

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

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CAF 18-01204

PRESENT: WHALEN, P.J., LINDLEY, DEJOSEPH, NEMOYER, AND TROUTMAN, JJ.

IN THE MATTER OF DESTINY S., ASHLEY L.W.W.,
AND ADAM M.W.

MEMORANDUM AND ORDER

CATTARAUGUS COUNTY DEPARTMENT OF SOCIAL
SERVICES, PETITIONER-RESPONDENT;

AMY W., RESPONDENT-APPELLANT.

ERICKSON WEBB SCOLTON & HAJDU, LAKEWOOD (LYLE T. HAJDU OF COUNSEL),
FOR RESPONDENT-APPELLANT.

STEPHEN J. RILEY, OLEAN, FOR PETITIONER-RESPONDENT.

AUDREY ROSE HERMAN, BUFFALO, ATTORNEY FOR THE CHILDREN.

Appeal from an order of the Family Court, Cattaraugus County (Michael J. Sullivan, A.J.), entered June 7, 2018 in a proceeding pursuant to Social Services Law § 384-b. The order terminated the parental rights of respondent with respect to the subject children.

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 three subject children on the grounds of mental illness and intellectual disability (see Social Services Law § 384-b [4] [c]). Although the petitions here 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" (*Matter of Tiffany M. [Jolanda M.]*, 88 AD3d 1299, 1299 [4th Dept 2011], *lv denied* 18 NY3d 803 [2012]), and we thus conclude that, contrary to the mother's contention, Family Court did not err in sua sponte conforming the petitions to the proof (see *Matter of Angel L.H. [Melissa H.]*, 85 AD3d 1637, 1637 [4th Dept 2011], *lv denied* 17 NY3d 711 [2011]; *Matter of A.G.*, 253 AD2d 318, 320-321 [1st Dept 1999]; see also *Tiffany M.*, 88 AD3d at 1299; see generally Family Ct Act § 1051 [b]).

We have reviewed the mother's remaining contentions and conclude that none warrants modification or reversal of the order.

Entered: November 8, 2019

Mark W. Bennett
Clerk of the Court