

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

982

CAF 12-00431

PRESENT: FAHEY, J.P., PERADOTTO, CARNI, AND SCONIERS, JJ.

IN THE MATTER OF JOSEPH C.E.,
RESPONDENT-APPELLANT.

MEMORANDUM AND ORDER

THOMAS ROOTE, PETITIONER-RESPONDENT.

JOHN M. LOCKHART, ATTORNEY FOR THE CHILD, GENESEO, FOR
RESPONDENT-APPELLANT.

Appeal from an order of the Family Court, Livingston County (Dennis S. Cohen, J.), entered September 23, 2011 in a proceeding pursuant to Family Court Act article 7. The order, among other things, adjudged that respondent is a person in need of supervision.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the motion is granted and the petition is dismissed.

Memorandum: Respondent appeals from an order adjudicating him a person in need of supervision and placing him on probation for a period of one year. At the outset, we note that, "[a]lthough the dispositional portion of the . . . order . . . has expired by its own terms, a review of [respondent's] adjudication as a person in need of supervision is not academic because of the possibility of collateral legal consequences resulting from the adjudication" (*Matter of Leslie H. v Carol M.D.*, 47 AD3d 716, 717; see Family Ct Act § 783).

Turning to the merits, we agree with respondent that Family Court erred in denying his motion to dismiss the petition. In a report attached to the petition, a representative of the Livingston County Probation Department (LCPD), the lead agency pursuant to Family Court Act § 735 (a), stated in a conclusory manner that diversion services for respondent and his family were provided prior to the filing of the petition. "Thus, the petition failed to demonstrate that the LCPD had 'exert[ed] what the statute refers to as documented diligent attempts to avoid the necessity of filing a petition' " (*Matter of Nicholas R.Y. [Joanne Y.]*, 91 AD3d 1321, 1322; see § 735 [b], [d]). "[T]he failure to comply with such substantive statutory requirements constitutes a nonwaivable jurisdictional defect requiring dismissal of the petition" (*Nicholas R.Y.*, 91 AD3d at 1322 [internal quotation marks omitted]).

Entered: October 5, 2012

Frances E. Cafarell
Clerk of the Court