

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

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CAF 07-01094

PRESENT: SMITH, J.P., CENTRA, PERADOTTO, AND GORSKI, JJ.

IN THE MATTER OF MADISON C. AND RILEY C.

NIAGARA COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

LORNA C., RESPONDENT,
AND PAUL C., RESPONDENT-APPELLANT.

ROBERT M. PUSATERI, CONFLICT DEFENDER, LOCKPORT (EDWARD P. PERLMAN OF
COUNSEL), FOR RESPONDENT-APPELLANT.

LAURA A. WAGNER, LOCKPORT, FOR PETITIONER-RESPONDENT.

CYNTHIA A. FALK, LAW GUARDIAN, NIAGARA FALLS, FOR MADISON C. AND RILEY
C.

Appeal from an order of the Family Court, Niagara County (John F. Batt, J.), entered April 23, 2007 in a proceeding pursuant to Family Court Act article 10. The order determined that Riley C. is an abused child and that Madison C. is a neglected child.

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

Memorandum: Paul C. (respondent), the live-in boyfriend of respondent mother, appeals from an order adjudicating the mother's daughter Riley to be an abused child and the mother's daughter Madison to be derivatively neglected. Respondent contends that Family Court erred in determining that petitioner established by a preponderance of the evidence that Riley was an abused child inasmuch as the petition alleged, inter alia, that Riley was a severely abused child, and such a determination must be based upon clear and convincing evidence (see Family Ct Act § 1051 [e]). Respondent is correct with respect to the standard of review to be applied in determining whether a child is severely abused. Nevertheless, we note that the court properly considered in the alternative whether petitioner established by a preponderance of the evidence that Riley was an abused child rather than a severely abused child (see generally *Matter of Julia BB.*, 42 AD3d 208, 218-219, lv denied 9 NY3d 815).

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court