

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

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Submitted - April 14, 2008

STEVEN W. FISHER, J.P.  
JOSEPH COVELLO  
DANIEL D. ANGIOLILLO  
ARIEL E. BELEN, JJ.

2007-03084  
2007-03085

DECISION & ORDER

In the Matter of Brian I. (Anonymous).  
Orange County Department of Social Services,  
respondent; Brian T. (Anonymous), appellant.  
(Proceeding No. 1)

In the Matter of Elizabeth Dunhyel F. (Anonymous).  
Orange County Department of Social Services,  
respondent; Brian T. (Anonymous), appellant.  
(Proceeding No. 2)

In the Matter of Olivia F. (Anonymous).  
Orange County Department of Social Services,  
respondent; Brian T. (Anonymous), appellant.  
(Proceeding No. 3)

(Docket Nos. N-69-06, N-70-06, N-71-06)

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Michele Marte-Indzonka, Newburgh, N.Y., for appellant.

David Darwin, County Attorney, Goshen, N.Y. (Peter R. Schwarz of counsel), for  
respondent.

Jeanmarie A. Marquardt, Shrub Oak, N.Y., attorney for the children.

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MATTER OF F. (ANONYMOUS), ELIZABETH DUNHYEL  
MATTER OF F. (ANONYMOUS), OLIVIA

In three related child protective proceedings pursuant to Family Court Act article 10, the father appeals from (1) a fact-finding order of the Family Court, Orange County (Klein, J.), dated July 18, 2006, which, after a hearing, found, in effect, that the subject children were derivatively neglected, and (2) an order of disposition of the same court dated January 8, 2007, which, upon the fact-finding order, determined, inter alia, that the children should remain in the custody of the Orange County Department of Social Services.

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that the appeal from the fact-finding order is dismissed, without costs or disbursements, as the fact-finding order was superseded by the order of disposition and is brought up for review on the appeal from the order of disposition; and it is further,

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

The petitioner had the burden of proving, by a preponderance of the evidence, that the father neglected the subject children (*see* Family Ct Act § 1012[f], § 1046[b][i]; *Nicholson v Scoppetta*, 3 NY3d 357, 368). The petitioner satisfied that burden with evidence that, inter alia, the father was convicted of multiple sexual abuse crimes against child victims other than the subject children. A derivative finding of neglect should be made where the evidence of abuse of another child or children demonstrates such an impaired level of parental judgment as to create a substantial risk of harm for any child in the respondent's care (*see Matter of Ian H.*, 42 AD3d 701; *Matter of Amber C.*, 38 AD3d 538, 540; *Matter of Nicole G.*, 274 AD2d 478, 479; *Matter of Dutchess County Dept. of Social Servs. [Noreen K.]*, 242 AD2d 533, 534; *Matter of Dutchess County Dept. of Social Servs. v Douglas E.*, 191 AD2d 694, 694).

The father's remaining contentions are either unpreserved for appellate review or without merit.

FISHER, J.P., COVELLO, ANGIOLILLO and BELEN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

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