

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

1006

CAF 11-01526

PRESENT: SCUDDER, P.J., SMITH, CENTRA, LINDLEY, AND MARTOCHE, JJ.

---

IN THE MATTER OF ALISA E.

-----

LIVINGSTON COUNTY DEPARTMENT OF SOCIAL  
SERVICES, PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

WENDY F., RESPONDENT-APPELLANT.

---

JEANNIE D. MICHALSKI, CONFLICT DEFENDER, GENESEO (P. ADAM MILITELLO OF  
COUNSEL), FOR RESPONDENT-APPELLANT.

DAVID J. MORRIS, COUNTY ATTORNEY, GENESEO (WENDY S. SISSON OF  
COUNSEL), FOR PETITIONER-RESPONDENT.

JAMES W. CAMPBELL, JR., ATTORNEY FOR THE CHILD, LIMA, FOR ALISA E.

-----

Appeal from an order of the Family Court, Livingston County  
(Robert B. Wiggins, J.), entered July 12, 2011 in a proceeding  
pursuant to Social Services Law § 384-b. The order, among other  
things, suspended judgment until May 13, 2012.

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

Memorandum: We reject respondent mother's contention in this  
permanent neglect proceeding that she was denied effective assistance  
of counsel at the fact-finding stage of the proceeding. "A parent  
alleging ineffective assistance of counsel has the burden of  
demonstrating both that he or she was denied meaningful representation  
and that the deficient representation resulted in actual prejudice"  
(*Matter of Michael C.*, 82 AD3d 1651, 1652, lv denied 17 NY3d 704; see  
*Matter of James R.*, 238 AD2d 962, 962-963). Here, the mother failed  
to demonstrate that any of her attorney's shortcomings resulted in  
actual prejudice. While we agree with the mother that her attorney  
should have objected to the use of leading questions, any error with  
respect thereto did not affect the outcome of the hearing and thus is  
harmless. The mother also contends that her attorney should have  
objected to the admission of hearsay. While the mother's attorney  
would have had grounds to object to some of the statements made during  
petitioner's direct case, the mother has failed to show that her  
attorney's failure to object was not strategic, i.e., an effort to  
establish leniency for his own line of questioning. Indeed, later in  
the hearing, Family Court allowed the mother's attorney to elicit  
hearsay during his examination, reasoning, "there has been a lot of  
hearsay in this hearing so far." Lastly, contrary to the mother's

contention, her attorney did not admit on summation that the subject child was neglected.

Entered: September 28, 2012

Frances E. Cafarell  
Clerk of the Court