

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

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CAF 11-00433

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

IN THE MATTER OF ALBERTO C., JR.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

TIBET H., RESPONDENT-APPELLANT.

CHARLES J. GREENBERG, BUFFALO, 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), FOR ALBERTO
C., JR.

Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered February 22, 2011 in a proceeding pursuant to Social Services Law § 384-b. The order terminated the parental rights of respondent.

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

Memorandum: Respondent contends on appeal that Family Court erred in granting the petition to terminate her parental rights based on mental illness (see Social Services Law § 384-b [4] [c]). We agree with the court that petitioner established by clear and convincing evidence that respondent could not adequately care for her child by presenting the testimony of a psychiatrist regarding respondent's mental illness (see Social Services Law § 384-b [6] [c], [e]). The expert testified that respondent was presently and for the foreseeable future unable, by reason of her mental illness, to provide proper and adequate care for the child (see *Matter of Vincent E.D.G.*, 81 AD3d 1285, 1285, *lv denied* 17 NY3d 703). We further conclude that the court did not err in refusing to hold a dispositional hearing. There is no requirement that a separate dispositional hearing be held following a determination that a parent is incapable of caring for his or her child based on mental illness (see *id.* at 1286).

Entered: June 8, 2012

Frances E. Cafarell
Clerk of the Court