

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

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CAF 14-00219

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, VALENTINO, AND WHALEN, JJ.

IN THE MATTER OF CYLE J.F. AND COREY A.F.

MEMORANDUM AND ORDER

SENECA COUNTY DIVISION OF HUMAN SERVICES,
PETITIONER-RESPONDENT;

ALEXANDER F., RESPONDENT-APPELLANT.

FRANKLIN & GABRIEL, OVID (STEVEN J. GETMAN OF COUNSEL), FOR
RESPONDENT-APPELLANT.

FRANK R. FISHER, COUNTY ATTORNEY, WATERLOO (DAVID R. MORABITO, JR., OF
COUNSEL), FOR PETITIONER-RESPONDENT.

MARYBETH D. BARNET, ATTORNEY FOR THE CHILDREN, CANANDAIGUA.

Appeal from an order of the Family Court, Seneca County (Dennis F. Bender, J.), entered January 10, 2014 in a proceeding pursuant to Family Court Act article 10. The order, among other things, placed respondent under the supervision of petitioner for a period of one year and placed the subject children in the custody of the Commissioner of Social Services of Seneca County.

It is hereby ORDERED that said appeal from the order insofar as it concerns disposition is unanimously dismissed and the order is otherwise affirmed without costs.

Memorandum: Respondent father appeals from an order of disposition placing his children in the custody of petitioner upon a finding that he neglected the children by, inter alia, inflicting excessive corporal punishment and misusing a drug (see Family Ct Act § 1012 [f] [i] [B]). The father contends that Family Court denied him due process by allowing the children's mother, who was not a respondent in the neglect proceeding, to participate in the fact-finding hearing as a party even after she withdrew her custody petition (see generally § 1035 [d]; *Matter of Telsa Z. [Rickey Z.-Denise Z.]*, 71 AD3d 1246, 1250-1251). The father did not timely object to the mother's participation and thus failed to preserve his contention for our review (see generally *Matter of Lucinda A. [Luba A.]*, 120 AD3d 492, 494, lv denied ___ NY3d ___ [Apr. 2, 2015]; *Matter of Ashley L.C. [James L.C.]*, 68 AD3d 1742, 1743). In any event, we reject the father's related contention that the court erred in denying his motion to strike evidence elicited by the mother inasmuch as other evidence amply supports the finding of neglect (see generally *Matter of Kinara C. [Jerome C.]*, 89 AD3d 839, 840-841; *Matter of Mary S.*, 279

AD2d 896, 898). The father's remaining contentions relate only to the disposition, i.e., the placement of the children and the terms of his visitation with them, and we dismiss as moot the father's appeal from that part of the order inasmuch as it has expired by its own terms (see *Matter of Gabriella G. [Jeannine G.]*, 104 AD3d 1136, 1136; *Matter of Kennedie M. [Douglas M.]*, 89 AD3d 1544, 1546, lv denied 18 NY3d 808).

Entered: May 1, 2015

Frances E. Cafarell
Clerk of the Court