

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

1386

CAF 08-01920

PRESENT: MARTOCHE, J.P., SMITH, FAHEY, CARNI, AND PINE, JJ.

IN THE MATTER OF STEVEN G.

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

DAIRYN O., RESPONDENT,
AND STEVEN G., RESPONDENT-APPELLANT.

CHRISTINE M. COOK, SYRACUSE, FOR RESPONDENT-APPELLANT.

GORDON J. CUFFY, COUNTY ATTORNEY, SYRACUSE (SARA J. LANGAN OF
COUNSEL), FOR PETITIONER-RESPONDENT.

KELLY M. CORBETT, LAW GUARDIAN, FAYETTEVILLE, FOR STEVEN G.

Appeal from an order of the Family Court, Onondaga County (Martha E. Mulroy, J.), entered August 20, 2008 in a proceeding pursuant to Social Services Law § 384-b. The order, insofar as appealed from, terminated the parental rights of respondent Steven G.

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

Memorandum: On appeal from an order terminating his parental rights with respect to his child on the ground of permanent neglect, respondent father contends that he was not served with the neglect petition and thus did not receive notice of the underlying neglect proceeding, in which he was a "non-respondent parent." The record belies that contention. Family Court's "Order of Fact-Finding and Disposition and Permanency Hearing (Neglect)" indicates that the father was in fact served with a copy of the neglect petition with respect to the child as "a non-respondent parent" but that he did not appear. The father was subsequently served with the termination petition and appeared in response thereto.

The father did not, however, move to vacate the prior order in the underlying neglect proceeding pursuant to CPLR 5015 (a) (4) or to Family Court Act § 1061 (*see generally Matter of Ceirra L.*, 50 AD3d 1520; *Matter of Shaune TT.*, 251 AD2d 758). In any event, the conclusory assertion of the father that he was not notified of the neglect proceeding was insufficient to raise an issue of fact requiring a traverse hearing with respect to service of the neglect petition (*see Shaune TT.*, 251 AD2d 758).

We reject the further contention of the father that the court's assignment of counsel when he appeared in response to the petition seeking to terminate his parental rights was "late" and "constitutionally inadequate" inasmuch as the father had not previously appeared in the proceeding.