

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

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Y/kmb

_____AD3d_____

Submitted - January 30, 2012

DANIEL D. ANGIOLILLO, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2011-07076

DECISION & ORDER

In the Matter of Edward J. Mc. (Anonymous), Jr.
Suffolk County Department of Social Services,
respondent; Edward J. Mc. (Anonymous), appellant.

(Docket No. N-10084-11)

Steven Flaumenhaft, West Sayville, N.Y., for appellant.

Dennis M. Cohen, Acting County Attorney, Central Islip, N.Y. (James G. Bernet of
counsel), for respondent.

Valerie M. Zuckerman, Smithtown, N.Y., attorney for the child.

In a child neglect proceeding pursuant to Family Court Act article 10, the father appeals, as limited by his brief, from so much of an order of fact-finding and disposition of the Family Court, Suffolk County (Freundlich, J.), dated July 26, 2011, as, after fact-finding and dispositional hearings, found that he had neglected the subject child and directed, inter alia, that he attend and participate in a substance abuse and rehabilitation program.

ORDERED that the order of fact-finding and disposition is affirmed insofar as appealed from, without costs or disbursements.

Although the father did not appear at the hearing, the order appealed from was not rendered upon default, as his counsel appeared and participated at the hearing (*see Matter of Elijah P. [C.I.P.]*, 76 AD3d 631; *Matter of Newman v Newman*, 72 AD3d 973). Accordingly, the father may appeal from the order of fact-finding and disposition (*see Matter of Amber Megan D.*, 54 AD3d 338; *Matter of Vanessa M.*, 263 AD2d 542; *Matter of Geraldine Rose W.*, 196 AD2d 313).

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MATTER OF Mc. (ANONYMOUS), EDWARD J., JR.

Contrary to the father's contention, the Family Court's determination that he neglected the subject child by virtue of his drug use is supported by a preponderance of the evidence (*see* Family Ct Act § 1012[f][i][B]; § 1046[a][iii], [b][i]; *Matter of Zaire D. [Benellic R.]*, 90 AD3d 923; *Matter of Latrell S. [Christine K.]*, 80 AD3d 618; *Matter of Brian W.*, 66 AD3d 791; *Matter of Gregory S.*, 39 AD3d 552; *Matter of Ayana Jean L.*, 23 AD3d 472; *cf. Matter of Anastasia G.*, 52 AD3d 830, 831-832).

ANGIOLILLO, J.P., LEVENTHAL, AUSTIN and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court