

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

1040

CAF 10-02449

PRESENT: FAHEY, J.P., PERADOTTO, LINDLEY, SCONIERS, AND GREEN, JJ.

IN THE MATTER OF TIFFANY M. AND TONIKA M.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

JOLANDA M., RESPONDENT-APPELLANT.

ALAN BIRNHOLZ, EAST AMHERST, FOR RESPONDENT-APPELLANT.

JOSEPH T. JARZEMBEK, BUFFALO, FOR PETITIONER-RESPONDENT.

DAVID C. SCHOPP, ATTORNEY FOR THE CHILDREN, THE LEGAL AID BUREAU OF
BUFFALO, INC., BUFFALO (CHARLES D. HALVORSEN OF COUNSEL), FOR TIFFANY
M. AND TONIKA M.

Appeal from an order of the Family Court, Erie County (Patricia A. Maxwell, J.), entered December 1, 2010 in a proceeding pursuant to Social Services Law § 384-b. The order terminated respondent's parental rights on the ground of mental illness.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Respondent mother appeals from an order terminating her parental rights with respect to the two children who are the subject of this proceeding. The testimony of petitioner's expert psychologist at the hearing established by clear and convincing evidence that, based on the mother's mental illness and mental retardation, she is unable presently and for the foreseeable future to provide proper and adequate care for the children (*see Matter of Mathew Z.*, 279 AD2d 904, 906; *see also Matter of Cayden L.R.*, 83 AD3d 1550; *Matter of William C.B.*, 83 AD3d 1583, *lv dismissed in part and denied in part* 17 NY3d 790). Although the petition did not allege mental illness as a ground for termination of the mother's parental rights, the mother did not object to the evidence relating to that ground. In addition, although Family Court did not specifically refer in its decision to the mother's mental retardation, the court determined that the mother lacked the mental capacity to care for the children properly, and there was ample evidence of the mother's mental retardation. We therefore conclude that the court properly terminated the mother's parental rights.

Entered: October 7, 2011

Patricia L. Morgan
Clerk of the Court