

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

1207.2

CAF 09-00241

PRESENT: HURLBUTT, J.P., MARTOCHE, CENTRA, GREEN, AND GORSKI, JJ.

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IN THE MATTER OF SHANIA L., CHEYANN L.,  
EDDIE B., JR., SKYLER B., AND VICTOR B.

MEMORANDUM AND ORDER

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ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,  
PETITIONER-RESPONDENT;

KELLY L., RESPONDENT-APPELLANT.

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

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

DAVID C. SCHOPP, LAW GUARDIAN, THE LEGAL AID BUREAU OF BUFFALO, INC.,  
BUFFALO (CHARLES D. HALVORSEN OF COUNSEL), FOR SHANIA L., CHEYANN L.,  
EDDIE B., JR., SKYLER B., AND VICTOR B.

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Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered December 31, 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 said appeal is unanimously dismissed without costs.

Memorandum: Respondent mother appeals from an order of disposition that, inter alia, terminated her parental rights with respect to her five children pursuant to Social Services Law § 384-b based upon a finding that she had permanently neglected them. The record establishes that the mother failed to appear at the fact-finding proceeding and that her attorney did not participate therein, and the only issues raised on appeal concern the underlying factual findings. Thus, the appeal must be dismissed inasmuch as the factual findings were entered upon the mother's default (*see Matter of Cynthia Hope A.*, 36 AD3d 803; *Matter of Sandra J.*, 25 AD3d 360; *cf. Matter of Isaiah H.*, 61 AD3d 1372; *see generally* CPLR 5511).

Entered: October 2, 2009

Patricia L. Morgan  
Clerk of the Court