

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

**465**

**CAF 17-00472**

PRESENT: SMITH, J.P., CARNI, NEMOYER, AND WINSLOW, JJ.

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IN THE MATTER OF CAIDEN G.

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ONONDAGA COUNTY DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES, PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

WALTER G., RESPONDENT-APPELLANT,  
AND MONIQUE (W.)G., RESPONDENT.

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COUNSEL), FOR RESPONDENT-APPELLANT.

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COUNSEL), FOR PETITIONER-RESPONDENT.

SARA E. LOWENGARD, SYRACUSE, ATTORNEY FOR THE CHILD.

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Appeal from an order of the Family Court, Onondaga County  
(Michele Pirro Bailey, J.), entered February 10, 2017 in a proceeding  
pursuant to Family Court Act article 10. The order, inter alia,  
determined that respondent neglected the subject child.

It is hereby ORDERED that said appeal insofar as it concerns the  
finding of neglect is unanimously dismissed and the order is affirmed  
without costs.

Memorandum: Petitioner, Onondaga County Department of Children  
and Family Services (DCFS), commenced this neglect proceeding pursuant  
to Family Court Act article 10 alleging, inter alia, that respondent  
father neglected the subject child by failing to protect the child  
after the child disclosed that he had been sexually abused by the  
paternal grandfather. DCFS alleged in the amended petition that the  
father failed to bring the child to two scheduled appointments at a  
child advocacy center to be interviewed; that, despite having been  
directed by police detectives and DCFS staff to ensure that the child  
had no contact with the grandfather while the investigation was  
pending, the father allowed the child to stay at the grandfather's  
house for two days; and that the child was found sleeping in the  
grandfather's bed. DCFS also alleged that the father had engaged in  
acts of domestic violence in the presence of the child. The father  
consented to the temporary removal of the child to the custody of  
DCFS, which placed the child in foster care, and subsequently entered  
an admission of neglect. Family Court conducted a dispositional and  
permanency hearing, and determined, inter alia, that the placement of  
the child in the custody of DCFS and foster care should continue until

the next permanency hearing, approximately six months later.

Initially, we note that the father's challenge to the underlying finding of neglect is not reviewable on appeal because it was premised on his admission of neglect and thereby made in an order entered on the consent of the father (see *Matter of Martha S. [Linda M.S.]*, 126 AD3d 1496, 1497 [4th Dept 2015], *lv dismissed in part and denied in part* 26 NY3d 941 [2015]). The father never moved to vacate the finding of neglect or to withdraw his consent to the order, and thus his challenge to the factual sufficiency of his admission is not properly before us (see *id.*; see also Family Ct Act § 1051 [f]). We therefore dismiss the appeal to that extent. We note, in any event, that the father waived his right to appeal with respect to fact-finding.

We reject the father's further contention that the court erred in continuing the child's placement when the child "could have been returned home safely with an [o]rder of [p]rotection." The determination whether to terminate or to continue a placement rests within the discretion of the court and should not be disturbed absent an improvident exercise of discretion (see generally Family Ct Act § 1065 [a]; *Matter of Latisha C. [Wanda C.]*, 101 AD3d 1113, 1115 [2d Dept 2012]). Although the evidence at the hearing establishes that the father received sexual abuse education and counseling, and that he completed domestic violence classes, it further establishes that he has made little progress in "overcom[ing] the specific problems which led to the removal of the child" (*Matter of Carson W. [Jamie G.]*, 128 AD3d 1501, 1501 [4th Dept 2015], *lv dismissed* 26 NY3d 976 [2015] [internal quotation marks omitted]). We therefore conclude that the court's determination is supported by the record, and we see no need to disturb it (see *Matter of Lylly M.G. [Theodore T.]*, 121 AD3d 1586, 1587-1588 [4th Dept 2014], *lv denied* 24 NY3d 913 [2015] [internal quotation marks omitted]).

We have considered the father's remaining contentions and conclude that they are without merit.