

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 9, 2009

506368

In the Matter of THERESA BB.,
Appellant,

v

RYAN DD.,
Respondent,
and

MEMORANDUM AND ORDER

ST. REGIS MOHAWK TRIBE
DEPARTMENT OF SOCIAL
SERVICES,
Respondent.

Calendar Date: May 27, 2009

Before: Mercure, J.P., Rose, Kane, Kavanagh and Garry, JJ.

John A. Cirando, Syracuse, for appellant.

David E. LaPlant, Malone, for St. Regis Mohawk Tribe
Department of Social Services, respondent.

David P. Dylis, Law Guardian, Ballston Spa.

Mercure, J.P.

Appeal from an order of the Family Court of St. Lawrence
County (Potter, J.), entered June 12, 2008, which dismissed
petitioner's application, in a proceeding pursuant to Family Ct
Act article 6, for custody of her grandchildren.

In January 2007, the subject Native American children were
removed from their mother's care after a neglect petition was

filed against her. Upon a finding of neglect, the children were placed with respondent St. Regis Mohawk Tribe Department of Social Services (hereinafter DSS).¹ DSS, in turn, placed the children in the care of foster parents.

The mother died in November 2007 and petitioner, the children's maternal grandmother, thereafter commenced this custody proceeding. The father, respondent Ryan DD., subsequently surrendered his parental rights on the condition that the children be adopted by their foster parents. Immediately following that conditional surrender, Family Court dismissed the instant proceeding without a hearing, and petitioner now appeals.

We affirm. Petitioner has no special right to custody of her grandchildren that would allow her "to override the right of the natural parent to surrender the child to a public agency and to confer on it the right to consent to the adoption of the child" (Matter of Peter L., 59 NY2d 513, 520 [1983]; see Matter of Sickler v Roach, 169 AD2d 874, 874-875 [1991]). Nor is petitioner entitled "to override a decision by [DSS] to place the child[ren] for adoption with adoptive parents to be selected by the agency" (Matter of Peter L., 59 NY2d at 516). Accordingly, once the father surrendered his parental rights to DSS for the purposes of adoption, Family Court was deprived of authority to entertain this custody proceeding and appropriately dismissed it (see Matter of Gerald BB., 51 AD3d 1081, 1086 [2008], lv denied 11 NY3d 703 [2008]; Matter of Linda S. v Krishna S., 50 AD3d 805, 806 [2008]; Matter of Genoria SS. v Christina TT., 233 AD2d 827, 828 [1996], lv denied 89 NY2d 811 [1997]). Should

¹ DSS notes that petitioner incorrectly named the St. Regis Mohawk Tribal Council rather than DSS as a party respondent in the notice of appeal. Given the absence of any prejudice to DSS resulting from this clerical defect, we will disregard it and treat the notice of appeal as containing the correct caption (see CPLR 2001; Matter of Tagliaferri v Weiler, 1 NY3d 605, 606 [2004]; Broughton v Dona, 63 AD2d 1101, 1101 [1978], appeals dismissed 46 NY2d 1013, 1074 [1979], lv denied 47 NY2d 709 [1979]).

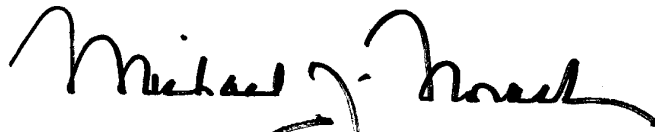
petitioner still seek custody of the children, her sole remedy is to seek adoption (see Matter of Herbert PP. v Chenango County Dept. of Social Servs., 299 AD2d 780, 781 [2002]).

Petitioner's remaining argument that Family Court erred in not complying with the Indian Child Welfare Act (see 25 USC § 1901 et seq.) is unpreserved for our review (see McCleary v City of Glens Falls, 32 AD3d 605, 607 [2006]; Matter of Joseph ZZ., 245 AD2d 881, 884 [1997], lv denied 91 NY2d 810 [1998]).

Rose, Kane, Kavanagh and Garry, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is fluid and cursive, with a large loop at the end.

Michael J. Novack
Clerk of the Court