

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

Decided and Entered: January 12, 2012

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In the Matter of CHASE F. and
Another, Alleged to be
Permanently Neglected
Children.

TOMPKINS COUNTY DEPARTMENT OF
SOCIAL SERVICES,
Respondent;

MICHAEL G.,
Appellant.

(Proceeding No. 1.)

MEMORANDUM AND ORDER

In the Matter of FLORENCE F.,
Respondent,

v

MICHAEL G.,
Appellant,
and

TIFFANY F. et al.,
Respondents.

(Proceeding No. 2.)

Calendar Date: November 17, 2011

Before: Peters, J.P., Malone Jr., Stein, Garry and Egan Jr., JJ.

Kelly M. Corbett, Fayetteville, for appellant.

Daniel S. Feder, Tompkins County Department of Social

Services, Ithaca, for Tompkins County Department of Social Services, respondent.

Mark A. Schaeber, Liverpool, attorney for the children.

Stein, J.

Appeals (1) from an order of the Family Court of Tompkins County (Rowley, J.), entered November 24, 2010, which granted petitioner's application, in proceeding No. 1 pursuant to Social Services Law § 384-b, to adjudicate respondent's children to be permanently neglected children, and terminated respondent's parental rights, and (2) from an order of said court, entered April 22, 2011, which dismissed petitioner's application, in proceeding No. 2 pursuant to Family Ct Act article 6, for custody of the subject children.

Respondent Michael G. (hereinafter the father) is the father of two children (born in 1998 and 2000). In February 2010, petitioner Tompkins County Department of Social Services (hereinafter DSS) commenced the first of these proceedings against the father alleging permanent neglect. Not long thereafter, petitioner Florence F., the children's paternal grandmother, commenced the second of these proceedings against the father and the children's mother seeking custody of the children. Following a fact-finding hearing at which the father failed to appear, Family Court adjudged the father to have permanently neglected the children. The court then held a combined dispositional and custody hearing, after which an order was entered terminating the father's parental rights, placing the children in the custody of DSS and freeing them for adoption. In a separate order, Family Court subsequently dismissed the grandmother's petition. The father now appeals from the order terminating his parental rights, as well as from the order dismissing the grandmother's custody petition.

Initially, we note that, although an appeal from an order of disposition in a permanent neglect proceeding ordinarily brings up for review all underlying orders, including an order of fact-finding (see generally CPLR 5501), no appeal lies here from the order adjudging the father to have permanently neglected his children because such order was entered upon the father's default (see CPLR 5511; Matter of Ariane I. v David I., 82 AD3d 1547, 1548 [2011], lv denied 17 NY3d 703 [2011]; Matter of Natalie Maria D. [Miguel D], 73 AD3d 536, 536 [2010]). As for Family Court's decision to terminate the father's parental rights, rather than order a suspended judgment (see Family Ct Act § 631; Matter of Anastasia FF., 66 AD3d 1185, 1187 [2009], lv denied 13 NY3d 716 [2010]), the father's counsel briefly mentioned in her closing statement the possibility of the children returning to the father's custody, but never actually requested such a disposition. Accordingly, the father has not preserved for review his claim on appeal that a suspended judgment was warranted (see Matter of Destiny CC., 40 AD3d 1167, 1169 [2007]; Matter of James X., 37 AD3d 1003, 1007 [2007]). In any event, we find a sound and substantial basis in the record for Family Court's determination to terminate his parental rights.

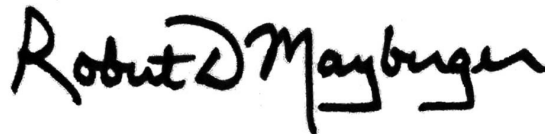
Finally, the father lacks standing to challenge Family Court's order dismissing the grandmother's petition, as he is not an aggrieved party (see CPLR 5511; Matter of Carol YY. v James OO., 68 AD3d 1463, 1463 [2009]). The order dismissed a petition seeking custody as against him and, in any event, his parental rights were already terminated (see Matter of Carrie B. v Josephine B., 81 AD3d 1009, 1009-1010 [2011], appeal dismissed 17 NY3d 773 [2011]). Consequently, the father's appeal from such order must be dismissed.

Peters, J.P., Malone Jr., Garry and Egan Jr., JJ., concur.

ORDERED that the order entered November 24, 2010 is affirmed, without costs.

ORDERED that the appeal from the order entered April 22, 2011 is dismissed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court