

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

D34146
N/kmb

_____AD3d_____

Submitted - February 9, 2012

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2011-01948

DECISION & ORDER

In the Matter of Assatta N. P. (Anonymous).
Nassau County Department of Social Services,
respondent; Nelson L. (Anonymous), Jr., appellant.

(Docket No. NA-7109-10)

Ralph R. Carrieri, Mineola, N.Y., for appellant.

John Ciampoli, County Attorney, Mineola, N.Y. (Robert F. Van der Waag of
counsel), for respondent.

Marjorie G. Adler, Garden City, N.Y., attorney for the child.

In a child protective proceeding pursuant to Family Court Act article 10, the father appeals from an order of fact-finding and disposition of the Family Court, Nassau County (Greenberg, J.), dated January 13, 2011, which granted the petitioner's motion for summary judgment finding that he had severely abused the subject child and adjudged that he had severely abused the subject child.

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

The father's contention that his due process rights were violated because the Family Court addressed the petitioner's motion for summary judgment in his absence is without merit. "While due process of law applies in Family [Court] Act article 10 proceedings and includes the right of a parent to be present at every stage of the proceedings, that right is not absolute" (*Matter of Elizabeth T. [Leonard T.]*, 3 AD3d 751, 753; *see Matter of Lillian D.L.*, 29 AD3d 583; *Matter of*

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MATTER OF P. (ANONYMOUS), ASSATTA N.

Q.-L.H., 27 AD3d 738; *Matter of James Carton K.*, 245 AD2d 374, 377). Here, balancing the due process rights of the father with the respective rights and “mental and emotional well being of the child,” the Family Court did not improvidently exercise its discretion in entertaining the motion in the father’s absence (*Matter of Q.-L.H.*, 27 AD3d at 739; see Family Ct Act § 1042; *Matter of Lillian D.L.*, 29 AD3d at 584). In addition, the father was not deprived of the effective assistance of counsel, as counsel is not ineffective for “fail[ing] to make a motion or argument that has little or no chance of success” (*People v Caban*, 5 NY3d 143, 152 [internal quotation marks omitted]; see *People v Padgett*, 87 AD3d 1166, 1167; *Matter of Ruvolo v Herrera*, 62 AD3d 1012; *Matter of Alfred C.*, 237 AD2d 517).

SKELOS, J.P., DICKERSON, ENG and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court