

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

896

CAF 08-02251

PRESENT: CENTRA, J.P., PERADOTTO, GREEN, PINE, AND GORSKI, JJ.

IN THE MATTER OF TYLER D.,
RESPONDENT-APPELLANT.

OSWEGO COUNTY ATTORNEY,
PETITIONER-RESPONDENT.

MEMORANDUM AND ORDER

SUSAN B. MARRIS, LAW GUARDIAN, MANLIUS, FOR RESPONDENT-APPELLANT.

RICHARD C. MITCHELL, COUNTY ATTORNEY, OSWEGO (JAMES K. EBY OF
COUNSEL), FOR PETITIONER-RESPONDENT.

Appeal from an order of the Family Court, Oswego County (David J. Roman, J.), entered October 9, 2008 in a proceeding pursuant to Family Court Act article 3. The order placed respondent on probation for two years upon a juvenile delinquency adjudication.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the order entered June 27, 2008 is vacated, and the matter is remitted to Family Court, Oswego County, for further proceedings on the petition.

Memorandum: Respondent, who was adjudicated a juvenile delinquent based upon his commission of an act that, if committed by an adult, would constitute the crime of endangering the welfare of a child, appeals from an order of disposition that, inter alia, placed him on probation under the supervision of the Oswego County Probation Department for two years. We agree with respondent that his admission to the underlying act was defective based on Family Court's failure to comply with Family Court Act § 321.3 (1) by conducting an adequate allocution of his mother (*see Matter of Andrew J.S.*, 48 AD3d 1224; *Matter of Sean R.P.*, 24 AD3d 1200, lv denied 6 NY3d 711; *Matter of Brandon M.*, 299 AD2d 966). Although respondent did not preserve his contention for our review, we note that preservation is not required inasmuch as "[t]he statute's requirements . . . are mandatory and nonwaivable" (*Matter of Florence V.*, 222 AD2d 991, 992; *see Matter of Mary L.M.*, 5 AD3d 1069). Thus, the dispositional order is reversed and the fact-finding order is vacated (*see Andrew J.S.*, 48 AD3d at 1225; *Matter of Andres S.*, 34 AD3d 1340; *Brandon M.*, 299 AD2d at 967). Because the period of respondent's placement has not expired, we do not dismiss the petition (*cf. Sean R.P.*, 24 AD3d at 1201).

Entered: July 10, 2009

Patricia L. Morgan
Clerk of the Court