

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

1273

CAF 10-01890

PRESENT: SCUDDER, P.J., SMITH, GREEN, GORSKI, AND MARTOCHE, JJ.

IN THE MATTER OF CLEOPHUS M.B.

ONEIDA COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER;

MEMORANDUM AND ORDER

ERIKA B., RESPONDENT,
AND TORRENCE B., RESPONDENT-RESPONDENT.

JOHN G. KOSLOSKY, ESQ., ATTORNEY FOR THE CHILD,
APPELLANT.

JOHN G. KOSLOSKY, ATTORNEY FOR THE CHILD, UTICA, APPELLANT PRO SE.

PETER J. DIGIORGIO, JR., UTICA, FOR RESPONDENT-RESPONDENT.

Appeal from an order of the Family Court, Oneida County (James R. Griffith, J.), entered August 31, 2010 in a proceeding pursuant to Family Court Act article 10. The order dismissed the petition.

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

Memorandum: As limited by his brief, the Attorney for the Child appeals from that part of an order entered following a fact-finding hearing that dismissed the petition insofar as it alleged that the child who is the subject of this proceeding was derivatively neglected by respondent father. We affirm. Although Family Court Act § 1046 (a) (i) permits evidence of the father's neglect of siblings of the child to be considered in determining whether the child was neglected, "the statute does not mandate a finding of derivative neglect" (*Matter of Jocelyne J.*, 8 AD3d 978, 979), and "such evidence typically may not serve as the sole basis of a finding of neglect" (*Matter of Evelyn B.*, 30 AD3d 913, 914, *lv denied* 7 NY3d 713). Family Court properly concluded under the circumstances of this case that the evidence was insufficient to sustain a finding of derivative neglect (*see Matter of Ronald M.*, 254 AD2d 838, 839).

Entered: December 23, 2011

Frances E. Cafarell
Clerk of the Court