

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

Decided and Entered: December 17, 2009

506022

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In the Matter of CELINE O. and  
Another, Alleged to be  
Neglected Children.

BROOME COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Respondent;

MEMORANDUM AND ORDER

JOHANNA Q.,

Appellant,  
et al.,  
Respondent.

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Calendar Date: October 21, 2009

Before: Spain, J.P., Rose, Malone Jr., McCarthy and Garry, JJ.

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Sandra M. Colatosti, Albany, for appellant.

Philomena M. Stamato, Broome County Department of Social  
Services, Binghamton, for Broome County Department of Social  
Services, respondent.

Bridget A. O'Connor, Law Guardian, Binghamton.

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Malone Jr., J.

Appeal from an order of the Family Court of Broome County  
(Connerton, J.), entered November 25, 2008, which granted  
petitioner's application, in a proceeding pursuant to Family Ct  
Act article 10, to adjudicate the subject children to be  
neglected.

Respondent Johanna Q. (hereinafter respondent) is the mother of the two subject children, a son (born in 1991) and a daughter (born in 1996), and respondent Aaron R. is the mother's former live-in boyfriend.<sup>1</sup> Petitioner commenced this proceeding in December 2007, seeking an order adjudicating the children to be neglected based upon allegations that respondents left the state without informing the children and leaving them unattended, and exposed the children to domestic violence. Following fact-finding and dispositional hearings, Family Court granted the petition and placed the children in the custody of the son's paternal grandmother. Respondent appeals.<sup>2</sup>

"According great deference to [Family Court's] factual findings, which will only be disturbed if they lack a sound and substantial basis in the record, we find no reason to set aside Family Court's determination that respondent's actions constituted a departure from the minimum degree of care which should be exercised by a reasonable and prudent parent in order to prevent a risk of impairment to the child or imminent danger of impairment" (Matter of Karissa NN., 19 AD3d 766, 766 [2005] [internal quotation marks and citations omitted]; see Matter of Nicholson v Scopetta, 3 NY3d 357, 368 [2004]). The testimony here established that respondent's boyfriend began physically abusing her shortly after he moved into her home. While the altercations occurred outside the children's immediate presence, the children could hear "major arguments" and "serious yelling," saw respondent's injuries and feared for her safety. The abuse was severe enough that, after one particular incident, respondent sought medical attention and called the police from the emergency room. Although respondent promised the responding police officer that she would take the kids to a shelter, she instead returned

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<sup>1</sup> Apparently respondents are also the parents of one child together who is not a subject of this proceeding.

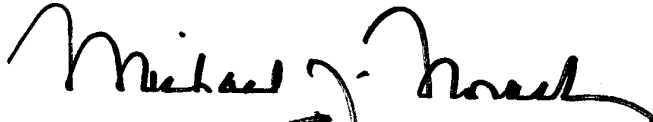
<sup>2</sup> Although the son is now 18 years old and the daughter has apparently been returned to respondent's custody, this appeal is not moot because the finding of neglect could be used against respondent in the future (see Matter of Karissa NN., 19 AD3d 766, 766 n [2005]).

home to her boyfriend, whereupon he again physically assaulted her. Just a few days later, while the children were in school, respondent left with her boyfriend and drove with him out of state without notifying the children or arranging for their care. The son called the police after he found a note that respondent had left under his pillow directing him to call 911, which he understood to be related to the domestic violence. The children were left unattended, with little food in the house, until the following day when petitioner intervened. That respondent attempted to minimize these incidents indicates that she lacked insight into the effect her actions had on the children's emotional and physical well-being. Accordingly, we find that the proof sufficiently supports Family Court's finding of neglect (see Family Ct Act § 1012 [f] [i] [B]; § 1046 [b] [i]; Matter of Angelique L., 42 AD3d 569, 572 [2007]).

Spain, J.P., Rose, McCarthy and Garry, JJ., concur.

ORDERED that the order is 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 at the end.

Michael J. Novack  
Clerk of the Court