

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

Decided and Entered: June 12, 2014

516782

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In the Matter of NA'SIR RR.,  
Alleged to be a Neglected  
Child.

COMMISSIONER OF THE SCHENECTADY  
COUNTY DEPARTMENT OF SOCIAL  
SERVICES,

MEMORANDUM AND ORDER

Respondent;

DEVINE RR.,

Appellant.

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Calendar Date: April 23, 2014

Before: Lahtinen, J.P., Stein, Garry and Rose, JJ.

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Sandra M. Colatosti, Albany, for appellant.

Jennifer M. Barnes, Schenectady County Department of Social  
Services, Schenectady, for respondent.

Karen Crandall, Schenectady, attorney for the child.

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Garry, J.

Appeals (1) from an order of the Family Court of  
Schenectady County (Powers, J.), entered March 15, 2013, which  
granted petitioner's application, in a proceeding pursuant to  
Family Ct Act article 10, to adjudicate respondent's child to be  
neglected, and (2) from the orders of protection and supervision  
issued thereon.

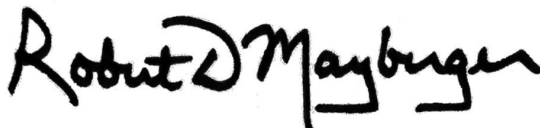
Respondent is the father of a child (born in 2012) who was removed from his mother's care immediately after his birth and temporarily placed in petitioner's custody. Petitioner commenced this proceeding alleging derivative neglect based upon a prior neglect finding. In February 2012, following several appearances, respondent consented to a finding of neglect, without admissions, and Family Court made a finding of neglect based upon the allegations in the petition. The court thereafter entered orders of fact-finding and disposition, supervision and protection. Respondent appeals.

The appeal must be dismissed, as an order entered upon consent is not appealable (see Matter of Dante W. [Justin W.], 110 AD3d 1400, 1401 [2013]; Matter of Trenton G. [Lianne H.], 100 AD3d 1124, 1125 [2012]). We note that in the course of the proceedings, respondent's counsel misstated the law in this respect, without correction. The record also reveals, however, that respondent was advised that Family Court would enter a finding of neglect upon his consent and would then proceed with an order of disposition, and the terms of the order of supervision were described to him (see Family Ct Act § 1051 [f]). Respondent has neither moved to vacate the finding of neglect nor to withdraw his consent and, thus, his claim that his consent was invalid is not properly before this Court (see Family Court Act § 1061; Matter of Dante W. [Justin W.], 110 AD3d at 1401; Matter of Gabrielle S. [Reberick T.], 105 AD3d 1098, 1098-1099 [2013]; Matter of Logan BB. [Michelle DD.], 82 AD3d 1373, 1374 [2011]).

Lahtinen, J.P., Stein and Rose, JJ., concur.

ORDERED that the appeal is dismissed, without costs.

ENTER:

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

Robert D. Mayberger  
Clerk of the Court