

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

1374

CAF 11-01895

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, VALENTINO, AND WHALEN, JJ.

IN THE MATTER OF JOANNA P., SAMANTHA M.,
JULIAN W., AND ADAIR M.

MEMORANDUM AND ORDER

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

PATRICIA M., RESPONDENT-APPELLANT.

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

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

PAMELA THIBODEAU, ATTORNEY FOR THE CHILDREN, WILLIAMSVILLE, FOR JOANNA P. AND SAMANTHA M.

MARY ANNE CONNELL, ATTORNEY FOR THE CHILDREN, BUFFALO, FOR JULIAN W. AND ADAIR M.

Appeal from an order of the Family Court, Erie County (Patricia A. Maxwell, J.), entered July 22, 2011 in a proceeding pursuant to Social Services Law § 384-b. The order, inter alia, terminated the parental rights of respondent.

It is hereby ORDERED that said appeal insofar as it concerned respondent's oldest child is unanimously dismissed and the order is affirmed without costs.

Memorandum: Respondent mother appeals from an order that, inter alia, terminated her parental rights pursuant to Social Services Law § 384-b on the ground of permanent neglect. We dismiss as moot the appeal from the order insofar as it concerned the mother's oldest child inasmuch as she has attained the age of 18 (*see Matter of Anthony M.*, 56 AD3d 1124, 1124, *lv denied* 12 NY3d 702).

We conclude that petitioner met its initial burden of establishing by clear and convincing evidence that it made the requisite diligent efforts to encourage and strengthen the mother's relationship with the younger children, and the mother failed to establish that she "had 'a meaningful plan for the child[ren's] future, including that [she has] addressed the problems that caused the removal' of the child[ren]" (*Matter of Rachael N. [Christine N.]*, 70 AD3d 1374, 1374, *lv denied* 15 NY3d 708). "Petitioner was not required to ensure that the mother succeeded in overcoming her obstacles but, rather, the mother was required to assume some

responsibility in dealing with those challenges" (*Matter of Gerald G. [Orena G.]*, 91 AD3d 1320, 1320, lv denied 19 NY3d 801). " '[A]lthough [the mother] participated in [some of] the services offered by petitioner, [s]he failed to address successfully the problems that led to the removal of the child[ren] and continued to prevent [their] safe return' " (*Matter of Brittany K.*, 59 AD3d 952, 953, lv denied 12 NY3d 709).

Contrary to the mother's contention, the record supports Family Court's determination that a suspended judgment would not serve the best interests of the younger children (*see Matter of Tiara B. [Torrence B.]*, 70 AD3d 1307, 1307-1308, lv denied 14 NY3d 709; *see generally Matter of Mercedes L.*, 12 AD3d 1184, 1185; *Matter of Saboor C.*, 303 AD2d 1022, 1023). " 'The progress made by [the mother] in the months preceding the dispositional determination was not sufficient to warrant any further prolongation of the child[ren's] unsettled familial status' " (*Matter of Roystar T. [Samaritan B.]*, 72 AD3d 1569, 1569, lv denied 15 NY3d 707).