novack
Clerk of the Court