

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

1018

CAF 16-00105

PRESENT: CENTRA, J.P., CARNI, LINDLEY, TROUTMAN, AND WINSLOW, JJ.

IN THE MATTER OF KAMERON V.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

EVA V., RESPONDENT,
AND JAMEL L., RESPONDENT-APPELLANT.

CHARLES J. GREENBERG, AMHERST, FOR RESPONDENT-APPELLANT.

KATE S. NOWADLY, BUFFALO, FOR PETITIONER-RESPONDENT.

DAVID C. SCHOPP, ATTORNEY FOR THE CHILD, THE LEGAL AID BUREAU OF
BUFFALO, INC., BUFFALO (CHARLES D. HALVORSEN OF COUNSEL).

Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered December 17, 2015 in a proceeding pursuant to Family Court Act article 10. The order found that respondent Jamel L. had neglected the subject child.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the petition against respondent Jamel L. is dismissed.

Memorandum: In this proceeding brought pursuant to Family Court Act article 10, Jamel L. (respondent) appeals from an order of fact-finding determining that he neglected the subject child. We agree with respondent that the evidence does not support Family Court's determination that he is a person legally responsible for the child (see § 1012 [g]), and the court therefore erred in determining that he neglected the child (see § 1012 [f] [i]). Even giving deference to the court's credibility determinations (see *Matter of Donell S.* [*Donell S.*], 72 AD3d 1611, 1611-1612, lv denied 15 NY3d 705), we conclude that petitioner's witnesses established that respondent and the mother of the child had been living together for some unspecified period of time, but there was nothing further to show that respondent acted "as the functional equivalent of a parent in a familial or household setting" (*Matter of Yolanda D.*, 88 NY2d 790, 796; see *Matter of Trenasia J.* [*Frank J.*], 25 NY3d 1001, 1004). There was no testimony that respondent, the mother, and the child were "living together as a family" (*Donell S.*, 72 AD3d at 1612), or that respondent provided childcare or financial support, or performed any household duties (cf. *Matter of Mackenzie P.G.* [*Tiffany P.*], 148 AD3d 1015, 1017; *Matter of Keniya G.* [*Avery P.*], 144 AD3d 532, 533; *Matter of*

Jayline R. [Jose M.], 110 AD3d 419, 420; *Matter of Tyler MM. [Stephanie NN.]*, 82 AD3d 1374, 1375, *lv denied* 17 NY3d 703).

Entered: September 29, 2017

Mark W. Bennett
Clerk of the Court