

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

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CAF 12-01943

PRESENT: SMITH, J.P., PERADOTTO, CARNI, SCONIERS, AND VALENTINO, JJ.

IN THE MATTER OF BURKE H.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

RICHARD H., RESPONDENT,
AND TIFFANY H., RESPONDENT-APPELLANT.

EVELYNE O'SULLIVAN, EAST AMHERST, 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).

Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered August 24, 2012 in a proceeding pursuant to Family Court Act article 10. The order, insofar as appealed from, determined Burke H. to be a neglected child.

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

Memorandum: In this proceeding pursuant to Family Court Act article 10, respondent mother appeals from an order that, insofar as appealed from, adjudged that she neglected the subject child. Contrary to the mother's contention, Family Court's finding of derivative neglect is supported by a preponderance of the evidence (see Family Ct Act § 1046 [b] [i]; *Matter of Brandon T. [Guillaume T.]*, 114 AD3d 950, 950-951). Petitioner established that "the neglect . . . of the child's older siblings was so proximate in time to the derivative proceeding that it can reasonably be concluded that the condition still existed" (*Brandon T.*, 114 AD3d at 950; see *Matter of Jamarra S. [Jessica S.]*, 85 AD3d 803, 804), and that the mother failed to address the problems that led to the neglect findings with respect to her other children (see *Matter of Krystal J.*, 267 AD2d 1097, 1098). To the extent that the mother challenges the testimony of petitioner's psychologist, it is well settled that the court's "determination regarding the credibility of witnesses is entitled to great weight on appeal, and will not be disturbed if supported by the record" (*Matter of Kanterakis v Kanterakis*, 102 AD3d 784, 785, *lv denied* 21 NY3d 864; see *Matter of Merrick T.*, 55 AD3d 1318, 1319). We conclude that the court properly credited the psychologist's report and opinion, which were based upon numerous visits with the mother and an extensive

review of documentation.

Entered: May 9, 2014

Frances E. Cafarell
Clerk of the Court