

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

1163

CAF 13-01349

PRESENT: SCUDDER, P.J., CENTRA, CARNI, WHALEN, AND DEJOSEPH, JJ.

IN THE MATTER OF NADYA S.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

BRAUNA S., RESPONDENT-APPELLANT.

WILLIAM D. BRODERICK, JR., ELMA, FOR RESPONDENT-APPELLANT.

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

DAVID C. SCHOPP, ATTORNEY FOR THE CHILD, THE LEGAL AID BUREAU OF
BUFFALO, INC., BUFFALO (CHARLES D. HALVORSEN OF COUNSEL).

Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered July 19, 2013 in a proceeding pursuant to Social Services Law § 384-b. The order, among other things, transferred guardianship and custody of the subject child to petitioner.

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

Memorandum: Petitioner commenced this proceeding seeking to terminate the parental rights of respondent mother with respect to her daughter on the grounds of, inter alia, mental illness (see Social Services Law § 384-b [4] [c]). We note at the outset that the mother's contention that Family Court erred in admitting in evidence the records of a certain agency is moot inasmuch as those records related only to the petition alleging that the child was a permanently neglected child (see § 384-b [4] [d]), which the court dismissed with prejudice. To the extent that the mother contends that other records were improperly admitted in evidence, those records are not part of the stipulated record on appeal, and thus we have not considered that contention (see *Matter of Santoshia L.*, 202 AD2d 1027, 1028).

The mother further contends that her rights were violated by the admission of the testimony of the court-appointed psychologist because the psychological evaluation was conducted in English and without the benefit of a Spanish interpreter. She also contends that the methodology utilized by the psychologist to determine that her comprehension of the English language was sufficient to proceed with the evaluation in English should have been subject to a *Frye* hearing. The mother failed to object to the testimony of the psychologist,

however, and thus failed to preserve those contentions for our review (see generally *Matter of Kaylene S. [Brauna S.]*, 101 AD3d 1648, 1648, lv denied 21 NY3d 852). We note with respect to the first contention that, in any event, the record establishes that the mother advised the psychologist that she was comfortable proceeding with the evaluation using English when he discussed with her whether the assessments should be conducted in English or Spanish, and that two prior psychological evaluations had been conducted in English.

Contrary to the contention of the mother, the court properly determined that petitioner met its burden of demonstrating by clear and convincing evidence that she is presently and for the foreseeable future unable to provide proper and adequate care for the child by reason of mental illness, particularly severe cognitive deficits and certain personality traits, none of which is treatable (see *Matter of Zachary R. [Duane R.]*, 118 AD3d 1479, 1480; *Kaylene S.*, 101 AD3d at 1648).