

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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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. [Mindyn S.], 68 AD3d 1487, 1488 (2009), lv dismissed 14 NY3d 812 (2010)

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