

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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CAF 10-02034

PRESENT: SCUDDER, P.J., SMITH, CENTRA, LINDLEY, AND MARTOCHE, JJ.

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IN THE MATTER OF SAMED S., MAURICE R., MALIK S.,  
JOSEFT A., FRANSHESKA D., AMAURI R., AND  
ADELL H.-S.

----- MEMORANDUM AND ORDER  
ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,  
PETITIONER-RESPONDENT;

SALEH A., RESPONDENT-APPELLANT,  
AND BRAUNA S., RESPONDENT.

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DAVID J. PAJAK, ALDEN, FOR RESPONDENT-APPELLANT.

JOSEPH T. JARZEMBEK, BUFFALO, FOR PETITIONER-RESPONDENT.

SHEILA SULLIVAN DICKINSON, ATTORNEY FOR THE CHILDREN, BUFFALO, FOR  
SAMED S., MAURICE R., MALIK S., JOSEFT A., AMAURI R., AND ADELL H.-S.

DAVID C. SCHOPP, ATTORNEY FOR THE CHILD, THE LEGAL AID BUREAU OF  
BUFFALO, INC., BUFFALO (CHARLES D. HALVORSEN OF COUNSEL), FOR  
FRANSHESKA D.

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Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered September 10, 2010 in a proceeding pursuant to Family Court Act article 10. The order adjudicated the subject children to be neglected and abused.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Respondent father appeals from an order adjudging several children under his care and control to be neglected and abused. Prior to the hearing on the issue whether the father was "a person legally responsible" pursuant to Family Court Act § 1012 (g), the father had pleaded guilty to sexually abusing one child (hereafter, victim) and was sentenced to a term of incarceration. We reject the father's contention that the petition should have been dismissed because he pleaded guilty to a count in the indictment that alleged sexual contact in December 2004, not July 2006, as alleged in the Family Court petition. The proof adduced at the hearing on the issue whether the father was a "person legally responsible" established that the sexual contact occurred in December 2004. Thus, inasmuch as the proof does not conform to the allegations of the petition, the court may amend the allegations to conform to the proof (see § 1051 [b]), and the petition is not subject to dismissal on that

ground. We have considered the father's remaining contentions and conclude that they are without merit.

Entered: June 8, 2012

Frances E. Cafarell  
Clerk of the Court