

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

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CAF 09-00584

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

IN THE MATTER OF CUNNTREL A., DAYJAH I M.A.,
DUVON J.A., AND TRYMEIR D.A.

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

CARRIE P., RESPONDENT,
AND JERMAINE D.A., RESPONDENT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (MARY P. DAVISON OF
COUNSEL), FOR RESPONDENT-APPELLANT.

GORDON J. CUFFY, COUNTY ATTORNEY, SYRACUSE (MARY J. FAHEY OF COUNSEL),
FOR PETITIONER-RESPONDENT.

SUSAN B. MARRIS, LAW GUARDIAN, MANLIUS, FOR CUNNTREL A., DAYJAH I M.A.,
DUVON J.A., AND TRYMEIR D.A.

Appeal from an order of the Family Court, Onondaga County (Martha E. Mulroy, J.), entered March 10, 2009 in a proceeding pursuant to Family Court Act article 10. The order, insofar as appealed from, adjudged that respondent Jermaine D.A. had neglected two of his children.

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

Memorandum: Respondent father appeals from an order adjudicating two of his children to be neglected based on his failure to supply them with adequate education (see Family Ct Act § 1012 [f] [i] [A]). Contrary to the father's contention, petitioner met its burden of establishing educational neglect by a preponderance of the evidence (see § 1046 [b] [i]; *Matter of Ember R.*, 285 AD2d 757, 758, lv denied 97 NY2d 604). Petitioner submitted evidence establishing that each child had "a significant, unexcused absentee rate that [had] a detrimental effect on [each] child's education" (*Ember R.*, 285 AD2d at 758; see *Matter of Matthew B.*, 24 AD3d 1183; *Matter of Dareth O.*, 304 AD2d 667). The father failed to present "evidence that the [children are] attending school and receiving the required instruction in another place" or to establish a reasonable justification for the children's absences and thus failed to rebut the prima facie evidence of educational neglect (*Matter of Christa H.*, 127 AD2d 997, 997; see *Matter of Brian H.*, 2 Misc 3d 1003[A], 2003 NY Slip Op 51715[U]; see

generally Matthew B., 24 AD3d 1183).

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court