

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

318

CAF 09-00663

PRESENT: SMITH, J.P., FAHEY, CARNI, SCONIERS, AND PINE, JJ.

IN THE MATTER OF DEMARIAH A.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

REBECCA B., RESPONDENT-APPELLANT,
ET AL., RESPONDENT.

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 DEMARIAH A.

Appeal from an order of the Family Court, Erie County (Patricia A. Maxwell, J.), entered March 18, 2009 in a proceeding pursuant to Social Services Law § 384-b. The order, insofar as appealed from, terminated the parental rights of respondent Rebecca B.

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 one of her children on the ground of mental illness. We affirm. Petitioner met its burden of demonstrating by clear and convincing evidence that the mother is presently and for the foreseeable future unable to provide proper and adequate care for the child by reason of mental illness (see Social Services Law § 384-b [4] [c]; [6] [a]). "The failure of the [court-appointed] psychologist to provide a precise, clinically accepted diagnosis does not render his testimony legally insufficient to satisfy the statutory mandate" (*Matter of Dylan K.*, 269 AD2d 826, 827, *lv denied* 95 NY2d 766).

Contrary to the contention of the mother, a separate dispositional hearing is not required following the determination that she is unable to care for the child because of mental illness (see *Matter of Sylvia M.*, 82 AD2d 217, 235, *affd* 57 NY2d 636, *rearg denied* 57 NY2d 775). Finally, contrary to the further contention of the mother, we conclude that she " 'failed to demonstrate that she was afforded less than meaningful representation by counsel' " (*Matter of*

Matthew B., 24 AD3d 1183, 1183).

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court