

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

587

CAF 08-00802

PRESENT: SMITH, J.P., CENTRA, FAHEY, CARNI, AND GORSKI, JJ.

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IN THE MATTER OF LA'DERRICK W. AND QUENTIN W.

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

ASHLEY W., RESPONDENT-APPELLANT.

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KATHLEEN P. REARDON, ROCHESTER, FOR RESPONDENT-APPELLANT.

CARACCIOLI & NELSON, PLLC, WATERTOWN (KATHRYN G. WOLFE OF COUNSEL),  
FOR PETITIONER-RESPONDENT.

LISA A. PROVEN, LAW GUARDIAN, WATERTOWN, FOR LA'DERRICK W. AND QUENTIN  
W.

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Appeal from an order of the Family Court, Jefferson County (Richard V. Hunt, J.), entered April 3, 2008 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, Jefferson County, for further proceedings in accordance with the following Memorandum: Respondent mother appeals from a default order terminating her parental rights upon a finding that she had permanently neglected her children. We agree with the mother that Family Court abused its discretion in granting the motion of the mother's attorney to withdraw as counsel for the mother without notice to her. "An attorney of record may withdraw as counsel only upon notice to his or her client" (*Matter of Hohenforst v DeMagistris*, 44 AD3d 1114, 1116; see CPLR 321 [b] [2]; Family Ct Act § 165 [b]; *Matter of Davontae D.*, \_\_\_ AD3d \_\_\_ [May 1, 2009]; *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 (see *Davontae D.*, \_\_\_ AD3d \_\_\_; *Michael W.*, 239 AD2d at 866). In light of our conclusion that a new hearing on the petition is necessary, we do not address the mother's remaining

contentions.

Entered: June 5, 2009

Patricia L. Morgan  
Clerk of the Court