

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

Decided and Entered: October 25, 2012

512633

In the Matter of CONNOR CC.
and Another, Alleged to
be Neglected Children.

SCHOHARIE COUNTY DEPARTMENT OF
SOCIAL SERVICES,

MEMORANDUM AND ORDER

Respondent;

JENNIFER DD.,

Appellant.

Calendar Date: September 14, 2012

Before: Mercure, J.P., Malone Jr., McCarthy, Garry and
Egan Jr., JJ.

Sandra M. Colatosti, Albany, for appellant.

David P. Lapinel, Schoharie County Department of Social
Services, Schoharie, for respondent.

Thomas F. Garner, Middleburgh, attorney for the child.

Michael W. Brosnan, Cobleskill, attorney for the child.

Egan Jr., J.

Appeals (1) from an order of the Family Court of Schoharie
County (Bartlett III, J.), entered February 3, 2011, which
granted petitioner's application, in a proceeding pursuant to
Family Ct Act article 10, to adjudicate respondent's children to
be neglected, and (2) from an order of protection entered
thereon.

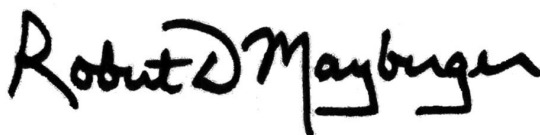
Petitioner commenced this neglect proceeding in January 2010 alleging that respondent abused controlled substances while caring for her two children (born in 1995 and 2004). A fact-finding hearing ensued, during the course of which respondent consented to a finding of neglect without factual admissions (see Family Ct Act § 1051 [a]) and, further, to placement of the children with her parents. When the matter came on for a dispositional hearing, respondent consented to both the continued placement of the children with her parents and the corresponding order of protection. Respondent now appeals.

It is well settled that no appeal lies from an order entered upon a party's consent (see Matter of Violette K. [Sheila E.K.], 96 AD3d 1499, 1499 [2012]; Matter of Mary UU. [Michael UU.-Marie VV.], 70 AD3d 1227, 1228 [2010]; Matter of Fantasia Y., 45 AD3d 1215, 1216 [2007]; Matter of Cheyenne QQ., 37 AD3d 977, 977-978 [2007]). Further, inasmuch as respondent did not move to vacate the underlying order, her present claim – that Family Court failed to comply with the requirements of Family Ct Act § 1051 (f) and, therefore, her consent was not knowing, intelligent and voluntary – is not properly before us (see Matter of Mary UU. [Michael UU.-Marie VV.], 70 AD3d at 1228; Matter of Fantasia Y., 45 AD3d at 1216; cf. Matter of Selena O. [Trisha O.-Steven R.], 84 AD3d 1648, 1648 [2011]; Matter of DeFrancesco v Mushtare, 77 AD3d 1079, 1080 [2010]). Accordingly, these appeals are dismissed.

Mercure, J.P., Malone Jr., McCarthy and Garry, JJ., concur.

ORDERED that the appeals are dismissed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court