

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

Decided and Entered: July 20, 2017

523306

In the Matter of ANGEL RR. and
Another, Neglected Children.

SULLIVAN COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Respondent;

MEMORANDUM AND ORDER

GLORIA RR.,

Respondent.

PEDRO RR.,

Appellant.

Calendar Date: June 9, 2017

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

Cliff Gordon, Monticello, for appellant.

Constantina Hart, Sullivan County Department of Social
Services, Monticello, for Sullivan County Department of Social
Services, respondent.

Jane M. Bloom, Monticello, attorney for the child.

Devine, J.

Appeal from an order of the Family Court of Sullivan County
(McGuire, J.), entered June 21, 2016, which, in a proceeding
pursuant to Family Ct Act articles 10 and 10-A, continued the
permanency plan for the subject children.

Pedro RR. (hereinafter the father) and Gloria RR. (hereinafter the mother) are the parents of two children born in 2002 and 2004. Family Court determined in 2005 that the father had neglected the subject children and others and, as a result, issued an order of protection in favor of the children (Matter of Stephanie RR. [Pedro RR.], 140 AD3d 1237, 1237-1238 [2016]). Upon an appeal from a subsequent permanency hearing order, the father challenged the aforementioned order of protection and we held, among other things, that he could not properly do so in that context (Matter of Angel RR. [Gloria RR.-Pedro RR.], 145 AD3d 1136, 1137-1138 [2016]). While that appeal was pending, another permanency hearing was held in May 2016 at which the father requested that Family Court allow him visitation. Family Court declined to do so due to the order of protection, but invited the father to move for modification of the order of protection if circumstances changed. Family Court thereafter issued a permanency hearing order from which the father appeals, arguing solely that the existing order of protection should be modified.

The "appropriate avenue for remedying . . . [an] order of protection . . . [is either] a timely appeal" from such order (Matter of Anderson v Anderson, 9 AD3d 619, 620 [2004]) or a motion seeking modification pursuant to Family Ct Act § 1061 (see Matter of Matthew W. v Sandra W., 291 AD2d 693, 694 [2002]). Thus, inasmuch as the father cannot challenge an order of protection within the context of an appeal from a permanency hearing order, the appeal must be dismissed (see Matter of Angel RR. [Gloria RR.-Pedro RR.], 145 AD3d at 1137-1138).

McCarthy, J.P., Garry, Egan Jr. and Clark, JJ., concur.

ORDERED that the appeal is dismissed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive style with a large, prominent "R" at the beginning and a long, sweeping underline at the end.

Robert D. Mayberger
Clerk of the Court