

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

121

CAF 22-01138

PRESENT: CURRAN, J.P., SMITH, GREENWOOD, DELCONTE, AND HANNAH, JJ.

IN THE MATTER OF LEONARD P.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

KRISTOPHER P., RESPONDENT-APPELLANT.
(APPEAL NO. 1.)

CHARLES J. GREENBERG, AMHERST, FOR RESPONDENT-APPELLANT.

MELISSA HORVATITS, BUFFALO, FOR PETITIONER-RESPONDENT.

DAVID C. SCHOPP, THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO
(RUSSELL E. FOX OF COUNSEL), ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), dated June 14, 2022, in a proceeding pursuant to Family Court Act article 10. The order, inter alia, found that respondent had abused the subject child.

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

Memorandum: In these proceedings pursuant to Family Court Act article 10, respondent father appeals from orders determining that he abused the child who is the subject of appeal No. 1 (child) and derivatively abused the children who are the subject of appeal Nos. 2 and 3, i.e., the child's siblings. The orders were entered after a fact-finding hearing on abuse petitions filed against the father and the children's mother. We affirm.

We reject the father's contention in appeal No. 1 that petitioner failed to establish by a preponderance of the evidence that he abused the child and his contentions in appeal Nos. 2 and 3 that petitioner failed to establish by a preponderance of the evidence that he derivatively abused the child's siblings. As we concluded in the mother's appeals, those contentions are without merit (*Matter of Leonard P. [Patricia M.]*, 222 AD3d 1443, 1443-1444 [4th Dept 2023], lv denied 41 NY3d 905 [2024]). We reject the father's further contention in all three appeals that he was denied meaningful representation by his attorney's failure to call the child's pediatrician and the mother's obstetrician to testify. The father's contention that those witnesses would have provided testimony favorable to his case is based

on speculation and is insufficient to establish deficient representation (*see id.* at 1444-1445).

Entered: March 14, 2025

Ann Dillon Flynn
Clerk of the Court