

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

1257

CAF 13-00988

PRESENT: CENTRA, J.P., FAHEY, CARNI, SCONIERS, AND VALENTINO, JJ.

IN THE MATTER OF DELIA S., JESUS S. AND
SKYLETT A.

MEMORANDUM AND ORDER

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

DESIREE S., RESPONDENT-APPELLANT.

THE ABBATOY LAW FIRM, PLLC, ROCHESTER (DAVID M. ABBATOY, JR., OF
COUNSEL), FOR RESPONDENT-APPELLANT.

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

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

SHARON ANSCOMBE OSGOOD, ATTORNEY FOR THE CHILD, BUFFALO.

Appeal from an order of the Family Court, Erie County (Sharon M. LoVallo, J.), entered May 13, 2013 in a proceeding pursuant to Social Services Law § 384-b. The order terminated respondent's parental rights with respect to the subject children.

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

Memorandum: Respondent mother appeals from an order terminating her parental rights with respect to the subject children on the ground of mental illness. We dismiss as moot the appeal from the order insofar as it concerns the mother's older child because she has attained the age of majority (*see Matter of Anthony M.*, 56 AD3d 1124, 1124, *lv denied* 12 NY3d 702). Contrary to the mother's contention, petitioner met its burden of demonstrating by clear and convincing evidence that the mother is "presently and for the foreseeable future unable, by reason of mental illness . . . , to provide proper and adequate care for" the remaining subject children (Social Services Law § 384-b [4] [c]; *see* § 384-b [6] [a]; *Matter of Christopher B., Jr. [Christopher B., Sr.]*, 104 AD3d 1188, 1188). The testimony of petitioner's witnesses, including a psychologist, "established that the [mother] was so disturbed in [her] behavior, feeling, thinking and judgment that, if the [remaining subject children] were returned to [her] custody, [they] would be in danger of becoming" neglected

children (*Christopher B., Jr.*, 104 AD3d at 1188; see § 384-b [6] [a]).

Entered: November 21, 2014

Frances E. Cafarell
Clerk of the Court