

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

Decided and Entered: February 18, 2010

507226

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

BROOME COUNTY DEPARTMENT OF
SOCIAL SERVICES,
Respondent;

MEMORANDUM AND ORDER

MICHAEL UU.,
Appellant,
et al.,
Respondent.

MARIE VV.,
Respondent.

(And Another Related Proceeding.)

Calendar Date: January 7, 2010

Before: Cardona, P.J., Peters, Rose, Kavanagh and McCarthy, JJ.

Teresa C. Mulliken, Harpersfield, for appellant.

Thomas P. Coulson, Broome County Department of Social
Services, Binghamton, for Broome County Department of Social
Services, respondent.

Allen E. Stone, Vestal, for Marie VV., respondent.

Randolph V. Kruman, Law Guardian, Cortland.

Peters, J.

Appeal from an order of the Family Court of Broome County (Charnetsky, J.), entered May 14, 2009, which, among other things, granted petitioner's application, in a proceeding pursuant to Family Ct Act article 10, to adjudicate the subject children to be neglected.

Petitioner commenced this neglect proceeding alleging, among other things, that respondent Michael UU. (hereinafter respondent) used and was under the influence of controlled substances while caring for the subject children (born in 1995 and 1997). Thereafter, with the assistance of counsel, respondent admitted to certain allegations contained in the petition, including that he was a person legally responsible for the children's care, and consented to both a finding that he neglected the children and Family Court's disposition. Respondent now appeals, arguing that he is not a person legally responsible for the children's care within the meaning of Family Court Act § 1012 (a) and (g).

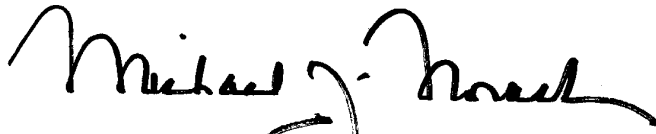
Because no appeal lies from an order entered on consent, this appeal must be dismissed (see Matter of Michael CC., 216 AD2d 740, 740 [1995]; see also Matter of Fantasia Y., 45 AD3d 1215, 1216 [2007]). To the extent that respondent argues that his consent was not knowing, intelligent or voluntary, he failed to make an application in Family Court to vacate the order (see Family Ct Act § 1051 [f]; § 1061; Matter of Brittany T., 48 AD3d 995, 996 [2008]).¹

Cardona, P.J., Rose, Kavanagh and McCarthy, JJ., concur.

¹ Respondent's challenge to the dismissal of his custody modification petition, which order was entered subsequent to the filing of his notice of appeal sub judice, is not properly before us since he did not file a notice of appeal from that order (see Matter of Jasper QQ., 64 AD3d 1017, 1019-1020 [2009], lv denied 13 NY3d 706 [2009]; Matter of Ashley D., 268 AD2d 803, 805 [2000], lv denied 94 NY2d 763 [2000]).

ORDERED that the appeal is dismissed, 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 initial "M".

Michael J. Novack
Clerk of the Court