

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

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CAF 23-01344

PRESENT: BANNISTER, J.P., MONTOUR, SMITH, GREENWOOD, AND HANNAH, JJ.

IN THE MATTER OF GODDESS H.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

DAMON H., RESPONDENT-APPELLANT.

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

LINDSEY PASTUSZYNSKI, BUFFALO, FOR PETITIONER-RESPONDENT.

DEBORAH K. JESSEY, CLARENCE, ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered August 3, 2023, in a proceeding pursuant to Family Court Act article 10. The order, among other things, adjudged that respondent had neglected the subject child.

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

Memorandum: In this proceeding pursuant to Family Court Act article 10, as limited by his brief, respondent father appeals from an order of fact-finding and disposition insofar as it adjudged the subject child to have been neglected.

Contrary to the father's contention, we conclude that there is a sound and substantial basis in the record supporting Family Court's determination that, under the circumstances of this case (*cf. Matter of Linda E.*, 143 AD2d 904, 908 [2d Dept 1988]), petitioner met its burden of establishing, by a preponderance of the evidence, that the child was neglected based upon the father's conduct in allowing the child to witness the father engaging in sex and sexual conduct in open areas of his home (*see Matter of Jacyah V. [Joseph V.]*, 188 AD3d 586, 587 [1st Dept 2020]; *Matter of Raelene B. [Alex D.]*, 179 AD3d 1315, 1317 [3d Dept 2020]; *Matter of Heather WW.*, 300 AD2d 940, 941 [3d Dept 2002]; *see generally Matter of Gina R. [Christina R.]*, 211 AD3d 1483, 1484 [4th Dept 2022]).

Entered: November 21, 2025

Ann Dillon Flynn
Clerk of the Court