

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

Decided and Entered: May 28, 2015

517487

In the Matter of JAMES I. and
Others, Neglected Children.

BROOME COUNTY DEPARTMENT OF
SOCIAL SERVICES,
Respondent;

MEMORANDUM AND ORDER

JENNIFER I.,
Appellant.

Calendar Date: February 18, 2015

Before: Peters, P.J., Lahtinen, Garry and Lynch, JJ.

Norbert A. Higgins, Binghamton, for appellant.

Kuredin Eytina, Broome County Department of Social
Services, Binghamton, for respondent.

John M. Scanlon, Binghamton, attorney for the child.

Marcy Lynn Cox, Endwell, attorney for the child.

Allen E. Stone, Vestal, attorney for the child.

Peters, P.J.

Appeal from an order of the Family Court of Broome County
(Connerton, J.), entered July 30, 2013, which, in a proceeding
pursuant to Family Ct Act article 10-A, modified the permanency
plan for respondent's children.

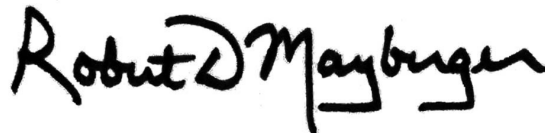
Respondent is the mother of three children – James I. (born in 1998), Jessie I. (born in 2001) and Destany K. (born in 2008) – all of whom were removed from her care in 2012. James and Jessie were placed in petitioner's custody and Destany, whose father is deceased, was placed in the care of her paternal grandparents. Thereafter, upon consent, respondent and the father of James and Jessie were adjudicated to have neglected the children based upon the father's sexual abuse of Jessie, respondent's excessive corporal punishment of the children and her relapse in her alcohol recovery. In 2013, following a permanency hearing and interviews with the children, Family Court modified the permanency goal from reunification with respondent to permanent placement with fit and willing relatives.

On this appeal, we need only address respondent's contention that the joint representation of the children by the same attorney created a conflict of interest. During the course of the permanency proceedings, it became clear that James and Jessie had divergent interests with regard to where and with whom they preferred to live and that the attorney for the children was ultimately going to have to take a position contrary to that of one of them. Because the children were entitled to appointment of separate attorneys to represent their conflicting interests, the underlying order must be reversed and the matter remitted for further proceedings (see Corigliano v Corigliano, 297 AD2d 328, 329 [2002]; Gary D.B. v Elizabeth C.B., 281 AD2d 969, 971-972 [2001]; Matter of Brooke D., 193 AD2d 1100, 1100-1101 [1993], lv dismissed 82 NY2d 734 [1993]; cf. Matter of Chelsea BB., 34 AD3d 1085, 1088 [2006], lv denied 8 NY3d 806 [2007]).

Lahtinen, Garry and Lynch, JJ., concur.

ORDERED that the order is reversed, on the law, without costs, and matter remitted to the Family Court of Broome County for further proceedings not inconsistent with this Court's decision.

ENTER:

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

Robert D. Mayberger
Clerk of the Court