

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

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CAF 09-00543, CAF 09-00544

PRESENT: SCUDDER, P.J., PERADOTTO, LINDLEY, GREEN, AND GORSKI, JJ.

IN THE MATTER OF ELIZABETH W., MICHAEL W.,
NATHANIEL W., AND RICHARD W.

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

THERESA W. AND PAUL W., RESPONDENTS-APPELLANTS.

WILLIAM D. BRODERICK, JR., ELMA, FOR RESPONDENTS-APPELLANTS.

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

DAVID C. SCHOPP, ATTORNEY FOR THE CHILDREN, THE LEGAL AID BUREAU OF
BUFFALO, INC., BUFFALO (CHARLES D. HALVORSEN OF COUNSEL), FOR
ELIZABETH W., MICHAEL W., NATHANIEL W., AND RICHARD W.

Appeals from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered February 18, 2009 in a proceeding pursuant to Family Court Act article 10. The order, among other things, adjudged that respondents neglected their children.

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

Memorandum: In this proceeding pursuant to article 10 of the Family Court Act, respondents appeal from an order adjudging that they neglected their four children. Contrary to the contention of respondents and the Attorney for the Children, we conclude that petitioner established by a preponderance of the evidence that the physical, mental or emotional condition of the children had been impaired as "a consequence of the failure of [respondents] to exercise a minimum degree of care in providing the child[ren] with proper supervision or guardianship" (*Nicholson v Scoppetta*, 3 NY3d 357, 368; see Family Ct Act § 1046 [b] [i]). With respect to respondent mother, petitioner established that she repeatedly subjected the children to unnecessary and demeaning physical examinations and gave them an herbal remedy that she knew to be toxic (see generally *Matter of Morgan P.*, 60 AD3d 1362; *Matter of Andrew B.*, 49 AD3d 638, 639-640, lv denied 10 NY3d 714). With respect to respondent father, petitioner established that he knew or reasonably should have known that the mother was harming the children "and that a reasonably prudent parent would have acted differently and, in so doing, prevented the [harm]" (*Matter of Cory S.*, 70 AD3d 1321, 1322 [internal quotation marks

omitted]).

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court