

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

428

CAF 08-01784

PRESENT: SMITH, J.P., CENTRA, FAHEY, AND PINE, JJ.

IN THE MATTER OF KEYAREI M., NETZA M., JR.,
AND TAJANIQUE M.

MEMORANDUM AND ORDER

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

NETZA M., RESPONDENT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR RESPONDENT-APPELLANT.

JOSEPH T. JARZEMBEK, BUFFALO, FOR PETITIONER-RESPONDENT.

DAVID C. SCHOPP, LAW GUARDIAN, THE LEGAL AID BUREAU OF BUFFALO, INC.,
BUFFALO (CHARLES D. HALVORSEN OF COUNSEL), FOR KEYAREI M., NETZA M.,
JR., AND TAJANIQUE M.

Appeal from an order of the Family Court, Erie County (Patricia A. Maxwell, J.), entered August 1, 2008 in a proceeding pursuant to Family Court Act article 10. The order directed respondent to comply with an order of protection upon a finding of abuse.

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

Memorandum: Respondent father contends that the evidence is legally insufficient to support Family Court's finding that he derivatively abused three of his children based upon his admission that he committed serious abuse in causing the death of their sister. We reject that contention. Pursuant to Family Court Act § 1046 (a) (i), "proof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of . . . the respondent." Furthermore, "[w]here the conduct which formed the basis for a finding of abuse as to one child is so proximate in time to the derivative proceeding that it can reasonably be concluded that the condition still exists, a finding of abuse should be made as to the surviving child[ren]" (*Matter of James P.*, 137 AD2d 461, 464), and that is the case here. The father failed to preserve for our review his further contention that Family Court erred in failing to conduct a separate dispositional hearing and, in any event, that contention lacks merit (*see Matter of Damion S.*, 300 AD2d 1039, 1040).

We have considered the remaining contention of the father and

conclude that it is without merit.

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court