

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD JUDICIAL DEPARTMENT

In the Matter of Connor S. and Others, Alleged to be Neglected
Children

516934 (N.Y. App. Div. Nov. 20, 2014) · No. 516934 · Decided November 20, 2014

SUMMARY

The Appellate Division dismissed a father's appeal from a Family Court order adjudicating his children neglected under Family Court Act article 10 because the order was entered on consent and he had not moved to vacate it. The court additionally stated that, if the order were reviewable, the record showed that the father knowingly and voluntarily consented after being informed of the order's implications.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Judicial Department
WRITING FOR THE COURT	Devine, J.; Stein, J.P.; Garry, J.; Rose, J.; Lynch, J.
JURISDICTION	New York
DECIDED	November 20, 2014
DOCKET	516934
DISPOSITION	dismissed
PROCEDURAL POSTURE	Joseph S. appealed from an order of the Family Court of Schoharie County entered May 3, 2013, adjudicating his children neglected by consent in a proceeding under Family Court Act article 10.
STANDARD OF REVIEW	Because the challenged order was entered on consent and the appellant did not move to vacate it, the appeal had to be dismissed. The court stated alternatively that, if the order were properly before it, review of the record would show that the consent was knowing and voluntary.
PRECEDENTIAL VALUE	Published Appellate Division memorandum and order; precedential under New York law subject to applicable court rules.
PARTIES	Joseph S. v. Schoharie County Department of Social Services

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether an appeal may be taken from a Family Court order entered on the respondent's consent.
2. Whether the appellate court could review the respondent's claim that his consent was involuntary when he had not moved to vacate the consent order.

HOLDINGS

1. An order entered on consent cannot be appealed.
2. When a respondent challenges the voluntariness or validity of a consent order but has not moved to vacate the order on those grounds, the appeal must be dismissed.

KEY QUOTATIONS

“Inasmuch as the order that respondent challenges was entered on consent, it cannot be appealed” (516934 at 2)

FACTUAL BACKGROUND

Joseph S. was the respondent father of Connor S., Eoin S., and Liam S. The Department of Social Services alleged that he engaged in domestic violence in the children's presence involving Liam's mother and his paramour. Assisted by counsel, Joseph consented to an adjudication that the children were neglected, after which Family Court imposed several conditions, including continued supervision by the Department.

PROCEDURAL HISTORY

The Schoharie County Department of Social Services commenced a neglect proceeding alleging that Joseph S. committed acts of domestic violence in the presence of the children. With counsel, Joseph consented to a finding of neglect under Family Court Act § 1051(a), and Family Court entered an order imposing supervision and other conditions. He appealed, arguing that his consent was involuntary because of stress and alleged misinformation, but he had not moved in Family Court to vacate the consent order.

DISPOSITION

dismissed

CASES CITED

- Matter of Gabrielle S. [Reberick T.], 105 AD3d 1098, 1098-1099 (2013)
- Matter of Trenton G. [Lianne H.], 100 AD3d 1124, 1125 (2012)

- Matter of Fantasia Y., 45 AD3d 1215, 1216 (2007)
- Matter of Mary UU. [Michael UU.–Marie VV.], 70 AD3d 1227, 1228 (2010)
- Matter of Nicole KK., 46 AD3d 1267, 1268 (2007)
- Matter of Cheyenne QQ., 37 AD3d 977, 978 (2007)
- Matter of Gabriella R. [Mindy S.], 68 AD3d 1487, 1488 (2009), lv dismissed 14 NY3d 812 (2010)

OPINION

PER CURIAM.

State of New York Supreme Court, Appellate Division Third Judicial Department Decided and Entered: November 20, 2014 516934 _____ In the Matter of CONNOR S. and Others, Alleged to be Neglected Children. SCHOHARIE COUNTY DEPARTMENT OF SOCIAL SERVICES, MEMORANDUM AND ORDER Respondent; JOSEPH S., Appellant. _____ Calendar Date: October 9, 2014 Before: Stein, J.P., Garry, Rose, Lynch and Devine, JJ. _____ Bruce E. Knoll, Albany, for appellant.

David Lapinal, Schoharie County Department of Social Services, Schoharie, for respondent. Leah W. Casey, Schenectady, attorney for the children. Teresa Meade, Middleburgh, attorney for the child. _____ Devine, J. Appeal from an order of the Family Court of Schoharie County (Bartlett III, J.), entered May 3, 2013, which granted petitioner's application, in a proceeding pursuant to Family Ct Act article 10, to adjudicate the subject children to be neglected. -2- 516934 Respondent is the father of Connor S. (born in 2001), Eoin S. (born in 2002) and Liam S. (born in 2008).

Respondent is the sole living parent of Connor and Eoin and has physical custody of them, while Liam's mother has custody of him. Petitioner commenced this neglect proceeding alleging that respondent had engaged in acts of domestic violence in the presence of the children involving Liam's mother and his paramour. While assisted by counsel, respondent consented to a finding that he had neglected the children pursuant to Family Ct Act § 1051 (a) and, thereafter, Family Court adjudicated the children as neglected and ordered respondent to comply with several terms and conditions, including the continued supervision by petitioner.

Respondent now appeals. Respondent maintains that his consent to Family Court's finding of neglect was involuntary as he was under stress and was misinformed by his attorney and the court of the consequences of agreeing to the disposition. Inasmuch as the order that respondent challenges was entered on consent, it cannot be appealed (see Matter of Gabrielle S. [Reberick T.], 105 AD3d 1098, 1098-1099 [2013]; Matter of Trenton G. [Lianne H.], 100 AD3d 1124, 1125 [2012]; Matter of Fantasia Y., 45 AD3d 1215, 1216 [2007]).

As respondent failed to move to vacate the order on the grounds that he now raises, we must dismiss the appeal (see Matter of Mary UU. [Michael UU.–Marie VV.], 70 AD3d 1227, 1228 [2010]; Matter of Nicole KK., 46 AD3d 1267, 1268 [2007]; Matter of Cheyenne QQ., 37 AD3d 977, 978 [2007]). Nonetheless, were the order before us we would find, upon a review of the record, that respondent knowingly and voluntarily agreed to the consent order and that he was duly informed of its implications (see Family Ct Act § 1051 [f]; Matter of Gabriella R. [Mindy S.], 68 AD3d 1487, 1488 [2009], lv dismissed 14 NY3d 812 [2010]).

Stein, J.P., Garry, Rose and Lynch, JJ., concur. -3- 516934 ORDERED that the appeal is dismissed, without costs. ENTER: Robert D. Mayberger Clerk of the Court