

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

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CAF 07-02050

PRESENT: HURLBUTT, J.P., MARTOCHE, CARNI, GREEN, AND PINE, JJ.

IN THE MATTER OF DAVONTAE D., CELIA D.C.,
SAMUEL D., KNOWLEDGE O.D., AND MARKELL D.

MEMORANDUM AND ORDER

MONROE COUNTY DEPARTMENT OF HUMAN SERVICES,
PETITIONER-RESPONDENT;

CELIA D., RESPONDENT-APPELLANT.

LORENZO NAPOLITANO, ROCHESTER, FOR RESPONDENT-APPELLANT.

DANIEL M. DELAUS, JR., COUNTY ATTORNEY, ROCHESTER (PAUL N. HUMPHREY OF
COUNSEL), FOR PETITIONER-RESPONDENT.

ANTHONY LEAVY, LAW GUARDIAN, ROCHESTER, FOR DAVONTAE D., CELIA D.C.,
SAMUEL D., KNOWLEDGE O.D., AND MARKELL D.

Appeal from an order of the Family Court, Monroe County (Marilyn L. O'Connor, J.), entered September 6, 2007 in a proceeding pursuant to Social Services Law § 384-b. The order, among other things, terminated respondent's parental rights.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the matter is remitted to Family Court, Monroe County, for further proceedings in accordance with the following Memorandum: Respondent mother appeals from an order terminating her parental rights with respect to her five children pursuant to Social Services Law § 384-b based upon a finding that she had permanently neglected them. We conclude that Family Court abused its discretion in entering the order upon the mother's default after granting the motion of the mother's attorney to withdraw as counsel without notice to the mother (*see* CPLR 321 [b] [2]; Family Ct Act § 165 [b]; *Matter of Hohenforst v DeMagistris*, 44 AD3d 1114, 1116; *Matter of Michael W.*, 239 AD2d 865). "Because the purported withdrawal of counsel in this case was ineffective, the order entered by Family Court was improperly entered as a default order and appeal therefrom is not precluded" (*Matter of Tierra C.*, 227 AD2d 994, 995; *see Matter of Kwasi S.*, 221 AD2d 1029). We therefore reverse the order and remit the matter to Family Court for reassignment of counsel and a new hearing on the petition.

Entered: May 1, 2009

Patricia L. Morgan
Clerk of the Court