

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14843
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_____AD3d_____

Argued - March 16, 2007

ROBERT W. SCHMIDT, J.P.
WILLIAM F. MASTRO
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

2006-00533
2006-05533

DECISION & ORDER

In the Matter of Dimitriy R. (Anonymous).
Nassau County Department of Social Services,
respondent; Colleen R. (Anonymous), et al., appellants
(and a related proceeding).

(Docket Nos. N-14758-04, N-545-05)

Mangi & Graham, LLP, Williston Park, N.Y. (Robert C. Mangi and James J. Graham,
Jr., of counsel), for appellants.

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Gerald R. Podlesak of
counsel), for respondent.

Alan Smilowitz, West Hempstead, N.Y., Law Guardian for the child.

In a child protective proceeding pursuant to Family Court Act article 10, Colleen R. and Gary R. appeal, as limited by their brief, from (1) so much of a fact-finding order of the Family Court, Nassau County (Foskey, J.), dated December 22, 2005, as, after a hearing, found that they neglected the child Dimitriy R., and (2) an order of disposition of the same court dated May 10, 2006, which, inter alia, adjudged that the child Dimitriy R. is a neglected child and placed the child in the custody of the Nassau County Department of Social Services for a period of one year.

ORDERED that the appeal from the fact-finding order is dismissed, without costs or disbursements, as the fact-finding order was superseded by the order of disposition dated May 10, 2006; and it is further,

April 24, 2007

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MATTER OF R. (ANONYMOUS), DIMITRIY

ORDERED that the order of disposition is affirmed, without costs or disbursements.

In a child protective proceeding, the party seeking to establish neglect must show, "first, that a child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired and second, that the actual or threatened harm to the child is a consequence of the failure of the parent or caretaker to exercise a minimum degree of care in providing the child with proper supervision or guardianship" (*Nicholson v Scopetta*, 3 NY3d 357, 368; *see* Family Ct Act § 1012[f]).

The Nassau County Department of Social Services, as the petitioner, had the burden of proving neglect by a preponderance of the evidence (*see* Family Ct Act § 1046[b][i]), and it satisfied that burden.

SCHMIDT, J.P., MASTRO, CARNI and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court