

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

Decided and Entered: November 19, 2015

518170

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In the Matter of IRYANNA I.,  
Alleged to be a Neglected,  
Abused and/or Severely  
Abused Child.

ST. LAWRENCE COUNTY DEPARTMENT  
OF SOCIAL SERVICES,  
Respondent;

MEMORANDUM AND ORDER

BENJAMIN K.,  
Appellant.

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Calendar Date: October 13, 2015

Before: Lahtinen, J.P., Garry, Egan Jr. and Clark, JJ.

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Alexander Lesyk, Norwood, for appellant.

Maureen C. McGaw, Canton, attorney for the child.

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Lahtinen, J.P.

Appeals from an order and an amended order of the Family Court of St. Lawrence County (Morris, J.), entered September 13, 2013 and September 16, 2013, which, in a proceeding pursuant to Family Ct Act article 10, denied respondent's motion for summary judgment dismissing the petition.

In 2013, petitioner commenced this proceeding alleging that respondent had derivatively neglected, abused and/or severely abused the subject child (born in 2013). Respondent moved for summary judgment dismissing the petition. In an order and amended order, Family Court found that triable issues of fact

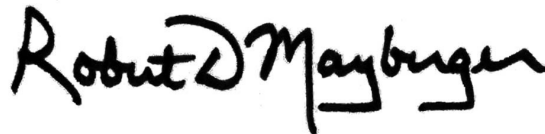
existed regarding whether respondent had complied with required counseling and whether the conditions that led to the previous findings of abuse continued and, therefore, it denied the motion. Respondent now appeals.

Respondent's counsel seeks to be relieved of his assignment on the ground that there are no nonfrivolous issues to be pursued on appeal (see Anders v California, 386 US 738 [1967]; Matter of Jennifer HH. v Veronica II., 70 AD3d 1072, 1073 [2010]; Matter of William XX. v Broome County Dept. of Social Servs., 11 AD3d 735, 736 [2004]). While "[i]ntermediate orders in Family Ct Act article 10 matters involving abuse and neglect are appealable as of right" (Matter of Ameillia RR. [Megan SS.], 95 AD3d 1525, 1526 [2012]; see Family Ct Act § 1112 [a]; cf. Matter of Confort v Nicolai, 9 AD3d 428, 429 [2004]; Matter of Koch v Ackerman, 142 AD2d 581, 582 [1988]), a hearing was held after the order denying respondent's motion was issued, and Family Court held that petitioner had established that respondent derivatively neglected and abused the subject child. As a result, we agree with the parties that the instant matter is moot (see Matter of Ameillia RR. [Megan SS.], 95 AD3d at 1526; Matter of Alexander K. [Jennifer N.], 77 AD3d 1023, 1024 [2010]) and, therefore, we need not address counsel's application to be relieved of his assignment (see Matter of Alexander K. [Jennifer N.], 77 AD3d at 1024 [2010]; Matter of Chelsea M. [Ernest M.], 68 AD3d 1489, 1489-1490 [2009]).

Garry, Egan Jr. and Clark, JJ., concur.

ORDERED that the appeals are dismissed, as moot, 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