NY CLS Soc Serv § 384-b, Part 1 of 2

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New York Consolidated Laws Service > Social Services Law (Arts. 1 — 12) > Article 6 Children (Titles 1 — 12-A) > Title 1 Care and Protection of Children (§§ 371 — 393)

§ 384-b. Guardianship and custody of destitute or dependent children; commitment by court order; modification of commitment and restoration of parental rights

1. Statement of legislative findings and intent.

(a) The legislature recognizes that the health and safety of children is of paramount importance. To the extent it is consistent with the health and safety of the child, the legislature further hereby finds that:

(i) it is desirable for children to grow up with a normal family life in a permanent home and that such circumstance offers the best opportunity for children to develop and thrive;

(ii) it is generally desirable for the child to remain with or be returned to the birth parent because the child's need for a normal family life will usually best be met in the home of its birth parent, and that parents are entitled to bring up their own children unless the best interests of the child would be thereby endangered;

(iii) the state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home; and

(iv) when it is clear that the birth parent cannot or will not provide a normal family home for the child and when continued foster care is not an appropriate plan for the child, then a permanent alternative home should be sought for the child.

(b) The legislature further finds that many children who have been placed in foster care experience unnecessarily protracted stays in such care without being adopted or returned to their parents or other custodians. Such unnecessary stays may deprive these children of positive, nurturing family relationships and have deleterious effects on their development into responsible, productive citizens. The legislature further finds that provision of a timely procedure for the termination, in appropriate cases, of the rights of the birth parents could reduce such unnecessary stays.

It is the intent of the legislature in enacting this section to provide procedures not only assuring that the rights of the birth parent are protected, but also, where positive, nurturing parent-child relationships no longer exist, furthering the best interests, needs, and rights of the child by terminating parental rights and freeing the child for adoption.

2. For the purposes of this section, (a) "child" shall mean a person under the age of eighteen years; and, (b) "parent" shall include an incarcerated parent unless otherwise qualified.

3.

(a) The guardianship of the person and the custody of a destitute or dependent child may be committed to an authorized agency, or to a foster parent authorized pursuant to *section one* thousand eighty-nine of the family court act to institute a proceeding under this section, or to a relative with care and custody of the child, by order of a surrogate or judge of the family court, as hereinafter provided. Where such guardianship and custody is committed to a foster parent or to a relative with care and custody of the child, the family court or surrogate's court shall retain continuing jurisdiction over the parties and the child and may, upon its own motion or the motion of any party, revoke, modify or extend

its order, if the foster parent or relative fails to institute a proceeding for the adoption of the child within six months after the entry of the order committing the guardianship and custody of the child to such foster parent or relative. Where the foster parent or relative institutes a proceeding for the adoption of the child and the adoption petition is finally denied or dismissed, the court which committed the guardianship and custody of the child to the foster parent or relative shall revoke the order of commitment. Where the court revokes an order committing the guardianship and custody of a child to a foster parent or relative, it shall commit the guardianship and custody of the child to an authorized agency.

(b) A proceeding under this section may be originated by an authorized agency or by a foster parent authorized to do so pursuant to *section one* thousand eighty-nine of the family court act or by a relative with care and custody of the child or, if an authorized agency ordered by the court to originate a proceeding under this section fails to do so within the time fixed by the court, by the child's attorney or guardian ad litem on the court's direction.

(c) Where a child was placed or continued in foster care pursuant to article ten, ten-A or ten-C of the family court act or *section three hundred fifty-eight-a* of this chapter, a proceeding under this section shall be originated in the family court in the county in which the proceeding pursuant to article ten, ten-A or ten-C of the family court act or *section three hundred fifty-eight-a* of this chapter was last heard and shall be assigned, wherever practicable, to the judge who last heard such proceeding. Where multiple proceedings are commenced under this section concerning a child and one or more siblings or half-siblings of such child, placed or continued in foster care with the same commissioner pursuant to *section one* thousand fifty-five, one thousand eighty-nine or one thousand ninety-five of the family court act, all of such proceedings may be commenced jointly in the family court in any county which last heard a proceeding under article ten, ten-A or ten-C of the family court act regarding any of the children who are the subjects of the proceedings under this section. In such instances, the case shall be assigned, wherever practicable, to the judge who last presided over such proceeding. In any other case, a proceeding under this section, including a proceeding brought in the surrogate's court, shall be originated in the county where either of the parents of the child reside at the time of the filing of the petition, if known, or, if such residence is not known, in the county in which the authorized agency has an office for the regular conduct of business or in which the child resides at the time of the initiation of the proceeding. To the extent possible, the court shall, when appointing an attorney for the child, appoint an attorney who has previously represented the child.

(c-1) Before hearing a petition under this section, the court in which the termination of parental rights petition has been filed shall ascertain whether the child is under the jurisdiction of a family court pursuant to a placement in a child protective or foster care proceeding or continuation in out-of-home care pursuant to a permanency hearing and, if so, which court exercised jurisdiction over the most recent proceeding. If the court determines that the child is under the jurisdiction of a different family court, the court in which the termination of parental rights petition was filed shall stay its proceeding for not more than thirty days and shall communicate with the court that exercised jurisdiction over the most recent proceeding. The communication shall be recorded or summarized on the record by the court in which the termination of parental rights petition was filed. Both courts shall notify the parties and child's attorney, if any, in their respective proceedings and shall give them an opportunity to present facts and legal argument or to participate in the communication prior to the issuance of a decision on jurisdiction. The court that exercised jurisdiction over the most recent proceeding shall determine whether it will accept or decline jurisdiction over the termination of parental rights petition. This determination of jurisdiction shall be incorporated into an order regarding jurisdiction that shall be issued by the court in which the termination of parental rights petition was filed within thirty days of such filing. If the court that exercised jurisdiction over the most recent proceeding determines that it should exercise jurisdiction over the termination of parental rights petition, the order shall require that the petition shall be transferred to that court forthwith but in no event more than thirty-five days after the filing of the petition. The petition shall be assigned, wherever practicable, to the judge who heard the most recent proceeding. If the court that exercised jurisdiction over the most recent proceeding declines to exercise

jurisdiction over the adoption petition, the court in which the termination of parental rights petition was filed shall issue an order incorporating that determination and shall proceed forthwith.

(d) The family court shall have exclusive, original jurisdiction over any proceeding brought upon grounds specified in paragraph (c), (d) or (e) of subdivision four of this section, and the family court and surrogate's court shall have concurrent, original jurisdiction over any proceeding brought upon grounds specified in paragraph (a) or (b) of subdivision four of this section, except as provided in paragraphs (c) and (c-1) of this subdivision.

(e) A proceeding under this section is originated by a petition on notice served upon the child's parent or parents, the attorney for the child's parent or parents and upon such other persons as the court may in its discretion prescribe. Such notice shall inform the parents and such other persons that the proceeding may result in an order freeing the child for adoption without the consent of or notice to the parents or such other persons. Such notice also shall inform the parents and such other persons of their right to the assistance of counsel, including any right they may have to have counsel assigned by the court in any case where they are financially unable to obtain counsel. The petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section and section three hundred eighty-four-c of this title, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to the provisions of this section or of section three hundred eighty-four-c of this title. When the proceeding is initiated in family court service of the petition and other process shall be made in accordance with the provisions of *section six hundred seventeen of the family court act*, and when the proceeding is initiated in surrogate's court, service shall be made in accordance with the provisions of *section three hundred seven of the surrogate's court procedure act*. When the proceeding is initiated on the grounds of abandonment of a child less than one year of age at the time of the transfer of the care and custody of such child to a local social services official, the court shall take judicial notice of efforts to locate the child's parents or other known relatives or other persons legally responsible pursuant to paragraph (ii) of subdivision (b) of *sectione* thousand fifty-five of the family court act.

(f) In any proceeding under this section in which the surrogate's court has exercised jurisdiction, the provisions of the surrogate's court procedure act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section in which the family court has exercised jurisdiction, the provisions of articles one, two and eleven of the family court act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section, the provisions and limitations of article thirty-one of the civil practice law and rules shall apply to the extent that they do not conflict with the specific provisions of this section. In determining any motion for a protective order, the court shall consider the need of the party for the discovery to assist in the preparation of the case and any potential harm to the child from the discovery. The court shall set a schedule for discovery to avoid unnecessary delay. Any proceeding originated in family court upon the ground specified in paragraph (d) of subdivision four of this section shall be conducted in accordance with the provisions of part one of article six of the family court act.

(g)

(i) An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon a finding that one or more of the grounds specified in subdivision four of this section are based upon clear and convincing proof.

(ii) Where a proceeding has been properly commenced under this section by the filing of a petition before the eighteenth birthday of a child, an order committing the guardianship and custody of a child pursuant to this section upon a finding under subdivision four of this section shall be granted after the eighteenth birthday of a child where the child consents to such disposition.

(h) In any proceeding brought upon a ground set forth in paragraph (c) of subdivision four, neither the privilege attaching to confidential communications between husband and wife, as set forth in *section forty-five hundred two of the civil practice law and rules*, nor the physician-patient and related

privileges, as set forth in *section forty-five hundred four of the civil practice law and rules*, nor the psychologist-client privilege, as set forth in *section forty-five hundred seven of the civil practice law and rules*, nor the social worker-client privilege, as set forth in *section forty-five hundred eight of the civil practice law and rules*, shall be a ground for excluding evidence which otherwise would be admissible.

(i) In a proceeding instituted by an authorized agency pursuant to the provisions of this section, proof of the likelihood that the child will be placed for adoption shall not be required in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child to an authorized agency.

(j) The order and the papers upon which it was granted in a proceeding under this section shall be filed in the court, and a certified copy of such order shall also be filed in the office of the county clerk of the county in which such court is located, there to be recorded and to be inspected or examined in the same manner as a surrender instrument, pursuant to the provisions of *section three hundred eighty-four* of this chapter.

(k) Where the child is over fourteen years of age, the court may, in its discretion, consider the wishes of the child in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child.

(l)

(i) Notwithstanding any other law to the contrary, whenever: the child shall have been in foster care for fifteen months of the most recent twenty-two months; or a court of competent jurisdiction has determined the child to be an abandoned child; or the parent has been convicted of a crime as set forth in subdivision eight of this section, the authorized agency having care of the child shall file a petition pursuant to this section unless based on a case by case determination: (A) the child is being cared for by a relative or relatives; or (B) the agency has documented in the most recent case plan, a copy of which has been made available to the court, a compelling reason for determining that the filing of a petition would not be in the best interest of the child; or (C) the agency has not provided to the parent or parents of the child such services as it deems necessary for the safe return of the child to the parent or parents, unless such services are not legally required; or (D)the parent or parents are incarcerated, in immigration detention or immigration removal proceedings, or participating in a residential substance abuse treatment program, or the prior incarceration, immigration detention or immigration removal proceedings, or participation of a parent or parents in a residential substance abuse treatment program is a significant factor in why the child has been in foster care for fifteen of the last twenty-two months, provided that the parent maintains a meaningful role in the child's life based on the criteria set forth in subparagraph (v) of this paragraph and the agency has not documented a reason why it would otherwise be appropriate to file a petition pursuant to this section.

(ii) For the purposes of this section, a compelling reason whereby a social services official is not required to file a petition for termination of parental rights in accordance with subparagraph (i) of this paragraph includes, but is not limited to, where:

(A) the child was placed into foster care pursuant to article three or seven of the family court act and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is either (1) return to his or her parent or guardian or (2) discharge to independent living;

(B) the child has a permanency goal other than adoption;

(C) the child is fourteen years of age or older and will not consent to his or her adoption;

(D) there are insufficient grounds for filing a petition to terminate parental rights; or

(E) the child is the subject of a pending disposition under article ten of the family court act, except where such child is already in the custody of the commissioner of social services as a result of a proceeding other than the pending article ten proceeding, and a review of the

specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is discharge to his or her parent or guardian.

(iii) For the purposes of this paragraph, the date of the child's entry into foster care is the earlier of sixty days after the date on which the child was removed from the home or the date the child was found by a court to be an abused or neglected child pursuant to article ten of the family court act.

(iv) In the event that the social services official or authorized agency having care and custody of the child fails to file a petition to terminate parental rights within sixty days of the time required by this section, or within ninety days of a court direction to file a proceeding not otherwise required by this section, such proceeding may be filed by the foster parent of the child without further court order or by the attorney for the child on the direction of the court. In the event of such filing the social services official or authorized agency having care and custody of the child shall be served with notice of the proceeding and shall join the petition.

(v) For the purposes of clause (D) of subparagraph (i) of this paragraph, an assessment of whether a parent maintains a meaningful role in his or her child's life shall be based on evidence, which may include the following: a parent's expressions or acts manifesting concern for the child, such as letters, telephone calls, visits, and other forms of communication with the child; efforts by the parent to communicate and work with the authorized agency, attorney for the child, foster parent, the court, and the parent's attorney or other individuals providing services to the parent, including correctional, mental health and substance abuse treatment program personnel for the purpose of complying with the service plan and repairing, maintaining or building the parent-child relationship; a positive response by the parent to the authorized agency's diligent efforts as defined in paragraph (f) of subdivision seven of this section; and whether the continued involvement of the parent in the child's life is in the child's best interest. In assessing whether a parent maintains a meaningful role in his or her child's life, the authorized agency shall gather input from individuals and agencies in a reasonable position to help make this assessment, including but not limited to, the authorized agency, attorney for the child, parent, child, foster parent or other individuals of importance in the child's life, and parent's attorney or other individuals providing services to the parent, including correctional, mental health and substance abuse treatment program personnel. The court may make an order directing the authorized agency to undertake further steps to aid in completing its assessment.

4. An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon one or more of the following grounds:

(a) Both parents of the child are dead, and no guardian of the person of such child has been lawfully appointed; or

(b) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with *section one hundred eleven of the domestic relations law*, abandoned such child for the period of six months immediately prior to the date on which the petition is filed in the court; or

(c) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with *section one hundred eleven of the domestic relations law*, are presently and for the foreseeable future unable, by reason of mental illness or intellectual disability, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately prior to the date on which the petition is filed in the court; or

(d) The child is a permanently neglected child; or

(e) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with *section one hundred eleven of the domestic relations law*, severely or repeatedly abused such child. Where a court has determined that reasonable efforts to reunite the child with his or her parent are not required, pursuant to the family court act or this chapter, a petition to terminate parental rights on the ground of severe abuse as set forth in subparagraph (iii) of paragraph (a) of subdivision eight of this section may be filed immediately upon such determination.

5.

(a) For the purposes of this section, a child is “abandoned” by his parent if such parent evinces an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency. In the absence of evidence to the contrary, such ability to visit and communicate shall be presumed.

(b) The subjective intent of the parent, whether expressed or otherwise, unsupported by evidence of the foregoing parental acts manifesting such intent, shall not preclude a determination that such parent has abandoned his or her child. In making such determination, the court shall not require a showing of diligent efforts, if any, by an authorized agency to encourage the parent to perform the acts specified in paragraph (a) of this subdivision.

6.

(a) For the purposes of this section, “mental illness” means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.

(b) For the purposes of this section, “intellectual disability” means subaverage intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act; provided, however, that case law regarding use of the phrase “mental retardation” under this section shall be applicable to the term “intellectual disability”.

(c) The legal sufficiency of the proof in a proceeding upon the ground set forth in paragraph (c) of subdivision four of this section shall not be determined until the judge has taken the testimony of a psychologist, or psychiatrist, in accordance with paragraph (e) of this subdivision.

(d) A determination or order upon a ground set forth in paragraph (c) of subdivision four shall in no way affect any other right, or constitute an adjudication of the legal status of the parent.

(e) In every proceeding upon a ground set forth in paragraph (c) of subdivision four the judge shall order the parent to be examined by, and shall take the testimony of, a qualified psychiatrist or a psychologist licensed pursuant to article one hundred fifty-three of the education law as defined in *section 730.10 of the criminal procedure law* in the case of a parent alleged to be mentally ill or retarded, such psychologist or psychiatrist to be appointed by the court pursuant to *section thirty-five of the judiciary law*. The parent and the authorized agency shall have the right to submit other psychiatric, psychological or medical evidence. If the parent refuses to submit to such court-ordered examination, or if the parent renders himself unavailable therefor whether before or after the initiation of a proceeding under this section, by departing from the state or by concealing himself therein, the appointed psychologist or psychiatrist, upon the basis of other available information, including, but not limited to, agency, hospital or clinic records, may testify without an examination of such parent, provided tha such other information affords a reasonable basis for his opinion.

7.

(a) For the purposes of this section, “permanently neglected child” shall mean a child who is in the care of an authorized agency and whose parent or custodian has failed for a period of either at least one year or fifteen out of the most recent twenty-two months following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency’s diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child. The court shall consider the special circumstances of an incarcerated parent or parents, or of a parent or parents participating in a residential substance abuse treatment program, when determining whether a child is a “permanently neglected child” as

defined in this paragraph. In such cases, the court also shall consider the particular constraints, including but not limited to, limitations placed on family contact and the unavailability of social or rehabilitative services to aid in the development of a meaningful relationship between the parent and his or her child, that may impact the parent's ability to substantially and continuously or repeatedly maintain contact with his or her child and to plan for the future of his or her child as defined in paragraph (c) of this subdivision. Where a court has previously determined in accordance with paragraph (b) of subdivision three of *section three hundred fifty-eight-a* of this chapter or *section one* thousand thirty-nine-b, subparagraph (A) of paragraph (i) of subdivision (b) of *section one* thousand fifty-two, paragraph (b) of subdivision two of section seven hundred fifty-four or paragraph (c) of subdivision two of *section 352.2 of the family court act* that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as defined in this section. In the event that the parent defaults after due notice of a proceeding to determine such neglect, such physical and financial ability of such parent may be presumed by the court.

(b) For the purposes of paragraph (a) of this subdivision, evidence of insubstantial or infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a determination that such child is a permanently neglected child. A visit or communication by a parent with the child which is of such character as to overtly demonstrate a lack of affectionate and concerned parenthood shall not be deemed a substantial contact.

(c) As used in paragraph (a) of this subdivision, "to plan for the future of the child" shall mean to take such steps as may be necessary to provide an adequate, stable home and parental care for the child within a period of time which is reasonable under the financial circumstances available to the parent. The plan must be realistic and feasible, and good faith effort shall not, of itself, be determinative. In determining whether a parent has planned for the future of the child, the court may consider the failure of the parent to utilize medical, psychiatric, psychological and other social and rehabilitative services and material resources made available to such parent.

(d) For the purposes of this subdivision:

(i) A parent shall not be deemed unable to maintain contact with or plan for the future of the child by reason of such parent's use of drugs or alcohol, except while the parent is actually hospitalized or institutionalized therefor; and

(ii) The time during which a parent is actually hospitalized or institutionalized shall not interrupt, but shall not be part of, a period of failure to maintain contact with or plan for the future of a child.

(e) Notwithstanding the provisions of paragraph (a) of this subdivision, evidence of diligent efforts by an agency to encourage and strengthen the parental relationship shall not be required when:

(i) The parent has failed for a period of six months to keep the agency apprised of his or her location, provided that the court may consider the particular delays or barriers an incarcerated parent or parents, or a parent or parents participating in a residential substance abuse treatment program, may experience in keeping the agency apprised of his or her location; or

(ii) An incarcerated parent has failed on more than one occasion while incarcerated to cooperate with an authorized agency in its efforts to assist such parent to plan for the future of the child, as such phrase is defined in paragraph (c) of this subdivision, or in such agency's efforts to plan and arrange visits with the child as described in subparagraph five of paragraph (f) of this subdivision.

(f) As used in this subdivision, "diligent efforts" shall mean reasonable attempts by an authorized agency to assist, develop and encourage a meaningful relationship between the parent and child, including but not limited to:

(1) consultation and cooperation with the parents in developing a plan for appropriate services to the child and his family;

(2) making suitable arrangements for the parents to visit the child except that with respect to an incarcerated parent, arrangements for the incarcerated parent to visit the child outside the correctional facility shall not be required unless reasonably feasible and in the best interest of the child;

(3) provision of services and other assistance to the parents, except incarcerated parents, so that problems preventing the discharge of the child from care may be resolved or ameliorated;

(4) informing the parents at appropriate intervals of the child's progress, development and health;

(5) making suitable arrangements with a correctional facility and other appropriate persons for an incarcerated parent to visit the child within the correctional facility, if such visiting is in the best interests of the child. When no visitation between child and incarcerated parent has been arranged for or permitted by the authorized agency because such visitation is determined not to be in the best interest of the child, then no permanent neglect proceeding under this subdivision shall be initiated on the basis of the lack of such visitation. Such arrangements shall include, but shall not be limited to, the transportation of the child to the correctional facility, and providing or suggesting social or rehabilitative services to resolve or correct the problems other than incarceration itself which impair the incarcerated parent's ability to maintain contact with the child. When the parent is incarcerated in a correctional facility located outside the state, the provisions of this subparagraph shall be construed to require that an authorized agency make such arrangements with the correctional facility only if reasonably feasible and permissible in accordance with the laws and regulations applicable to such facility; and

(6) providing information which the authorized agency shall obtain from the office of children and family services, outlining the legal rights and obligations of a parent who is incarcerated or in a residential substance abuse treatment program whose child is in custody of an authorized agency, and on social or rehabilitative services available in the community, including family visiting services, to aid in the development of a meaningful relationship between the parent and child. Wherever possible, such information shall include transitional and family support services located in the community to which an incarcerated parent or parent participating in a residential substance abuse treatment program shall return.

8.

(a) For the purposes of this section a child is "severely abused" by his or her parent if

(i) the child has been found to be an abused child as a result of reckless or intentional acts of the parent committed under circumstances evincing a depraved indifference to human life, which result in serious physical injury to the child as defined in subdivision ten of *section 10.00 of the penal law*; or

(ii) the child has been found to be an abused child, as defined in paragraph (iii) of subdivision (e) of *section ten hundred twelve of the family court act*, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law and, for the purposes of this section the corroboration requirements contained in the penal law shall not apply to proceedings under this section; or

(iii) (A) the parent of such child has been convicted of murder in the first degree as defined in section 125.27, murder in the second degree as defined in section 125.25, manslaughter in the first degree as defined in section 125.20, or manslaughter in the second degree as defined in section 125.15, and the victim of any such crime was another child of the parent or another child for whose care such parent is or has been legally responsible as defined in subdivision (g) of *section one* thousand twelve of the family court act, or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the homicide; or has been convicted of an attempt to commit any of the

foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible as defined in subdivision (g) of *section one* thousand twelve of the family court act, or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the attempted homicide; (B) the parent of such child has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; (C) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in *section 120.12 of the penal law*, and the victim of any such crime was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or (D) the parent of such child has been convicted under the law in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in clause (A), (B) or (C) of this subparagraph; and

(iv) the agency has made diligent efforts to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. Where a court has previously determined in accordance with this chapter or the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as set forth in this section.

(b) For the purposes of this section a child is “repeatedly abused” by his or her parent if:

(i) the child has been found to be an abused child, (A) as defined in paragraph (i) of subdivision (e) of *section ten hundred twelve of the family court act*, as a result of such parent’s acts; or (B) as defined in paragraph (iii) of subdivision (e) of *section ten hundred twelve of the family court act*, as a result of such parent’s acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law; and

(ii) (A) the child or another child for whose care such parent is or has been legally responsible has been previously found, within the five years immediately preceding the initiation of the proceeding in which such abuse is found, to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of *section ten hundred twelve of the family court act*, as a result of such parent’s acts; provided, however, in the case of a finding of abuse as defined in paragraph (iii) of subdivision (e) of *section ten hundred twelve of the family court act* the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law, or (B) the parent has been convicted of a crime under section 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 or 130.80 of the penal law against the child, a sibling of the child or another child for whose care such parent is or has been legally responsible, within the five year period immediately preceding the initiation of the proceeding in which abuse is found; and

(iii) the agency has made diligent efforts, to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. Where a court has previously determined in accordance with this chapter or the family court act that reasonable efforts to make it possible for the child to return safely to his or

her home are not required, the agency shall not be required to demonstrate diligent efforts as set forth in this section.

(c) Notwithstanding any other provision of law, the requirements of paragraph (g) of subdivision three of this section shall be satisfied if one of the findings of abuse pursuant to subparagraph (i) or (ii) of paragraph (b) of this subdivision is found to be based on clear and convincing evidence.

(d) A determination by the court in accordance with article ten of the family court act based upon clear and convincing evidence that the child was a severely abused child as defined in subparagraphs (i) and (ii) of paragraph (a) of this subdivision shall establish that the child was a severely abused child in accordance with this section. Such a determination by the court in accordance with article ten of the family court act based upon a fair preponderance of evidence shall be admissible in any proceeding commenced in accordance with this section.

(e) A determination by the court in accordance with article ten of the family court act based upon clear and convincing evidence that a child was abused [(A)][*] as defined in paragraph (i) of subdivision (e) of *section ten hundred twelve of the family court act*, as a result of such parent's acts; or (B) as defined in paragraph (iii) of subdivision (e) of *section ten hundred twelve of the family court act*, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law shall establish that the child was an abused child for the purpose of a determination as required by subparagraph (i) or (ii) of paragraph (b) of this subdivision. Such a determination by the court in accordance with article ten of the family court act based upon a fair preponderance of evidence shall be admissible in any proceeding commenced in accordance with this section.

(f) Upon a finding pursuant to paragraph (a) or (b) of this subdivision that the child has been severely or repeatedly abused by his or her parent, the court shall enter an order of disposition either (i) committing the guardianship and custody of the child, pursuant to this section, or (ii) suspending judgment in accordance with *section six hundred thirty-three of the family court act*, upon a further finding, based on clear and convincing, competent, material and relevant evidence introduced in a dispositional hearing, that the best interests of the child require such commitment or suspension of judgment. Where the disposition ordered is the commitment of guardianship and custody pursuant to this section, an initial freed child permanency hearing shall be completed pursuant to *section one* thousand eighty-nine of the family court act.

9. Nothing in this section shall be construed to terminate, upon commitment of the guardianship and custody of a child to an authorized agency or foster parent, any rights and benefits, including but not limited to rights relating to contact with siblings, inheritance, succession, social security, insurance and wrongful death action claims, possessed by or available to the child pursuant to any other provision of law. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the termination of parental rights or death of a parent. Notwithstanding any other provision of law, a child committed to the custody and guardianship of an authorized agency pursuant to this section shall be deemed to continue in foster care until such time as an adoption or another planned permanent living arrangement is finalized. Where the disposition ordered is the commitment of guardianship and custody pursuant to this section, an initial freed child permanency hearing shall be held pursuant to *section one* thousand eighty-nine of the family court act.

10. Upon the court's order transferring custody and guardianship to the commissioner, the attorney for the petitioning authorized agency shall promptly serve upon the persons who have been approved by such agency as the child's adoptive parents, notice of entry of such order and advise such persons that an adoption proceeding may be commenced. In accordance with the regulations of the department, the

[*] The bracketed designator has been inserted by the Publisher.

authorized agency shall advise such persons of the procedures necessary for adoption of the child. The authorized agency shall cooperate with such persons in the provision of necessary documentation.

11. Upon the entry of an order committing the guardianship and custody of a child pursuant to this section, the court shall inquire whether any foster parent or parents with whom the child resides, or any relative of the child, or other person, seeks to adopt such child. If such person or persons do seek to adopt such child, such person or persons may submit, and the court shall accept, all such petitions for the adoption of the child, together with an adoption home study, if any, completed by an authorized agency or disinterested person as such term is defined in subdivision three of *section one hundred sixteen of the domestic relations law*. The court shall thereafter establish a schedule for completion of other inquiries and investigations necessary to complete review of the adoption of the child and shall immediately set a schedule for completion of the adoption.

12. If the court determines to commit the custody and guardianship of the child pursuant to this section, or if the court determines to suspend judgement pursuant to *section six hundred thirty-three of the family court act*, the court in its order shall determine if there is any parent to whom notice of an adoption would be required pursuant to *section one hundred eleven-a of the domestic relations law*. In its order the court shall indicate whether such person or persons were given notice of the proceeding and whether such person or persons appeared. Such determinations shall be conclusive in all subsequent proceedings relating to the custody, guardianship or adoption of the child.

13. A petition to modify a disposition of commitment of guardianship and custody in order to restore parental rights may be brought in accordance with part one-A of article six of the family court act where the conditions enumerated in section six hundred thirty-five of such part have been met.

History

Add, L 1976, ch 666, § 3, eff Jan 1, 1977; amd, L 1977, ch 862, § 6; L 1981, ch 284, § 1, eff June 22, 1981; L 1981, ch 739, §§ 5–8, eff Oct 25, 1981; L 1982, ch 123, § 1, eff May 24, 1982; L 1983, ch 911, §§ 2, 3, eff Jan 1, 1984; L 1987, ch 136, § 1, eff June 15, 1987; *L 1990, ch 605, § 2*, eff Oct 1, 1990; *L 1990, ch 867, § 2*, eff Sept 1, 1990; *L 1991, ch 588, §§ 2*, 3; *L 1991, ch 691, § 1*, eff Aug 2, 1991; *L 1993, ch 133, § 1*, eff Sept 19, 1993; *L 1993, ch 294, § 2*, eff Sept 19, 1993; *L 1994, ch 601, § 5*, eff Oct 24, 1994; *L 1996, ch 309, § 279*, eff July 13, 1996; *L 1996, ch 607, § 1*, eff Sept 4, 1996; *L 1999, ch 7, §§ 9*–14, eff Feb 11, 1999; *L 2000, ch 145, §§ 4*, 5, eff July 1, 2000; *L 2002, ch 312, § 6*, eff Aug 6, 2002; *L 2002, ch 663, § 11*, eff Dec 3, 2002; *L 2005, ch 3, §§ 55*–58 (Part A), eff Dec 21, 2005; *L 2006, ch 185, § 6*, eff Oct 24, 2006; *L 2006, ch 460, §§ 1*–3, eff Nov 14, 2006; *L 2007, ch 469, § 1*, eff Nov 29, 2007; *L 2010, ch 41, § 96*, eff April 14, 2010; *L 2010, ch 113, §§ 1*–4, eff June 15, 2010; *L 2010, ch 343, § 3*, eff Nov 11, 2010; *L 2012, ch 3, § 22*, eff Sept 18, 2012; *L 2013, ch 430, § 2*, eff Oct 23, 2013; *L 2016, ch 37, § 10*, effective May 25, 2016; *L 2016, ch 242, § 5*, effective November 16, 2016; *L 2019, ch 125, § 2*, effective October 25, 2019.

Annotations

Notes

Editor's Notes:

Laws 1976, ch 666, § 35, eff Jan 1, 1977, provides as follows:

§ 35. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law; provided, however, that nothing herein contained shall be construed so as to alter, affect, impair, defeat or restore any rights, obligations, duties or interests accrued, incurred, conferred or terminated prior to the effective date of this act.

Laws 1983, ch 911, §§ 1 and 6, eff Jan 1, 1984, provide as follows:

Section 1. Legislative findings and declaration. The legislature finds that the incarceration of a parent presents special considerations in achieving a permanent and stable environment for a child. Further, the prevailing public policy to protect the natural parent's rights and to terminate those rights where, for all practical purposes, the parent-child relationship has ceased to exist would be advanced by the revision of law governing the termination of parental rights of an incarcerated parent and the adoption of such parent's child.

The legislature further finds and declares that:

(i) A parent who has been incarcerated and, as a result, has been deprived of his or her civil rights pursuant to the provisions of the civil rights law, should not, by that fact alone, be deprived of his or her parental right to consent or withhold consent to the adoption of his or her child;.

(ii) A parent who has been incarcerated, however, does and should have an obligation to fulfill, while actually incarcerated, the requirement set forth in *section three hundred eighty-four-b of the social services law*, of visiting or communicating at least once every six months with the child or authorized agency. Having failed to fulfill such requirement, such parent should have his or her parental rights terminated upon the ground of abandonment pursuant to *section three hundred eighty-four-b of the social services law*;.

(iii) A parent who has been incarcerated should also fulfill, while actually incarcerated, the obligations of a parent as described in the provisions of *section three hundred eighty-four-b of the social services law* relating to the termination of parental rights upon the ground of permanent neglect. However, such ground of permanent neglect should recognize the special circumstances and need for assistance of an incarcerated parent to substantially and continuously or repeatedly maintain contact with, or plan for the future of his or her child. An incarcerated parent who has failed to fulfill these obligations may have his or her parental rights terminated upon such ground; and.

(iv) A parent who has been incarcerated also has an obligation to maintain substantial or frequent visits or communications with the child and having failed to fulfill that obligation, the parent should have his or her consent to adoption dispensed with pursuant to *section one hundred eleven of the domestic relations law*.

The intent of this act is to revise the social services law and domestic relations law so that such laws are consistent with the above legislative findings, and to confirm the prevailing interpretation of *section three hundred eighty-four-b of the social services law* that the tolling provisions of such section relating to permanent neglect are not applicable to the provisions of such section relating to abandonment.

§ 6. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law; provided, however, that nothing herein contained shall be construed so as to alter, affect, impair, defeat or restore any right, obligations, duties or interests accrued, incurred, conferred or terminated prior to the effective date of this act.

Laws 1993, ch 294, § 4**,** eff Sept 19, 1993, provides as follows:

§ 4. This act shall take effect on the sixtieth day after it shall have become a law; provided that, notwithstanding the provisions of the state administrative procedure act, or any other inconsistent provision of law, the commissioner of the department of social services, insofar as necessary to implement the provisions of this act, may promulgate on an emergency basis any regulation necessary to secure the implementation of any provision of this act, if he or she determines that such regulation is necessary or appropriate for the efficient administration of public assistance and care or reduces unnecessary expenditures for the provision of any grant, rate of reimbursement, allowance or service under the social services law, provided that any such emergency regulation shall be submitted to the legislature upon promulgation; provided further that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.

Laws 1999, ch 7, § 58**,** eff Feb 11, 1999, provides as follows:

§ 58. This act shall take effect immediately. Notwithstanding any other provision of law to the contrary, the office of children and family services and the division of criminal justice services shall have the authority to promulgate regulations on an emergency basis for the purpose of implementing the provisions of this act.

Laws 2000, ch 145, §§ 20 **and 21,** eff July 1, 2000, provide as follows:

§ 20. By enactment of this act, the legislature, in accordance with section 471(a)(20)(B) of the federal social security act, elects to make the provisions relating to criminal history record reviews set forth in section 471(a)(20)(A) of such act inapplicable to this state upon the effective date of this act (Repealed, *L 2008, ch 623, § 3*.).

§ 21. This act shall take effect July 1, 2000; provided, however, that effective immediately the office of children and family services and the division of criminal justice services are hereby authorized to promulgate rules and regulations on an emergency basis for the purpose of implementing the provisions of this act.

Laws 2005, ch 3, § 67 **(Part A),** eff Dec 21, 2005, provides as follows:

§ 67. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that notwithstanding any law to the contrary, the office of children and family services shall have the authority to promulgate, on an emergency basis, any rules and regulations necessary to implement the requirements established pursuant to this act.

Laws 2006, ch 185, § 8**,** eff Oct 24, 2006, provides as follows:

§ 8. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to adoption, extra-judicial surrender approval and termination of parental rights petitions and applications to execute judicial surrenders filed on or after such date.

Laws 2006, ch 460, § 4**,** eff Nov 14, 2006, provides as follows:

§ 4. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to termination of parental rights petitions filed on or after such effective date.

Laws 2012, ch 3, § 29**, subs (a), (b),** eff Sept 18, 2012, provides as follows:

§ 29. This act shall take effect immediately provided that:

(a) notwithstanding any provision of law to the contrary *sections one* through twenty-six of this act shall take effect upon the approval by the United States Department of Health and Human Services, Administration for Children, Youth and Families of a title IV-E state plan amendment to add destitute children, submitted by the office of children and family services, the office of children and family services shall notify the legislative bill drafting commission [notice received by LBDC stated effective September 18, 2012] upon the occurrence of the submission and approval set forth in this section in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of *section 44 of the legislative law* and *section 70-b of the public officers law*;.

(b) effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date; and.

Laws 2016, ch 242, § 6, eff November 16, 2016, provides:

§ 6. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to petitions filed on or after such date.

Laws 2019, ch 125, § 1**, eff October 25, 2019,** provides:

Section 1. This act shall be known and may be cited as the “New York State Reuniting Families Act.”

Laws 2019, ch 125, § 3**, eff October 25, 2019,** provides:

§ 3. This act shall take effect on the ninetieth day after it shall have become a law.

1996 Recommendations of Family Court Advisory and Rules Committee:

This proposal is intended to clarify an ambiguity concerning venue for proceedings terminating parental rights to children placed in foster care. Enactment of this measure is necessary to avoid delays in freeing children for adoption that are caused by the unnecessary transfer of cases from one court to another.

The Family Court has exclusive original jurisdiction over most proceedings to terminate parental rights. However, the Surrogate’s Court has concurrent jurisdiction in cases alleging the death of, or abandonment by, the biological parent. Until enactment of Chapter 588 of the Laws of 1991, venue for all cases lay in the county where the petitioning foster care agency had an office for the regular conduct of business, where the child resided or where either of the parents resided. Chapter 588 amended *Social Services Law Section 384-b(3)(c)* to provide that, in cases where the termination petition is filed in Family Court, and the subject children were originally placed in foster care after a finding by the Family Court or abuse or neglect, the termination proceeding must be filed in the same Family Court, and wherever “practicable” assigned to the same judge who had “last heard” the child abuse or neglect case. Thus, the subsequent Family Court proceeding to terminate the parent’s rights will be heard by the same judge who heard the original matter, and, if possible, the same law guardian will be assigned to represent the child. In any other cases, chapter 588 provided that venue is determined principally by the biological parents’ or child’s residence.

One court has concluded that, because the new statute did not explicitly link the Surrogate’s Court with the affected proceedings, chapter 588 had “effectively repealed” the venue provisions applicable to termination petitions filed in the Surrogate’s Court. The court issued a decision requesting guidance from the Legislature, and, on its own motion, initiated a policy of transferring all such cases to the Family court pending legislative clarification. Matter of Eno R.W., NY Law Journal, Aug. 26, 1992, p. 27, col. 5 (Surr. Ct., Nassau Co. 1992.).

This measure would clarify that the intent of Chapter 588 was to require simply that Family Court termination proceedings be filed in the same Family Court that exercised jurisdiction over the underlying child protective case. The new language now makes it clear that venue of all other proceedings — including those filed in the Surrogate’s Court pursuant to *section 384-b(3)(d) of the Social Services Law* — would be based on the current residence of the biological parent, if known, or the county of the child’s residence or any county in which the authorized agency has an office for the regular conduct of business.

By clarifying the venue for petitions to terminate parental rights in both the Family Court and Surrogate’s Court, this measure will ensure uniformity in the application of the reforms intended by chapter 588, and avoid costly and unnecessary delays caused by transfer of cases from one court to another.

The amendment to *Domestic Relations Law § 113* is also necessary to resolve a conflict in the law arising from the enactment of chapter 588 of the laws of 1991. *Domestics Relations Law § 113*, the venue statute governing adoptions, currently provides that adoptions must be brought in the county in which the adoptive parents reside or, if they are not state residents, the county in which the authorized agency has its principal office. Chapter 588, however, contains two new statutory provisions, *Domestic Relations Law 112(8)* and *Social Services Law § 384-b (11)*, which are designed to expedite the adoption process by allowing prospective adoptive parents to file an adoption petition in the court in which a termination of parental rights petition regarding the subject child or children is pending or has been heard. These new provisions apparently conflict with *D.R.L. § 113* in cases in which the prospective adoptive parents are New York State residents, but not residents of the county in which the termination of parental rights proceeding has been brought. Additionally, a conflict is created where the prospective adoptive parents are not New York State residents, but the authorized agency has its principal office in a county other than the county of venue of the termination of parental rights proceeding. The proposed amendment resolves the conflict

by providing that the new venue provisions of chapter 588 apply solely to adoption petitions brought pursuant to the expedited procedures articulated in *Domestic Relations Law § 112(8)* and *Social Services Law § 384-b(11)*, while the traditional venue rule continues to apply to all other adoption proceedings.

1987 Recommendations of Family Court Advisory and Rules Committee:

One of the major gaps in the statutory sequence leading to sound permanency planning for children in foster care exists at the point where a judge, using the authority given by *sections 392 of the Social Services Law* (foster care review proceedings), or 1055 of the Family Court Act (child protective proceedings), orders the agency responsible for foster care planning for the child to institute a proceeding to terminate parental rights and the agency fails to do so at all or in a timely fashion. This has been documented by successive studies of deficiencies in the permanency planning system.

Efforts by Family Court judges to use the contempt power under *FCA § 156* to enforce such a direction have been complicated by appellate decisions holding that the contempt power does not lie where alternate remedies are available, citing the statutory provision allowing a foster parent to institute the proceeding after 90 days have elapsed as such an alternate remedy (*SSL § 392(7)*). *Matter of Murray , 98 A.D.2d 93 (1st Dept., 1983)*; *Matter of Wilson , 98 A.D.2d 666 (1st Dept., 1983)*. However, inadequacy of this remedy as a practical alternative has left the judges dissatisfied, and even the Appellate Division, in *Matter of Murray, supra* , remarked upon its shortcomings and its impact on the child (in that case a 17-month delay), stating [at page 97]:

“In finding that a violation of these orders is not subject to the sanction of contempt because of the availability of another remedy, we are not unmindful of the, at times, inadequacy of the statutory remedy in situations such as this, where failure to commence termination proceedings delayed the adoption process by at least 17 months. These shortcomings are, however, a matter for legislative amelioration.”

Judge Holt Meyer, in Matter of Ida Luz M. , 131 Misc. 2d 1063, (Fam. Ct., Richmond Co., 1986), notes with persuasive detail the impact of the unwieldiness of the contempt power and its minimal impact on the presently intractable foster care system:

“Meanwhile the child continues to linger in limbo, lacking permanence, with possible adoption delayed and possibly, foreclosed. For many children in foster care, months of delay turn into years, and childhood is lost forever leaving emotional handicaps.”

The Committee, therefore, recommends an amendment to *section 384-b of the Social Services Law* to allow the court to order a person, other than the authorized agency or foster parent, to initiate a proceeding to terminate parental rights where the agency fails or delays inordinately to do so within a prescribed time period. With this additional enforcement option, the court will be able more effectively to propel the process forward to its desired and necessary result and avoid the delays that are inimical to the welfare of the affected child.

Amendment Notes:

2013. Chapter 430, § 2 amended:

Sub 8, par (a), subpar (ii) by deleting at fig 1 “and” and adding the matter in italics.

Sub 8, par (b), subpar (i) by deleting at fig 1 “and” and adding the matter in italics.

2012. Chapter 3, § 22 amended:

Sub (c) by deleting at figs 1–4 “or”.

The 2016 amendment by ch 37, § 10, substituted “intellectual disability” for “mental retardation” in 4(c) and 6(b) and added “provided, however, that case law regarding use of the phrase ‘mental retardation’ under this section shall be applicable to the term ‘intellectual disability’” in 6(b).

The 2016 amendment by ch 242, § 5, substituted “attorney for the child” for “law guardian” twice in 3(*l*)(v) and in 9, added “contact with siblings” in the first sentence and added the second sentence.

The 2019 amendment by ch 125, § 2, added “in immigration detention or immigration removal proceedings” twice in 3(l)(i)(D).

Commentary

2016 Recommendations of the Family Court Advisory and Rules Committee:

An increasing recognition of the critical importance of maintaining and fostering sibling relationships has been reflected in both Federal and New York State child welfare laws. *Sections 1055(c) and 1089(d)(2)(viii)(F) of the Family Court Act* provide that placement and permanency hearing orders, respectively, “may include encouraging and facilitating visitation with the child by the child's siblings.” *Section 1027-a of the Family Court Act* establishes a presumption that placement of siblings together is in the children’s best interests unless “contrary to the child's health, safety or welfare.” Regulations of the New York State Office of Children and Family Services (OCFS) reiterate this presumption. [*18 N.Y.C.R.R. § 431.10*] and a 1992 Administrative Memo issued by OCFS further provides that where siblings are placed in separate homes, bi-weekly visitation should be arranged. In 2008, the Federal Fostering Connections to Success and Increasing Adoptions Act [Public Law 110-351] requires child welfare agencies to exercise “reasonable efforts” to place siblings together when arranging temporary foster care, kinship guardianship or adoptive placements – and, if not, to arrange for frequent sibling visitation, unless contrary to the health, safety or well-being of the child or children. Most recently, the *Preventing Sex Trafficking and Strengthening Families Act* [Public Law 113-183], enacted in 2014, requires notification to parents of siblings of children removed into foster care, as well as notification to foster youth of their rights. To implement these provisions, in 2015, OCFS issued an Administrative Memo regarding sibling parent notification and included the following in its *Bill of Rights for Children and Youth in Foster Care*:

“As a child or youth in foster care in the State of New York, I have the right:***

“4. To live with my brothers and sisters unless the court or my agency has determined it is not in my best interests or those of my brothers or sisters, and to visit with my brothers and sisters regularly if we do not live together unless a court or a caseworker has determined it is not in my best interests or those of one of my brothers or sisters, or their distance from me prevents visitation.”

Notwithstanding these provisions, New York State law does not clearly delineate the standing of youth to seek visitation or contact with their siblings when either the youth or siblings are in foster care, kinship care or have been adopted. The Family Court Advisory and Rules Committee is proposing a measure that would clarify the criteria and procedures for such youth to seek visitation and/or contact with their siblings. Codifying the OCFS regulation, *supra,* *Family Court Act § 1027-a* would be amended to impose a presumption that where siblings are not placed together, the agency must arrange “appropriate and regular” contact unless contact would not be in the child's or the child's siblings’ best interests. Use of the term “contact,” rather than the narrower term “visitation,” acknowledges both the practical constraints presented where long distances separate siblings and the increasingly available and accessible possibilities for electronic contact in between in-person visits. Significantly, application of the best interests standard to the siblings to be visited or with whom contact is sought is consistent with the decision of the *Appellate Division, First Department, in Keenan R. v. Julie L., 72 A.D.3d 542, 899 N.Y.S.2d 51 (1 Dept. 2010)* (visitation denied where causing anxiety to the siblings, who had no meaningful relationship with applicant).

Further, the proposal amends both *Family Court Act §§ 1027-a* and *1081* to afford specific standing to youth to seek an order for visitation or contact with siblings and, concomitantly, for siblings to seek orders for visitation or contact

with youth in care. [1.] Similar to the definition in Public Law 113-183 and the OCFS Administrative Memo, siblings are defined to include “half-siblings and those who would be deemed siblings or half-siblings but for the termination of parental rights or death of a parent.” Notice and an opportunity to be heard must be afforded to the respondent and other parent or parents of the youth, the parents or persons having care and custody of the children with whom the youth is seeking visitation or contact, the social services agency, the siblings themselves, if ten years of age or older, and the siblings' attorneys, if any. Affording due process to both the parents of the applicant-child and the parents of the siblings is consistent with the United States Supreme Court decision in *Troxel v. Granville, 530 U.S. 57 (2000)*, which requires that weight be given to the constitutional rights of parents regarding the upbringing of their children. *See also, Matter of Coccose v. Diane B., 8 Misc.3d 1020(A), 803 N.Y.S.2d 17 (Fam. Ct., Ulster Co., 2005)* (in determining sibling access application, court must evaluate the bases of the parents' objections, in addition to the sibling relationship itself).

The measure provides that placement and permanency hearing orders, issued pursuant to *Family Court Act §§ 1055(c)* and *1089(d)(2)(viii)(F)*, respectively, may incorporate §§ 1027-a or 1081 access orders. Moreover, it amends *Social Services Law § 384-b* to codify the case law that provides that termination of parental rights (and by extension, adoption) does not terminate sibling relationships. This removes any doubt that children may seek contact with siblings under the procedural vehicle of *Domestic Relations Law § 71*, notwithstanding severance of the children's ties to their parents. This provision is consistent with the Court of Appeals holding in *People ex rel Sibley v. Sheppard, 54 N.Y.2d 320, 445 N.Y.S.2d 420 (1981)*, that grandparent relationships are not severed by adoption, a holding extended to sibling relationships in *Hatch on behalf of Angela J. v. Cortland County Dept. of Social Services, 199 A.D.2d 765, 605 N.Y.S.2d 428 (3rd Dept. 1993)*.

It has been estimated that two-thirds of children in foster care also have siblings in care, [2.] many of whom are separated for a variety of reasons, including, *inter alia*, a large sibling group, or mental health, educational or other special needs of one of the siblings, or the fact that one of the siblings is over the age of 18. Approximately 60 to 73 percent of children adopted from foster care have siblings in care and approximately 40 percent are placed together, with visitation among those separated not provided consistently. [3.]

For youth already suffering the trauma of child abuse or neglect and separation from their homes, maintenance of their relationships with their siblings may be a vital lifeline, a protective shield against further trauma, an aid in coping with loss and grief, and essential to development of normal attachments and self-esteem – significantly, often “the most stable and consistent relationship available.” *See* R. Mandelbaum, *Delicate Balances: Assessing the Needs and Rights of Siblings in Foster Care to Maintain their Relationships Post-Adoption*, 41 N.Mex.Law Rev. 1, 29-34 (Spring, 2011); D.Post, S.McCarthy, R.Sherman and S.Bayimli, *Are You Still My Family?: Post-adoption Sibling Visitation*, 43 Cap.U.Law Rev. 307, 319-326 (2015). The *Beyond Permanency* Symposium, sponsored by the Children's Law Center at New York Law School on October 23, 2015, as well as the article by Dawn Post, *supra*, were replete with first-hand accounts of youth who struggled to maintain relationships with siblings, often mentor-type relationships that facilitate the successful adjustment of the siblings. Enactment of the Committee's proposal, therefore, will not only bring clarity to New York State law but will also provide substantial developmental benefits for the numerous sibling groups in the State's child welfare system.

PRACTICE INSIGHTS:

[1.] This provision fills the gap noted by Professor Merril Sobie, in his McKinney's Practice Commentary to *Family Court Act § 1085*, that is, that “[u]nmentioned in the statutory visitation series [*Family Court Act § 1081*, et seq.] is the fact that the child and her siblings also enjoy reciprocal visitation rights [see, e.g., § 1055(c)].”

[2.] Sibling Issues in Foster care and Adoption (Child Welfare Information Gateway, www.childwelfare.gov/pubPDFs/siblingissues.pdf) [cited in D.Post, S.McCarthy, R.Sherman and S.Bayimli, *Are You Still My Family?: Post-adoption Sibling Visitation*, 43 Cap.U.Law Rev. 307, 336 (2015)].

[3.] R. Mandelbaum, *Delicate Balances: Assessing the Needs and Rights of Siblings in Foster Care to Maintain their Relationships Post-Adoption*, 41 N.Mex.Law Rev. 1, 6 (Spring, 2011)

NY CLS Soc Serv § 384-b, Part 1 of 2

TERMINATING PARENTAL RIGHTS - CHANGES IN PRACTICE UNDER 2005 and 2006 LEGISLATION.

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INSIGHT

The statutes concerning termination of parental rights have changed considerably. Petitions alleging permanent neglect may now be filed at a point that is either one year — or 15 of the most recent 22 months — following the date the child "came into care." Petitions upon the ground of severe or repeated abuse may now be filed immediately after a determination that reasonable efforts toward reunification with the parent are no longer required. New provisions for suspended judgments have been created. A suspended judgment may not be extended for more than one year past the expiration of the initial suspended judgment order. Furthermore, the statute now provides for specific terms and conditions to be included in the order, including provisions for expiration and violations of the order. There are now also provisions to insure that one judge hears all of the cases concerning one family. The definition of "severe abuse" has been expanded in cases of homicide.

ANALYSIS

Counsel Must Understand Provisions Regarding Timing and Filing of Petitions.

Prior to the new statute, permanent neglect proceedings could not be brought unless a child was in the care of an authorized agency for a period of more than one year. A federal law, The Adoption and Safe Families Act of 1997, with some exceptions, provides that social services agencies must file petitions to terminate parental rights when a child is placed for 15 of the most recent 22 months, whether consecutively or not. Notwithstanding the federal law, New York law did not provide for this. Under the former New York law, a child had to be in placement for more than twelve consecutive months. Now, New York law conforms to the federal statute and a petition for permanent neglect may be filed at a point that is *either* one year — or 15 of the most recent 22 months — following the date the child "came into care." Interestingly, the same is not so for termination of parental rights proceedings brought upon the grounds of mental illness or mental retardation. Existing law in that area has not changed; the child must be "in care" for the period of one year immediately prior to the date on which a petition is filed.

Proceedings to terminate parental rights upon the grounds of severe or repeated abuse may now be brought and litigated immediately after a determination that reasonable efforts toward reunification with the parent are no longer required. The former requirement that the child be "in care" for at least one year prior to the commencement of the fact finding hearing has been eliminated.

Effective October 24, 2006, a petition seeking to terminate parental rights must be originated in the family court in the same county in which the last proceeding concerning the child was heard (L 2006, ch 185). A new paragraph (c-1) has been added to *SSL § 384-b[3]*.. This provision provides that in the event a termination of parental rights proceeding is filed in one county and that same child is already under the jurisdiction of a different family court, the judges shall communicate with one another concerning the jurisdictional issues.

Counsel Must Consider Procedures Regarding Suspended Judgment Orders.

Suspended judgment orders pursuant to *FCA § 633*. must clearly set forth the duration of the order as well as specific terms and conditions. Moreover, the order must state a "date certain" for a court appearance and review not later than 30 days before the expiration of the order. All counsel would be well advised to diary this date and be prepared to proceed on the scheduled date.

Counsel for agencies must ensure that new procedures for reports are adhered to. No later than 60 days prior to the expiration of the suspended judgment order, the petitioning agency must file a report with the court, all parties,

any intervenors, the law guardian and the attorneys for the parties. The report must address the respondent's compliance with the terms of the suspended judgment. When the matter appears before the court for the "thirty day review" as referenced above, the court must review the report.

Counsel for agencies, or law guardians, should consider filing a motion or submitting an order to show cause if the respondent parent is in violation of the terms of the suspended judgment or if the moving party seeks to extend the order. Upon the filing of such motion or order to show cause, the expiration of the order is tolled until the matter is resolved. Unless such a motion or order to show cause is filed prior to the order's expiration, the terms of the suspended judgment are "deemed satisfied" and the termination or parental rights proceedings will be dismissed.

Successive Extensions Not Permitted.

Suspended judgments may no longer be extended for more than one year past the expiration of the initial suspended judgment order. The new statute specifically prohibits successive extensions.

It is important for all counsel to remember that permanency hearings, pursuant to FCA Article 10-A, must continue, in accordance with that statute, during a period of a suspended judgment.

The Definition of "Severe Abuse" Has Been Expanded.

Effective 11/14/06 (L. 2006, ch. 460), termination of parental rights proceedings brought upon the ground of severe abuse (*SSL § 384-b[8]*.) may now include cases where a parent is convicted of murder or manslaughter, or an attempt to commit those crimes, and the victim of the crime was the child's other parent. Additionally, such cases may be brought where the victim of the crime was another child for whose care such parent is or has been legally responsible as defined by *FCA § 1012(g)*.. Although not specifically characterized as such, there appears to be an affirmative defense set forth in this new amendment to the statute. The provisions of *SSL § 384-b(8)(a)(iii)(A)*. will not apply to cases where the parent's conviction for murder or manslaughter (or an attempt to commit such crimes) concerned a parent who was a victim of "physical, sexual or psychological abuse" by the decedent parent *and* such abuse was a factor in causing the homicide or attempted homicide. Counsel involved in such a unique case would be well advised to review the provisions of the statute very carefully.

For more analysis of the 2005 New York Permanency Legislation, *see* the 2005 New York Permanency Legislation Special Alert in *Carrieri & Lansner, New York Civil Practice: Family Court Proceedings* § SA.01 *et seq.* .

NEGOTIATING CONDITIONAL SURRENDER OF CHILD.

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INSIGHT

If an attorney represents a parent whose children have been in foster care and who is now facing a termination of parental rights proceeding under *SSL § 384-b*., there are basically only three ways to handle the matter. First, counsel can go to trial and attempt to win. The odds are against the client-parent — the agencies usually win these proceedings, and the total loss of the child is the harshest of all outcomes for the client. However, the agencies sometimes have a weak case against which strategies can be employed, so this option could be discussed with the client. A second option is to attempt to negotiate a suspended judgement to give the client more time to resolve the issues keeping the child in foster care. The third option — negotiating a conditional surrender — is one that many parents" attorneys consider, particularly when the case against the client appears strong. The conditional surrender option allows the client to avoid the total loss of access to the child that may result from losing a termination of parental rights proceeding. It also may be an emotional relief for a parent consciously to choose an adoption plan

for their child as opposed to having all control taken from them in a long and draining legal proceeding. The key is to negotiate conditions that will allow the client to have some real involvement in the child's life.

ANALYSIS

Consideration of Surrender Requires Evaluation of Agency's Case for Termination of Parental Rights.

After a termination petition has been filed, defense attorneys for parents are frequently the first to raise the question of a possible surrender of the child. It is quite possible that there has already been a discussion at the agency about whether to accept any terms in a particular surrender that might be offered. The agency may have already formulated a position — from which it has sworn not to deviate — anticipating that the parent will seek possible terms. Counsel should not just wave the white flag and enter unarmed.

Counsel should first ensure that the client's case warrants such a discussion. Pre-trial discovery should be completed to determine if there is a strong case against the parent. In addition, counsel must calculate the likelihood that the court would terminate parental rights. Counsel must also discuss the strength of the case with the client and the possible consideration of surrender. Obviously, there are many clients who will not consider this option under any circumstances. However, it may be easier for the client to visualize the possibility and give it thoughtful consideration if the attorney can tell the client what terms may be included in the negotiation. Another consideration is whether the parent is likely to continue contact with the child even if there is a trial and parental rights are terminated. For example, if the child is placed with a foster parent who is also a relative, and who is intending to adopt, the parent may be able to have contact with the child without any conditional surrender agreement, thereby reducing the risk of trial.

Counsel Should Attempt to Negotiate Favorable Terms and Carefully Consider Client Objectives.

How and when to open a negotiation of conditions for a surrender are tactical considerations. In some cases, a discussion immediately after the petition has been filed may catch the other side off guard and result in some favorable terms. It also may avoid the emotional drain on the client during what could be a drawn-out process of losing a child. On the other hand, it may be very advantageous in some cases to let the case get down to the wire — right before the first day of the hearing, or even during the hearing itself — before opening negotiations. This may put the agency in a more flexible mood, particularly if it has concerns about the strength of its case or if it is hoping to free the child for adoption more quickly. Of course, the choice could be preempted if the judge or another party opens the discussion of terms for a conditional surrender.

As the conditional surrender becomes ever more common, it would seem that an early approach to opening discussions is most favorable. Whenever counsel chooses to begin negotiating, counsel must be sure to have carefully thought through the appropriate objectives for the client. The biggest problems arise when counsel simply did not consider asking for a term that may have been beneficial.

Stressing Child's Perspective on Termination May Yield Better Agreement for Parent.

The attorney must remember that a conditional surrender requires agreement of all the parties including the law guardian as well as the specific agreement of the Judge, and counsel may very well have to marshal reasons as to why the other parties should be willing to consider terms. Counsel is advised to lean heavily on the fact that surrender will free the child much more quickly and that the child may benefit from some ongoing contact with the parent. Stressing the child's perspective — having some contact with a parent they know and love — is a much more effective tone to take than pontificating about the parent's rights.

Identifying Potential Adoptive Parents Is Often Key Negotiating Term that Will Make Surrender More Palatable to Surrendering Parent.

The parent's attorney will generally want to negotiate very specific terms that leave no doubt as to the parent's exact position after the child has been surrendered and also after the child has been adopted. A common term to negotiate is identification of the person or persons who will adopt. *SSL § 383-c(2)(b)*.. This can be a key term to

negotiate. If the potential adoptive parent is known to the birth parent, perhaps a relative or a respected foster parent, this can make all the difference in the client's decision that the surrender is a good choice to make for the child. Counsel can also feel more assured if the adoptive parent is named, as it is then clear that the parent is aware of and willing to accept the terms of the surrender. Counsel should consider negotiating that counsel and the client be immediately informed if the identified adoptive parent cannot or will not adopt and that the client be allowed to totally withdraw the surrender in that situation. The surrender form allows a parent to choose if he or she will be notified if a substantial failure of a material condition occurs before the adoption. It is hard to imagine why the birth parent would ever waive this notice. The birth parent can then use the procedures in *FCA § 1055-a*. to enforce the terms or to argue that the surrender should be nullified if the terms cannot be honored.

Arriving at Settlement Favorable to Parent-Client Requires Careful Attention to Detail and Clear Written Agreement.

If ongoing contact is to be part of the negotiated conditions, counsel should clarify how much contact the parent will have with the child and the details of that contact — including location and length of the visit, who can be present, and the terms for make-up visits. The means of communication between birth parent and adoptive parent are very important matters to negotiate so they can set dates and notify each other of changes in address. Counsel should pay careful attention to any proposals that would limit the visits under specific future circumstances — such as the older child who may not want to visit or limitations based on a therapist's opinion that the visits are not in the child's best interests. The other parties may not be willing to accept a surrender without such terms, however, but counsel should try to negotiate the details of these limitations to be as favorable and clear as possible. The agreement can even include terms of contact with any siblings or half siblings who are not being adopted together. After an adoption, the terms are enforceable under *DRL § 112-b*. and the court must enforce the terms unless it is no longer in the child's best interests to do so.

For more analysis of the 2005 New York Permanency Legislation, *see* the 2005 New York Permanency Legislation Special Alert in *Carrieri & Lansner, New York Civil Practice: Family Court Proceedings* § SA.01 *et seq.* .

USING DISPOSITIONAL HEARING AS LAST OPPORTUNITY TO FINALIZE DETERMINATION OF PARENTAL RIGHTS TERMINATION.

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INSIGHT

Unless specifically waived on the record by all parties, the court must hold a dispositional hearing after finding that a parent has permanently neglected his or her child. There is no statutory mandate for a dispositional hearing in a termination on the grounds of abandonment, mental illness, or mental retardation, but the court can use its discretion to hold one. This hearing is the last opportunity, absent an appeal, for the parent to prevent the court from freeing the child for adoption. It is the final opportunity for the agency attorney to convince the court that the time has come to end the parent's rights to the child. It is also the final point of argument for the law guardian – whichever way he or she is disposed. Unlike the fact-finding hearing, the dispositional hearing is all about the child's best interests. It can include factual information before and subsequent to the filing of the termination petition. The parties should use the time between the filing of the termination petition and the dispositional hearing to position the client to the best advantage.

ANALYSIS

Counsel for Parent Should Remind Court of Agency's Burden of Proof.

In a permanent neglect matter, if the case has proceeded this far, the likelihood of termination is very strong, and the parent's battle must be waged with great skill. The court has already determined that the parent has permanently neglected the child. Although the agency still has the burden of proof that it is in the child's best interests to be freed for adoption, the court is likely to expect some proof why it is *not* in the child's best interests to be adopted. The attorney should remind the court that the burden of proof is, in fact, still on the agency and that the disposition is to be made on the child's best interests and ". .there shall be no presumption that such interests will be promoted by any particular disposition." *FCA § 631*..

Counsel for Parent Should Establish Plan with Client to Demonstrate that Parent-Child Relationship Should Remain Intact.

There are two basic plans of attack for the parent's attorney. First, counsel can argue that it is in the best interests of the child to give the parent further opportunity to try to resolve the issues that are keeping the child out of the home, and second, that there is no real adoptive possibility for the child. Counsel should try to make both arguments, if possible. The parent's attorney most likely attempted to negotiate a suspended judgment before the fact-finding and was unsuccessful. The court, however, can still order a suspended judgment in the context of the permanent neglect dispositional hearing. *FCA § 633*.. The case law strongly implies that the court should only order a suspended judgment where there has been significant progress on the issues by the parent, as well as where there is a strong relationship with the child. Counsel should marshal any evidence of the parent's recent efforts to comply with services and make progress. Sympathetic service providers will sometimes be willing to testify that the parent is doing much better lately and has a real chance to resolve the issues. The practitioner should also present any available evidence of the parent's ongoing contact with the child, including visits, notes, gifts, and telephone calls. If possible, locate witnesses to the child's bond with, and love for, the parent. This argument is much more effective if the attorney for the parent has successfully counseled his or her client at the beginning of the termination to make all possible efforts to comply with the services that have been ordered. Delaying final resolution of the termination matter would then be advantageous and will give the client as much time as possible to improve matters and set up this argument for the dispositional hearing. If there is no adoptive parent who has been identified for the child, this should be a constant theme: "Judge, this child should not be made a legal orphan." If the child is 14 years of age or older – or even close in age – then the child's wishes may be helpful, if the child does not want to be adopted. *SSL § 384-b(3)(k)*. There is case law that supports not freeing a child who is close to 14 or over 14 and has clearly stated that he or she does not wish to be adopted. The law guardian may be very helpful in this situation.

Arguing Agency's Position Requires Demonstrating Child's Best Interests Are Served by Termination and Should Include Analysis of Neglect History.

The agency attorney should hammer away on the best interests of the child and remind the court that the dispositional hearing is not about whether the "parent deserves another chance." The attorney should stress how long the child has had to wait in the limbo of foster care for the parent to resolve his or her problems. Counsel should make use of available case law holding that a parent who has made some improvement while the matter has been pending has done too little, too late – given the child's time frame. Evidence should be provided that any recent efforts to resolve problems need to be seen in the backdrop of the many months – sometimes years –of little or no progress. Evidence that the parent has not consistently visited and maintained a relationship with the child can be very powerful. The agency attorney should present a strong argument that the child has an adoptive home waiting eagerly to care permanently and lovingly for the child. The statute provides that the court is not to require proof that there is an adoptive home for the child. *SSL § 384-b(3)*(i.).. In practice, however, the court expects that the agency will have an adoptive home for the child. Counsel should advise the client from the onset of the proceeding that there should be an adoptive home for the child by the time of the dispositional hearing. A key witness in the dispositional hearing should be the foster parent who can testify, with some emotion, about how much they want to adopt the child. The attorney should offer any evidence that the foster parent has been providing for any special needs of the child. The key is to show the court that the child has a strong, bonded, long-term relationship with a loving, stable, adoptive home.

Counsel for Parent and/or the Law Guardian Should Argue for Dispositional Hearing Even when Not Mandated by Statute.

In a termination based on abandonment, mental illness or mental retardation, there is no statutory authority for a dispositional hearing. If the court does use its discretion to hold one, there is no statutory authority for a suspended judgment. Although some courts seem to be unaware of the law, if the court knows the law or if the agency attorney reminds the court, then parent's counsel has a double battle – first, to convince the court to hold a hearing and then to convince the court that termination is not in the child's best interests. It is likely that the only argument that may be successful is the older child who does not want to be adopted and still has a strong bond with the parent or where perhaps a relative has come forward with a strong argument for custody.

For more analysis of the 2005 New York Permanency Legislation, *see* the 2005 New York Permanency Legislation Special Alert in *Carrieri & Lansner, New York Civil Practice: Family Court Proceedings* § SA.01 *et seq.* .

PERMANENCY HEARINGS FOR CHILDREN FREED FOR ADOPTION.

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INSIGHT

Permanency hearings for children freed for adoption appear to be mostly ministerial proceedings. For the child placed in a pre-adoptive home with foster parents who actively pursue adoption that might be true. For the child not placed in a pre-adoptive home, or for the child who does not wish to be adopted, or where other special circumstances exists, the hearings are quite important.

ANALYSIS

The Initial Permanency Hearing Must Proceed Immediately upon the Child Becoming Freed for Adoption.

At the conclusion of the dispositional hearing at which the child was freed for adoption in a proceeding pursuant to *SSL §§ 383-c*., 384. (voluntary surrender) or 384-b. (termination of parental rights), the court must set a date certain for the initial freed child permanency hearing and advise all parties in court of the date set, except for the respondent, who is no longer a party to the proceeding. The hearing must commence no later than 30 days after the hearing at which the child was freed and must be completed within 30 days, unless the court determines to hold the permanency hearing immediately upon completion of the hearing at which the child was freed, provided adequate notice has been given.

When a Child Is Placed in a Pre-Adoptive Home, It Is Important that the Process of Filing for Adoption Be Expedited.

At a freed child permanency hearing, the court, among other things, may direct that the child be placed for adoption in the foster family home where he or she resides or has resided or with any other suitable person or persons, and may further direct the local social services district to provide services or assistance to the child and the prospective adoptive parent, including the evaluation of eligibility for an adoption subsidy. *FCA § 1089(d)(2)(viii)(B)*.. If a petition for adoption was filed at the same time as the petition seeking to terminate parental rights (*DRL § 112[8]*.), the court should review the petition and set a schedule for the completion of the adoption (*SSL § 384-b[11]*.). If a petition for adoption has not yet been filed the court should set a time frame for the filing and should direct the agency to complete other necessary documents by certain dates.

When a Child Is Not Placed in a Pre-Adoptive Home, It Is Important to Review the Matter Carefully to Insure that All Efforts Are Made to Secure an Adoptive Home, or that Other Permanency Plans Are Explored.

For children not placed in pre-adoptive homes, the court should be more vigilant in reviewing the matter and should issues appropriate orders so that all efforts are made to secure an adoptive placement. The court should look carefully at the impediments to the adoption and direct the social service agency to provide services to the child to assist in removing those impediments.

There are times, when despite many efforts, adoptive homes cannot be located for certain children. It is not inappropriate to re-think a permanency plan for a child even when parental rights are already terminated. What is important, of course, is that children have a place which they can call home and know that the place is permanent and stable. The permanency plan of "another permanent planned living arrangement" (APPLA) can be appropriate, but only when such plan includes "a significant connection to an adult willing to be a permanency resource for the child." *FCA § 1089(d)(2)(i)(E)*.. Counsel, particularly law guardians, should explore all options with the child and think creatively to find that "significant connection to an adult." At the permanency hearing, the court should explore these possibilities. as well and issues orders to expedite the process of locating a permanency resource for the child.

There may be times when a child freed for adoption, but not placed in a pre-adoptive home, can live with a relative. Perhaps the relative was not previously available or was not considered a resource when the child was first placed. Situations change, of course, and in some cases many years have passed since the child's first placement. The fact of being unable to secure a pre-adoptive home for a child must be factored into the equation when considering, or re-considering, a relative. Here again, lawyers and judges should be innovative and should strive to find a proper place for a child so that permanency can be achieved.

Indeed, the permanency hearing for the freed child can be the most important of all hearings for the child; it can be the hearing that aids in finding the child a permanent home.

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2002 Recommendations of the Family Court Advisory and Rules Committee:

Enactment of legislation in New York state implementing the federal *Adoption and Safe Families Act* [Public Law 105-89] capped a series of reforms aimed at expediting the movement of children out of foster care and into permanent times through reunification with their families or through adoption or other alternative. *See* Governor's Memorandum of Approval, 1999 McKinney's Sess. Laws of N.Y. Ch. 7. Since 1986, periodic reviews of children freed for adoption have been required, a process that dove-tailed with the requirements in ASFA for regular permanency hearings to be held for each in foster care until the child's achievement of permanency. *See* Laws of 1986, ch. 902; Laws of 1988, ch. 638; Laws of 1999, ch. 534. However, the amalgamation of these earlier state law requirements with the federal ASFA and its regulations has created confusion, particularly with respect to the applicable time-frames and other requirements for permanency hearings in cases in which termination of parental rights proceedings are pending or have concluded. The Family Court Advisory and Rules Committee is proposing a measure that would greatly simplify the determination of when a permanency hearing is due and add needed clarity to the applicable procedures. In so doing, the measure would provide more rigorous judicial monitoring of cases involving children freed for adoption, thereby fulfilling the twin goals of expediting the achievement of permanency for these children and ensuring New York State's eligibility for federal foster care funding through its compliance with federal mandates.

First, the proposal requires a permanency hearing, pursuant to *section 1055-a of the Family Court Act*, to be held with dispatch in all cases in which the Family Court either commits a child to the guardianship and custody of an authorized agency as a result of a proceeding to terminate parental rights or approves a judicial or extra-judicial surrender of a child to an authorized agency. The hearing would have to be convened and completed immediately following, but not more than 60 days after, the earlier of the Court's announcement of its ruling on the record or issuance of its written order. Regardless of the mode of the child's entry into foster care — whether by voluntary placement or by a placement resulting from an adjudication of child abuse or neglect — the requirement to complete a permanency hearing immediately after the child has been freed for adoption would ensure that the appropriate questions regarding progress toward permanency would be answered on a timely basis. This would

eliminate any confusion over whether the disparate permanency hearing deadlines resulting from the date of the child's original placement would continue to apply, notwithstanding the pendency or conclusion of surrender or termination of parental rights proceedings, since the requirement for an immediate permanency hearing once the child has been freed would, in effect, start the permanency hearing calendar anew. Significantly, the Court would have flexibility to determine whether a formal petition or simply a report would be required for the permanency hearing and what schedule and form of service should be utilized to assure prompt notification of all required permanency hearing participants.

Second, following completion of the first section 1055-a hearing, all subsequent permanency petitions would have to be filed no later than six months after completion of the prior section 1055-a hearing. Each hearing would be required to be completed within 60 days of the filing of the petition. Simplicity and certainty as to the applicable time-frames would be provided by requiring the calendar to begin for all children freed for adoption at the same time — i.e., immediately upon freeing of the child — and by specifying uniform deadlines both for the filing of subsequent petitions at six-month intervals and for completion of hearings within 60 days thereafter.

Under current law, the six-month deadline applies to children who have been freed for adoption but for whom either no adoptive placement has been made or no adoption petition has been filed; annual permanency hearings are required for other freed children. Although those two categories of freed children probably account for most of the children freed for adoption, [*]the Family Court is unable to predict at the point of issuance of a permanency order whether the following hearing would be required at a six or a 12 -month interval. Thus, the Court is hampered in scheduling subsequent permanency hearings in advance or in retaining the cases on the court calendars with dates certain — an obstacle to expeditious achievement of permanency that would be eliminated by enactment of this measure. The practice of retaining cases on the calendar, scheduling hearings well in advance and convening frequent reviews is, in fact, integral to the success of the model "Special Expedited Permanency Part" in Family Court, New York County, key features of which are in the process of replication throughout New York City. [**]

Third, *section 1055(h) of the Family Court Act* would be clarified to provide that while children freed for adoption, either as a result of surrender or termination of parental rights, would no longer be considered placed in foster care on the original child protective proceeding, they would nonetheless still be deemed to be in foster care and subject to periodic permanency hearings pursuant to *section 1055-a of the Family Court Act* until permanency is actually achieved. This ensures that all children in this category would remain in foster care for purposes of federal reimbursement, notwithstanding the "suspension" language of *section 1055(h) of the Family Court Act*. A child originally placed pursuant to a child protective petition, however, would still be considered to be so placed in cases in which there is another parent or other person whose consent would be required for an adoption but whose parental rights have not been terminated. Such a child would remain subject to extensions of placement and permanency hearings in accordance with *section 1055(b) of the Family Court Act*, rather than section 1055-a, and would also be entitled to federal foster care reimbursement.

Finally, the proposal would make several technical amendments to *section 392 of the Social Services Law*, specifically removing obsolete references to children freed for adoption, whose permanency hearings are now held in accordance with *section 1055-a of the Family Court Act* instead of that section, and reinstating paragraph (c) of subdivision six of *section 392 of the Social Services Law*, a provision of the *Adoption and Safe Families Act* that was inadvertently repealed as part of Chapter 534 of the Laws of 1999.

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[*] Because most children freed for adoption are already subject to the six-month review requirement, extension of the six-month requirement to all freed children will not create any appreciable burden for the Family Court or the parties. In any event, to the extent that permanency hearings would in some cases be more frequent, the burden would be more than offset by the more rapid achievement of permanency for those children that would result from more rigorous judicial monitoring.

[**] This court part and a similar court part in Family Court, Erie County, both established with the assistance of the Permanent Judicial Commission on Justice for Children, have been designated as "model courts" by the National Council of Juvenile and Family Court Judges and have had remarkable success in achieving quicker permanency for children. See Schecther, "Family Court Case Conferencing and Post-dispositional Tracking: Tools for Achieving Justice for Parents in the Child Welfare System," *70 Ford. L Rev. 427, 428 (Nov., 2001)*.

2006 Recommendations of the Family Court Advisory and Rules Committee:

2006 Recommendations of the Family Court Advisory and Rules Committee:

Children caught in the limbo of foster care must be given permanent homes — preferably through return to their families, but otherwise through adoption or other alternative — as quickly as possible. This is critical to the healthy development of the children, is the linchpin of New York's recently-enacted landmark permanency legislation [Laws of 2005, ch 3] and is a mandate for New York State's eligibility for significant federal foster care funding under the federal *Adoption and Safe Families Act* [Public Law 105-89]. Recognizing that the court process should not itself present an impediment to the timely achievement of permanence for children, the Family Court Advisory and Rules Committee is submitting a proposal to streamline the process through implementation of the nationally-recognized "one family/one judge" model.

Continuity of the court and the judge have been identified as essential elements for the propmpt achievement of permanency for children in foster care. Federally-issued guidelines for state statutes implementing the *Adoption and Safe Families Act* , as well as guidelines adopted by the National Council of Juvenile and Family Court Judges governing "Model Courts : nationally, including those in New York and Erie Counties, emphasize the importance of having the same judge preside from the outset of a child protection proceeding to the fulfillment of a permanent home for a child, whether it be return, adoption or alternate plan. [11] Significantly, research has demonstrated that the filing of an adoption petition in the same county and before the same judge can measurably reduce the average time between freeing a child for adoption and finalization of the adoption from over one year to under six months. [22] This finding is particularly noteworthy when viewed in the context of earlier research demonstrating significant delays between freeing and finalization, notwithstanding the fact that an overwhelming majority of the children adopted were already residing in their adoptive homes at the tine they were freed. [33]

Consistent with national recommendations and research, the Committee's proposal would reduce a significant source of delay in achieving permanency for children by reducing the fragmentation that occurs when adoption petitions are filed in a different court than the related child protective, termination of parental rights and/or surrender proceedings. The measure would provide a preference for filing an adoption proceeding in the same court and, to the extent practicable, before the same judge that heard the most recent proceeding involving a child who is the currently subject of a Family Court child protective, foster care, surrender or termination of parental rights proceeding. If such an adoption petition is filed in a different court, the Court in which the case is filed would be required to ascertain whether the child is under the jurisdiction of a Family Court and, if so, which Court. The Court in which the petition is filed would then be required to communicate promptly with the judge who presided over the most recent litigation and to defer to that judge's determination as to the exercise of jurisdiction over the case. Sensitive to cases in which the two courts are located far from each other, the measure has been modified from its 2004 version to provide guidance to the court in its determination. Factors to be considered would include, among others, the relative familiarity of each court with the facts and circumstances of the case, the convenience of each court to the residence of the adoptive parents, the ability of the law guardian to continue to represent the child and

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[1] Duquette and Hardin, Guidelines for Public Policy and State Legislation Governing Permanence for Children (U.S. Dept. of H.H.S., Admin, for Children and Families, + Children's Bureau, 1999), p. IV-4; Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse + Neglect Cases (National Council of Juvenile and Family Court Judges, Fall 2000), pps. 5, 64; Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases(National Council of Juvenile and Family Court Judges, 1995), p. 19.

[2] The research examined implementation in New York City of the statutory authorization, contained in chapter 588 of the Laws of 1991, to file adoption petitions during the pendency of termination of parental rights proceedings. At the end of the research period, 91.6% of the children in the experimental group were adopted, as compared to 39.3% of the children in the randomly-assigned control group for whom the chapter 588 authorization wad not utilized. See Festinger and Pratt, "Speeding Adoptions: An Evaluation of the Effects of Judicial Continuity, "26 Social Work Research #4:217-214 (Dec., 2002).

[3] Children adopted in New York City during a four-year period averaged 24 months between termination of parental rights and adoption finalization, even though 85.5 % of the children were already residing in their adoptive homes at the time of freeing. See Festinger and Pratt. "Speeding Adoptions" An Evaluation of the Effects of Judicial Continuity, " 26 Social Work Research #4:217-224 (Dec., 2002); Festinger, NYC Adoptions: 1995—1998 (Un pub annual monographs, NYU Sch. of Social Work).

the relative ability of each court to determine the adoption proceeding expeditiously. Similar preferences would be provided to assure continuity in surrender and termination of parental rights proceedings.

The 2005 permanency legislation greatly increases the need for the measure, particularly the critical need for continuity in the judge who addresses issues regarding post-adoption contact agreements. *See* D.R.L. § 112-b. Surely the same judge who approves a surrender based upon such an agreement should be the same judge who determines whether the agreement should be incorporated into an order of adoption —and ultimately, the same judge responsible for enforcing the agreement, should the need arise. Further, enactment of this measure would significantly advance the efforts to the Unified Court System, through Chief Judge Judith S Kaye's "Adoption Now" collaborative initiative in conjunction with the New York State Office of Children and Family Services and the New York City Administration for Children's Services, to ensure that the large number of children freed for adoption in New York State but not yet adopted — over 4,000 at any given time — can be adopted without delay.

2006 Recommendations of the Family Court Advisory and Rules Committee:

Few cases can be said to pose a greater challenge to the strong constitutional and statutory primacy of birth parents' rights than that of a child whose parent has been convicted of homicide, either of another child in the home or of another parent. Enactment of the *Lee Ann Cruz Act* in 1998, its amendemnt in 1999 and its inclusion in the New York State version of the *Uniform Child Custody Jurisdiction and Enforcement Act* in 2001, refelected the Legislature's clear determination that, notwithstanding ties of blood, parents convicted of such crimes should be presumptively denied custody of, or visitation with, their surviving children, *See* Laws of 1988, ch. 150; Laws of 1999, ch. 378; Laws of 2001, ch. 386. This strong statement of public policy was evident as well in the Legislature's enactment in 1999 of the statute implementing the federal *Adoption and Safe Families Act* [P.L., 105-89] and its 2000 amendment. A conviction for homicide of a child was included as a presumptive ground for the Family Court to order child care agencies to dispense with reasonable efforts to reunify families and as a form of severe abuse constituting a ground for termination of parental rights; a conviction for homicide or other violent felony was also included as presumptive evidence of disqualification to be a foster or adoptive parent. *See* Laws of 1999, ch. 7; Laws of 2000, ch. 145. However, the termination of parental rights statute in New York continues to be an incomplete reflection of this policy determination and its flaws have impeded the achievement of permanency for children whose tragic cases make them among those most in need.

The Family Court Advisory and Rules Committee is proposing legislation to fill this gap in the severe abuse statute. Social Services Law § 384-b(8), to better fulfill the State's strong public policy underlying the *Adoption and Safe Families Act* prccept that the "safety of the child is paramount." First, the measure would add a conviction for homicide of the child's other parent as a ground for termination of parental rights. As in the law presumptively rendering individuals with such convictions ineligible to be foster or adoptive parents, an exception would be provided where the convicted parent "was a victim of physical , sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the homicide." *See* Social Services Law § 378-a(2)(j).

Second, the enumerated grounds for termination of parental rights would be expanded to include a conviction for homicide of another child in the household for whose care the convicted parent "is or has been legally responsible," as the latter phrase is defined in the child protection statute, Family Court Act § 1012(g), even if the murdered child was not a sibling of the child whose parent's rights are facing termination. Addition of the cross-reference to the definition of individuals who can be charged with child neglect or abuse would foster consistency in the statutory framework by making clear that homicide of a child by a person who is the child's custodian, or guardian or who "continually or at regular intervals [is] found in the sane household as the child. . .. ." would be grounds for terminating the convicted parent's rights over his or her surviving child. No longer would an agency have the burden of proving permanent neglect (failure of the parent to plan for or contact the child), because of the inapplicability of the severe abuse statute as written. For example, in Matter of Kyle M., 5 A.D.3d 489 (2d Dept., 2004), the Appellate Division, Second Department upheld a permanent neglect finding against a mother who had been convicted of fatally strangling her three-year-old nephew, who was entrusted to her care — a case that could have been addressed more simply and expeditiously had the Committee's proposal been the law at the time. In support of the findings that reasonable efforts to reunite the family would have been pointless in such an egregious case, the

Court quoted the Court of Appeals' decision *in Matter of Marino S., 100 N.Y.2d 361, 372 (2003)*, cert. denied. *124 S.Ct. 834 (2003)*: .

> [W]hen a child's best interests are endangered. . .. . .the State's strong interest in avoiding extended foster care and expediting permanency planning may properly excuse the futile exercise of making efforts toward reuniting a family that, in the end, should not and will not be reunited

2010 Recommendations of the Family Court Advisory and Rules Committee:

Following numerous statewide hearings and extensive research, in February, 2006, the Matrimonial Commission, which was appointed by former Chief Judge Judith S. Kaye and chaired by former Supreme Court, Appellate Division, Second Department Judge Sondra Miller, issued its comprehensive report. The Commission recommended, *inter alia,* that the title "law guardian" be replaced by "attorney for the child," which it characterized as a "necessary language change that more accurately reflects the attorney's role:"

From the testimony at the hearings and the written submissions received, it is clear that there exists a misconception that a law guardian plays a neutral role in these adversarial proceedings ….

The attorney for the child is not a mental health professional, a mediator, a fiduciary or, most importantly, an arm of the court ….

The Commission reiterates that at all times during the proceeding, the attorney for the child is subject to the same rules of good lawyering and professional responsibility applicable to any attorney in a civil proceeding or action, and must represent the client within those bounds.

Report of the Matrimonial Commission (Feb., 2006), at pps. 17, 18, 40.

The Family Court Advisory and Rules Committee has joined with the Statewide Advisory Committee on Attorneys for Children in recommending that the Legislature adopt the Commission's long-overdue change. The proposal would amend the Civil Practice Law and Rules, the Executive Law, the Judiciary Law, the Family Court Act, the Public Health Law and the Social Services Law to substitute "attorney" or "counsel" for "law guardian." With respect to the appointment of attorneys for children in voluntary foster care placement proceedings, it would correct a decade-old error. Although *Family Court Act § 249* was amended in 1999 to require such appointments and such appointments have become routine, the references in *section 358-a of the Social Services Law* to these appointments as discretionary were never changed. *See* Laws of 1999, ch. 506.

New York State's tradition of affording legal representation to children in a variety of proceedings is long-standing and nationally recognized. Its Family Court Act, enacted in 1962, was cited by the United States Supreme Court in its seminal decision *in Matter of Gault, 387 U.S. 1 (1967)*, which required counsel in juvenile delinquency proceedings and equated its role with counsel in criminal cases. However, almost from its inception, the ambiguous term "law guardian," although defined in *Family Court Act § 242* as an attorney, has created debate and confusion. It suggests a role that combines attributes of the attorney-advocate with those of a guardian *ad litem,* functions that are inherently incompatible. This ambiguity has fostered uncertainty not only among children's lawyers but also among other participants in family law proceedings, including judges, parents, and parents' attorneys, on such fundamental issues as attorney-client confidentiality, ex parte communications and the impact of the child's preferences on litigation goals. The result has all too often been misunderstanding and clashing expectations about the actions and intentions of the child's lawyer, adding needless complexity and confusion to cases involving children.

Consistent with both Rule 7.2 of the *Rules of the Chief Judge* [*22 NYCRR § 7.2*] and the NYS Bar Association standards for the representation of children,47 this change in language is long overdue. In fact, in removing an appellate attorney for failing to consult with his 11 year old client, the Appellate Division, Third Dept., in its decision in *Mark T. v. Joyanna U., 64 A.D.3d 1092 (3rd Dept., 2009)*, recently emphasized that client-informed advocacy, rather than guardian-type judgments in the abstract about a child client's best interests without consultation, must be the linchpin of representation. See also *Van Dee v. Bean, 66 A.D.3d 1253 (3rd Dept., 2009)*. Clearly the terminology used to label the child's attorney should match the court's (and the court rule's) definition of the

attorney's role. The term "law guardian" confuses the attorney's role; "attorney for the child" defines it. In proposing this important language change, the Committees are continuing a practice already begun by the Legislature. Chapters 473 and 476 of the Laws of 2009, Chapter 626 of the Laws of 2007 and Chapter 576 of the Laws of 2008, for example, use the term "attorney for the child." Further, shortly after the Matrimonial Commission report, Rule 7.2 of the *Rules of the Chief Judge* was promulgated, which also used the term "attorney for the child" and clarified the role as unquestionably that of an attorney. Along with Rule 7.2, the Administrative Board of the Courts approved the "Summary of Responsibilities of the Attorney for the Child," outlining the essential elements of effective legal representation. Appellate courts have continued the trend toward a change in terminology, both in its identification of counsel and in the text of opinions. *In Naomi C. v. Russell A., 48 A.D.3d 203 (1st Dept., 2008)*, for example, the Appellate Division, First Department, referred to "Law Guardian (now called Attorney for the Child)." *See also,* Bonthu v. Bonthu, -A.D.3d-, 2009 WL 3859919 (2d Dept., 2009); Sarah Ann K. v. Armando Charles C., - A.D.3d-, 2009 WL 3818370 (1st Dept., 2009).

Clearly, the time has come for a comprehensive legislative change of title, a change that will provide a more consistent understanding of the function of the child's attorney and remove a major, persistent source of confusion about this vital role.

2013 Recommendations of the Family Court Advisory and Rules Committee:

In 1981, the State Legislature added subdivision 8 to *Social Services Law § 384-b* to create two additional grounds to support terminations of parental rights: severe or repeated child abuse. *See* L. 981, ch. 739. These grounds, however, were almost never utilized because of difficulties of proof. In light of the lower quantum of proof required for a child abuse finding under Article 10 of the Family Court Act as compared to that which is required for termination of parental rights - a preponderance of the evidence as compared to clear and convincing evidence - the Article 10 child abuse findings that precipitated a child's entry into foster care could not be used as proof of severe or repeated child abuse in a subsequent termination of parental rights proceeding. The original child abuse allegations would thus need to be retried, often long after the fact, utilizing the higher standard of proof. In an attempt to obviate the need to retry the child abuse charges, the Legislature amended *Family Court Act § 1051* regarding fact-finding orders as part of the State statute implementing the Federal *Adoption and Safe Families Act* [Public Law 105-89]. The Family Court was thereby authorized to render an additional finding of severe or repeated child abuse as part of its fact-finding order in a child abuse proceeding so long as the requisite proof by clear and convincing evidence had been adduced. *See* L. 1999, ch. 7.

Although the 1999 statute facilitated greater utilization of the severe or repeated child abuse grounds for terminations of parental rights, the Family Courts encountered a significant obstacle to making the additional findings at the stage of the initial child abuse proceedings. Moreover, the definition of severe abuse has not been updated since its enactment 30 years ago to incorporate two serious sexual offenses that were added to the Penal Law in 2006. The Family Court Advisory and Rules Committee is submitting a proposal to address these problems.

First, the measure would eliminate the need for the Family Court to include a finding regarding provision of diligent efforts in order for the additional findings that may be rendered in a child protective proceeding under Article 10 of the Family Court Act to be admissible in a proceeding to terminate parental rights. *Family Court Act § 1051* would be amended to provide that, in addition to child abuse findings by a preponderance of evidence, the Family Court may make findings in a child abuse proceeding by clear and convincing evidence regarding the acts of abuse or the crimes that comprise the definitions of severe or repeated child abuse, that is, subparagraphs (i), (ii) and (iii) of paragraph (a) or subparagraphs (i) and (ii) of paragraph (b), respectively, of *Social Services Law § 384-b(8)*. While these findings would supply the requisite proof regarding the substantive allegations of abuse or crimes in a later termination of parental rights proceeding brought on the grounds of severe or repeated child abuse, the agency would nonetheless retain its obligation to prove the additional element of diligent efforts - that is, *Social Services Law § 384-b(8)(a)(iv)* or § 384-b(8)(b)(iii), respectively — as part of its case in chief in the termination proceeding.

The additional findings rendered at the child abuse stage would obviate the need for the agency to retry the abuse allegations in the subsequent termination of parental rights proceeding, but diligent efforts would nonetheless need to be proven at that later stage, unless excused by the Family Court. In a particularly egregious case, a child

protective agency may move pursuant to *Family Court Act § 1039-b* for an order terminating its obligation to provide reasonable efforts to enable a child's return home, thus allowing the Family Court to render additional findings that cover all of the elements of the severe or repeated child abuse definition, including diligent efforts. However, such motions are rare and more often it would be premature for the Family Court to render a finding regarding diligent efforts to reunite the family at the early stage of the fact-finding hearing in a child abuse case. Several appellate cases have reversed severe abuse findings that had been made in child abuse proceedings where findings regarding diligent efforts had not been included. *See, e.g., Matter of Leon K., 83 A.D.3d 1069 (2nd Dept., 2011)*; *Matter of Candace S., 38 A.D. 3d 786 (2nd Dept., 2007)*, lve. app. denied, *9 N.Y.3d 805 (2007)*; *Matter of Latifah C., 34 A.D.3d 798 (2nd Dept., 2006)*. Without altering the agency's obligation to meet its burden of proving diligent efforts as part of its termination of parental rights *prima facie* case, the Committee's measure would eliminate duplication by permitting the findings from the initial child abuse case regarding the alleged act or acts of severe or repeated child abuse to be used in a subsequent termination of parental rights proceeding.

Second, the proposal would add *sections 130.95 and 130.96 of the Penal Law* to the list of sexual offenses and other felonies that constitute severe abuse, as defined in *Social Services Law § 384-b(8)(a)*. These offenses, both Class A-II felonies, carry criminal penalties for first offenders of a minimum of 10 to 25 years and a maximum of life imprisonment, with longer sentences required for repeat and persistent offenders. The two offenses add aggravating factors to — and are therefore more serious than - the crimes already listed in *Social Services Law § 384-b(8)*, specifically, rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree and course of sexual conduct against a child in the first degree. Predatory sexual assault, as defined in *Penal Law § 130.95*, enhances the penalties for these crimes where the offender: causes serious physical injury to the victim, uses or threatens the immediate use of a dangerous instrument, commits the crime against one or more additional persons or has a prior conviction for a felony sex offense, incest or use of a child in a sexual performance. Predatory sexual assault against a child, as defined in *Penal Law § 130.96*, enhances the penalties where the offender is 18 years of age or older and commits one of the enumerated crimes against a victim under the age of 13 years old. Both of these predatory crimes, among the most serious crimes in the Penal Law, warrant inclusion in the definition of "severe abuse," both as grounds for termination of parental rights and as bases for enhanced findings in child abuse proceedings under Article 10 of the Family Court Act.

Enactment of this proposal would make the promise of permanency a reality for a group of children in out-of-home care who are most in need of new, safe and stable families, that is, those who have been removed from the care of parents who have been found to have committed the most serious forms of child abuse.

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I. In General

1. Generally

State supreme court found that, in drafting N.Y. Soc. Serv. Law § 384-b, the legislature clearly demonstrated an intent to bring deceased children within the ambit of the New York Family Court Act in order to protect surviving children, and it held that a family court erred by finding that a petition filed by a department of social services, which sought a judgment declaring that a mother committed child abuse when she left her six-month-old child alone in a bathtub, was moot because the child was dead. *In re Alijah C., 1 N.Y.3d 375, 774 N.Y.S.2d 483, 806 N.E.2d 491, 2004 N.Y. LEXIS 204 (N.Y. 2004)*.

Pendency of termination proceeding does not authorize retention of children over parent's objection. *In re Lillie Mae W., 116 A.D.2d 1026, 498 N.Y.S.2d 642, 1986 N.Y. App. Div. LEXIS 51810 (N.Y. App. Div. 4th Dep't 1986)*.

Family Court exceeded its authority under CLS Family Ct Act § 255 in appointing unrelated petitioner as guardian of children whom she had taken care of (initially at request of their mother, who was drug user, and then for 8 years following mother's death) and ordering that in event petitioner voluntarily placed children with Commissioner of Social Services for purpose of securing foster care placement with eye toward their adoption by her, commissioner should not remove children from her custody without prior court approval, and only in emergency, since it was beyond commissioner's legal authority to accept voluntary placement of children and deem petitioner foster parent of children while petitioner was simultaneously designated their legal guardian; legal guardian has exclusive control, custody, and care of children, as opposed to status of foster parent where agency in foster care placement continues to exercise care, custody, or guardianship of children. *In re Hasani B., 195 A.D.2d 404, 600 N.Y.S.2d 694, 1993 N.Y. App. Div. LEXIS 7494 (N.Y. App. Div. 1st Dep't 1993)*.

Contrary to a father's claim, the trial court properly applied a 2006 amendment to N.Y. Soc. Serv. Law § 384-b(a)(iii) in a case seeking termination of the father's parental rights because the amendment was remedial in nature and merely closed a loophole that existed in the statute; additionally, the amendment specifically stated that it applied to all petitions filed more than 90 days following its November 2006 enactment, implying that it applied retroactively to behavior committed prior to the effective date as long as the petition was filed after that date. Even though the father's underlying behavior was committed prior to the amendment's enactment, the amendment was properly applied to the petition filed in February 2007. *In re Jamaal NN., 61 A.D.3d 1056, 878 N.Y.S.2d 205, 2009 N.Y. App. Div. LEXIS 2453 (N.Y. App. Div. 3d Dep't)*, app. denied, *12 N.Y.3d 711, 881 N.Y.S.2d 660, 909 N.E.2d 583, 2009 N.Y. LEXIS 968 (N.Y. 2009)*.

Court has discretion under CLS Family Ct Act § 1017(2)(b) to direct that agency have child reside in specific certified foster home where court determines that such placement is in furtherance of child's best interest, and court may also direct that child not be placed in specific certified foster home if opposite result is likely to occur. *In re Adrienne M., 153 Misc. 2d 803, 583 N.Y.S.2d 756, 1992 N.Y. Misc. LEXIS 126 (N.Y. Fam. Ct. 1992)*, aff'd, *201 A.D.2d 938, 610 N.Y.S.2d 908, 1994 N.Y. App. Div. LEXIS 2122 (N.Y. App. Div. 4th Dep't 1994)*.

Because a grandfather was willing to work with his granddaughter to provide her with the stability and structure she needed to succeed in life, pursuant to N.Y. Soc. Serv. Law § 384-b(1)(a), it was in the granddaughter's best interest that the grandfather be awarded custody. *Gregory B. v Administration for Children's Servs., 800 N.Y.S.2d 486, 8 Misc. 3d 894, 233 N.Y.L.J. 84, 2005 N.Y. Misc. LEXIS 1283 (N.Y. Fam. Ct. 2005)*.

2. Purpose

Freeing the child for adoption is one of the express purposes of Soc Serv Law § 384-b. *In re W., 87 A.D.2d 988, 450 N.Y.S.2d 118, 1982 N.Y. App. Div. LEXIS 16530 (N.Y. App. Div. 4th Dep't 1982)*.

In proceeding to obtain custody of child, judgment which dismissed proceeding affirmed–foster parents contend that plan of Department of Social Services to extend placement of child for 12 months and to transfer custody of child to her maternal grandmother was arbitrary and capricious and not in best interests of child–plan approved by Family Court comports with purposes of both Social Services Law and Family Court Act in satisfying best interests of child; Family Court Act § 1055 provides for extension of placement upon showing that parent is presently unable to care for child and that continued placement is in child's best interest; both conditions have been met; legislative intent of

Social Services Law § 384-b is that State's first obligation is to help family with services to prevent its breakup or to reunite it if child has already left home; plan provided that child would reside with her maternal grandmother, her aunt, and her two older siblings, while her natural mother continued her efforts, through rehabilitation, to enable her to resume care of her family; record supports finding that grandmother was adequate resource for child. *Antonelli v Department of Social Services, 155 A.D.2d 598, 548 N.Y.S.2d 37, 1989 N.Y. App. Div. LEXIS 14408 (N.Y. App. Div. 2d Dep't 1989)*.

It is not contrary to legislative intent to terminate parental rights where adoption is not practical goal because of child's age. *In re Lisa T., 247 A.D.2d 882, 669 N.Y.S.2d 97, 1998 N.Y. App. Div. LEXIS 1211 (N.Y. App. Div. 4th Dep't 1998)*.

Legislation has purpose of returning a child placed in foster care to the natural parent "unless the best interests of the child would thereby be endangered". State's primary obligation is to "help the family with services to prevent its break-up or to reunite it if the child has already left home". *In re E., 95 Misc. 2d 102, 407 N.Y.S.2d 380, 1978 N.Y. Misc. LEXIS 2389 (N.Y. Fam. Ct.)*, aff'd, *63 A.D.2d 1127, 405 N.Y.S.2d 1013, 1978 N.Y. App. Div. LEXIS 15582 (N.Y. App. Div. 1st Dep't 1978)*.

The legislative intent in enacting *section 384-b of the Social Services Law* was to provide procedures not only assuring that the rights of the natural parent are protected, but, also, where positive, nurturing parent-child relationships no longer exist, furthering the best interests, needs, and rights of the child by terminating parental rights and freeing the child for adoption. *In re R., 97 Misc. 2d 694, 412 N.Y.S.2d 257, 1978 N.Y. Misc. LEXIS 2852 (N.Y. Fam. Ct. 1978)*, aff'd, *74 A.D.2d 1009, 1980 N.Y. App. Div. LEXIS 15840 (N.Y. App. Div. 1st Dep't 1980)*.

A motion by a Law Guardian to dismiss a proceeding for termination of parental rights would be granted where the 13-year-old subject child was not residing in a preadoptive home, maintained a strong relationship with both parents, did not wish to be adopted and stated he would refuse to give consent to adoption when he reached 14 years of age; inasmuch as the parent-child relationship has been continuously maintained, given the child's age and opposition to adoption, it would not be in his best interests to sever the parent-child bond and leave him legally parentless; further, it is clearly in the child's best interest to avoid protracted hearings where no useful purpose would be served and to sever parental ties under circumstances where a child will not, with good reason, consent to adoption, would clearly contravene the public policy and legislative intent under which *Soc Serv Law § 384-b* was enacted, the statue intending only to free children for adoption once the relationship with their parents had broken down. *In re Brian G., 122 Misc. 2d 659, 471 N.Y.S.2d 535, 1984 N.Y. Misc. LEXIS 2882 (N.Y. Fam. Ct. 1984)*.

As a matter of public policy, a state through its child welfare agency is charged with the duty to provide services and assistance to help reunify families (*N.Y. Soc. Serv. Law § 384-b(1)(a)(iii)*), and this duty is grounded in the cultural assumption that it is generally desirable for a child to remain with or be returned to a birth parent, (*N.Y. Soc. Serv. Law § 384-b(1)(a)(ii)*). *Matter of Jaime S., 798 N.Y.S.2d 667, 9 Misc. 3d 460, 2005 N.Y. Misc. LEXIS 1361 (N.Y. Fam. Ct. 2005)*.

3. Constitutionality

Natural father was not denied due process by Family Court's decision to continue, in father's absence, factfinding hearing in proceeding to terminate parental rights under CLS *Soc Serv § 384-b* where father forfeited his right to be present at continued hearing by his failure to appear, although informed by his counsel as to date of hearing. *In re Michael Dennis C., 121 A.D.2d 535, 504 N.Y.S.2d 28, 1986 N.Y. App. Div. LEXIS 58512 (N.Y. App. Div. 2d Dep't 1986)*.

Sections 384, 384-b and 384-c of the Social Services Law are unconstitutional, being violative of due process and equal protection, to the extent that they permit the adoption of an out-of-wedlock child upon the surrender of the mother alone and permit the termination of parental rights in a proceeding which significantly differentiates between the rights accorded an unwed mother and an unwed father and severely limit the ability of the unwed father to present evidence at such a proceeding; the United States Supreme Court has invalidated section 111 (subd 1, par

[c]) of the Domestic Relations Law which permitted the adoption of a child born out of wedlock without the consent of the natural father while requiring such consent from the mother (see *Caban v Mohammed (1979) 441 US 380, 60 L Ed 2d 297, 99 S Ct 1760*) and there is no significant difference between the rights which are terminated by an unwed mother who consents to an adoption pursuant to the invalidated statute and the rights which are terminated by an unwed mother who assigns to a social services agency her right to consent to an adoption, the result in each case being identical in that the child is freed for adoption without the consent of the unwed father. *In re Guardianship of N., 104 Misc. 2d 263, 428 N.Y.S.2d 178, 1980 N.Y. Misc. LEXIS 2314 (N.Y. Fam. Ct. 1980)*.

Parent-child relationship is constitutional in nature, and "high degree of due process" must be afforded to parents in cases where government wishes to sever relationship; therefore, it is appropriate to strictly construe applicable statutes, especially to extent that they afford protection to parents. *In re Brandon A., 165 Misc. 2d 736, 630 N.Y.S.2d 850, 1995 N.Y. Misc. LEXIS 308 (N.Y. Fam. Ct. 1995)*.

4. Parent

Parent is deemed parent of child until parental rights have been surrendered pursuant to CLS *Soc Serv § 384* or terminated pursuant to § 384-b and child is subsequently adopted, and minor's right of support from natural father does not end until formal adoption occurs, such that it is error to determine that natural father has no duty to contribute to support of his child whom he has voluntarily surrendered to custody of Department of Social Services but who has not yet been adopted. *Harvey-Cook v Neill, 118 A.D.2d 109, 504 N.Y.S.2d 434, 1986 N.Y. App. Div. LEXIS 53718 (N.Y. App. Div. 2d Dep't 1986)*.

Although "psychological parenthood" of nonparent may be insufficient in and of itself to constitute extraordinary circumstance within meaning of rule requiring initial showing of extraordinary circumstances in custody dispute between parent and nonparent, mother's direct involvement in creation and development of father-son relationship between nonparent and her child can be such extraordinary circumstance. *Canabush v Wancewicz, 193 A.D.2d 260, 603 N.Y.S.2d 230, 1993 N.Y. App. Div. LEXIS 10292 (N.Y. App. Div. 3d Dep't 1993)*.

Although stipulation between child's biological mother and nonparent purporting to elevate nonparent's status to that of parent is unenforceable, it is relevant to issue of whether there are extraordinary circumstances warranting award of custody to nonparent over mother, since it evinces intent on mother's part to relinquish her superior right to custody. *Canabush v Wancewicz, 193 A.D.2d 260, 603 N.Y.S.2d 230, 1993 N.Y. App. Div. LEXIS 10292 (N.Y. App. Div. 3d Dep't 1993)*.

Term "parents" as used in CLS *Soc Serv § 384-b* refers only to parent or parents whose consent to adoption would otherwise be required under CLS *Dom Rel § 111*. *In re Guardianship of Tracy Q.T., 152 Misc. 2d 450, 576 N.Y.S.2d 783, 1991 N.Y. Misc. LEXIS 635 (N.Y. Sur. Ct. 1991)*.

5. Termination of parental rights, generally

Absent a finding of statutory abandonment, permanent neglect, or that the mother is unfit, a court may not permanently sever all parental ties (*Social Services Law, § 384-b*, subd 4), even though some might find adoption to be in the child's best interests. *In re K., 47 N.Y.2d 374, 418 N.Y.S.2d 339, 391 N.E.2d 1316, 1979 N.Y. LEXIS 2083 (N.Y. 1979)*.

Once a father's parental rights were terminated pursuant to *N.Y. Soc. Serv. Law § 384-b* based on the family court's finding that the child was permanently neglected, the court had no authority to direct continuing contact between the father and child; therefore, it properly denied the father's request for continuing visitation. *Matter of Hailey ZZ. (Ricky ZZ.), 19 N.Y.3d 422, 948 N.Y.S.2d 846, 972 N.E.2d 87, 2012 N.Y. LEXIS 1319 (N.Y. 2012)*.

Legislature did not sanction judicial imposition of post-termination contact with a child where parental rights were terminated after a contested proceeding; absent legislative warrant, the family court is not authorized to include any

such condition in a dispositional order made pursuant to N.Y. Soc. Serv. Law § 384-b. *Matter of Hailey ZZ. (Ricky ZZ.), 19 N.Y.3d 422, 948 N.Y.S.2d 846, 972 N.E.2d 87, 2012 N.Y. LEXIS 1319 (N.Y. 2012)*.

Proceeding pursuant to CLS Soc Serv § 384-b for termination of parental rights is not precluded by order of filiation. *Thomas S. v Robin Y., 209 A.D.2d 298, 618 N.Y.S.2d 356, 1994 N.Y. App. Div. LEXIS 11385 (N.Y. App. Div. 1st Dep't 1994)*, app. dismissed, *86 N.Y.2d 779, 631 N.Y.S.2d 611, 655 N.E.2d 708, 1995 N.Y. LEXIS 5669 (N.Y. 1995)*.

Termination of petitioner's parental rights when her daughter was 9 years old did not result in absolute bar to her standing to seek grandparental visitation with daughter's child born 8 years later, where grandchild was in care of Department of Social Services due to pending neglect charges; petitioner was not mere concerned third party, but was biological grandmother of child clearly in need of positive family influences and, if her claims of self-improvement were genuine, she should be afforded opportunity to establish that visitation was in child's best interests. *Ann M.C. v Orange County Dep't of Soc. Servs., 250 A.D.2d 190, 682 N.Y.S.2d 62, 1998 N.Y. App. Div. LEXIS 13518 (N.Y. App. Div. 2d Dep't 1998)*.

Social service department's right to pursue termination proceeding based on abandonment, permanent neglect, mental illness or mental retardation was unimpaired by mother's revocation of her judicial surrender consenting to child's adoption. *In re Christopher "F", 260 A.D.2d 97, 701 N.Y.S.2d 171, 1999 N.Y. App. Div. LEXIS 13594 (N.Y. App. Div. 3d Dep't 1999)*.

Since there was no evidence presented as to the children's present circumstances and relationship with their mother, and the effect upon them of the termination of her parental rights and their potential adoption, the court improperly terminated her parental rights under N.Y. Soc. Serv. Law § 384-b. *In re Jordan Amir B., 15 A.D.3d 477, 790 N.Y.S.2d 507, 2005 N.Y. App. Div. LEXIS 1632 (N.Y. App. Div. 2d Dep't 2005)*.

Trial court did not err in terminating a father's parental rights in N.Y. Soc. Serv. Law § 384-b proceeding because, although the father conceded that he did not meet the criteria of a consent father, the fact that the mother brought nearly simultaneous proceeding to adjudicate the father's paternity created concern about him asserting rights as to child. *Matter of William B., 47 A.D.3d 983, 849 N.Y.S.2d 123, 2008 N.Y. App. Div. LEXIS 51 (N.Y. App. Div. 3d Dep't)*, app. denied, *11 N.Y.3d 702, 864 N.Y.S.2d 389, 894 N.E.2d 653, 2008 N.Y. LEXIS 2470 (N.Y. 2008)*.

Pursuant to N.Y. Soc. Serv. Law § 384-b(11), a trial court properly denied the petition of the mother's cousin for custody of the subject children without a hearing, because, as the parental rights had been terminated and the subject children were freed for adoption, the proper recourse of the mother's cousin was to seek adoption, not mere custody. *Matter of McHarris v Administration for Children's Servs., 53 A.D.3d 660, 862 N.Y.S.2d 382, 2008 N.Y. App. Div. LEXIS 6287 (N.Y. App. Div. 2d Dep't 2008)*.

N.Y. Fam. Ct. Act § 1039-b(b)(6) did not unconstitutionally distinguish between individuals whose parental rights were involuntarily terminated and those who rights were voluntarily surrendered as an involuntary termination under N.Y. Soc. Serv. § 384-b led to an adoption that relieved the biological parent of all parental duties and responsibilities for the child under N.Y. Dom. Rel. Law § 117(1)(a), and a voluntary surrender might involve ongoing contacts between the biological parent and child; § 1039-b(b)(6) was properly limited to individuals whose rights to further contact with their other children had been indisputably terminated. *Matter of Jayden QQ. (Christopher RR.), 105 A.D.3d 1274, 964 N.Y.S.2d 280, 2013 N.Y. App. Div. LEXIS 2722 (N.Y. App. Div. 3d Dep't 2013)*, app. dismissed, *113 A.D.3d 899, 977 N.Y.S.2d 921, 2014 N.Y. App. Div. LEXIS 151 (N.Y. App. Div. 3d Dep't 2014)*.

Family Court appropriately terminated the mother's parental rights, rather than issuing a suspended judgment because the mother had not demonstrated any appreciable progress in addressing her mental health issues or otherwise developing the skills and stability necessary for the children to return to her care. *Matter of Chloe B. (Sareena B.), 189 A.D.3d 2011, 137 N.Y.S.3d 592, 2020 N.Y. App. Div. LEXIS 8339 (N.Y. App. Div. 3d Dep't 2020)*.

Termination of parental rights rather than to enter a suspended judgment was not in the child's best interests because although child had been in foster care for several years, mother had been regularly visiting the child and there was a strong bond between them and between child and mother's younger child; she had completed a drug treatment program, attended parenting class, underwent mental health evaluation, and was receiving therapy and preventive services. *Matter of Grace G. (gloria G.), 194 A.D.3d 712, 147 N.Y.S.3d 125, 2021 N.Y. App. Div. LEXIS 2897 (N.Y. App. Div. 2d Dep't 2021)*.

On appeal in a case terminating the father's parental rights, the father failed to demonstrate that he was prepared for the children's return. Thus, a suspended judgment was not warranted in light of the father's failure to make progress toward the goal of reunification in the decade since the removal of the children. *Matter of William S. L. (julio A. L.), 195 A.D.3d 839, 149 N.Y.S.3d 542, 2021 N.Y. App. Div. LEXIS 3948 (N.Y. App. Div. 2d Dep't 2021)*.

The State may not force the breakup of a natural family over the objections of the parents and their children, without some showing of unfitness and for the sole reason of the children's best interests. *In re Gross, 102 Misc. 2d 1073, 425 N.Y.S.2d 220, 1980 N.Y. Misc. LEXIS 2060 (N.Y. Fam. Ct. 1980)*.

Even if natural mother had standing to bring petition for termination of parental rights of natural father in order for child to be freed for adoption, natural mother could not make out prima facie case for termination based on her desire to get fresh start in life without burden of having child reared in her neighborhood or possibility of being sued for child support. *Aida G. v Carlos P., 163 Misc. 2d 423, 620 N.Y.S.2d 887, 1994 N.Y. Misc. LEXIS 572 (N.Y. Fam. Ct. 1994)*.

Proceeding for termination of parental rights cannot be used to ensure that child will be raised in 2-parent home, e.g. where natural mother seeks to terminate natural father's parental rights so that child can be freed for adoption. *Aida G. v Carlos P., 163 Misc. 2d 423, 620 N.Y.S.2d 887, 1994 N.Y. Misc. LEXIS 572 (N.Y. Fam. Ct. 1994)*.

Proceeding for termination of parental rights cannot be used avoid financial responsibility of child, e.g. where natural mother seeks to terminate natural father's parental rights so that child can be freed for adoption. *Aida G. v Carlos P., 163 Misc. 2d 423, 620 N.Y.S.2d 887, 1994 N.Y. Misc. LEXIS 572 (N.Y. Fam. Ct. 1994)*.

Biological mother, whose parental rights had been terminated by a prior court order, did not have standing to seek custody of that child in a later proceeding; the order terminating the biological mother's parental rights was res judicata and precluded a court sanctioned legal relationship between the biological mother and the child. *T.C. v R.C., 195 Misc. 2d 417, 759 N.Y.S.2d 295, 2003 N.Y. Misc. LEXIS 269 (N.Y. Fam. Ct. 2003)*.

Unwed father, like other parents, may lose his parental rights if a child services agency pleads and proves that he has either abandoned or permanently neglected the children; the agency must first give him notice of such allegations by filing the proper petitions and then prove them by clear and convincing evidence. The burden is properly the agency's to prove a statutory basis for terminating his rights, not the unwed father's, to establish his right to consent. *Matter of M./B. Children, 792 N.Y.S.2d 785, 7 Misc. 3d 272, 233 N.Y.L.J. 7, 2004 N.Y. Misc. LEXIS 2979 (N.Y. Fam. Ct. 2004)*.

II. Particular Grounds for Terminating Parental Relationship

A. Abandonment

6. Generally

Proceeding to commit guardianship and custody of child to authorized agency based on abandonment must be maintained against both parents, not merely one, unless one parent is dead or has otherwise had parental rights terminated. *In re Victoria K., 117 A.D.2d 968, 499 N.Y.S.2d 23, 1986 N.Y. App. Div. LEXIS 53206 (N.Y. App. Div.*

3d Dep't 1986), overruled, *In re Latif HH., 248 A.D.2d 831, 669 N.Y.S.2d 755, 1998 N.Y. App. Div. LEXIS 2507 (N.Y. App. Div. 3d Dep't 1998)*.

Child whose parents were deceased, and whose relatives within third degree of consanguinity applied for letters of guardianship, was not "abandoned" within meaning of CLS *Soc Serv Law §§ 371* and *384-b*, and since Commissioner of Social Services has no statutory duty over children who are not abandoned, Surrogate exceeded his authority ordering commissioner to make investigation under CLS *Soc Serv § 398*. *Amrhein v Signorelli, 153 A.D.2d 28, 549 N.Y.S.2d 63, 1989 N.Y. App. Div. LEXIS 15901 (N.Y. App. Div. 2d Dep't 1989)*, app. denied, *76 N.Y.2d 701, 558 N.Y.S.2d 891, 557 N.E.2d 1187, 1990 N.Y. LEXIS 1282 (N.Y. 1990)*.

CLS *Soc Serv §§ 371*, *384-b* and *398* did not authorize surrogate to order Commissioner of Social Services or local department of social services to conduct investigations of petitioners in guardianship proceedings, including home studies and criminal checks, where petitioners were relativeswithin third degree of kinship, and infants were orphaned but had not been "abandoned" within meaning of statutes. *Amrhein v Signorelli, 153 A.D.2d 28, 549 N.Y.S.2d 63, 1989 N.Y. App. Div. LEXIS 15901 (N.Y. App. Div. 2d Dep't 1989)*, app. denied, *76 N.Y.2d 701, 558 N.Y.S.2d 891, 557 N.E.2d 1187, 1990 N.Y. LEXIS 1282 (N.Y. 1990)*.

Abandonment of child is matter of intent; however, under CLS *Soc Serv § 384-b*, parent's subjective intent does not preclude determination of abandonment. *In re Commitment of Crawford, 153 A.D.2d 108, 549 N.Y.S.2d 667, 1990 N.Y. App. Div. LEXIS 164 (N.Y. App. Div. 1st Dep't 1990)*.

Court erred in making finding of abandonment where allegation thereof was withdrawn by agency at close of its direct case; thus, such finding would be vacated and dispositional hearing ordered under CLS *Family Ct Act § 625(a)*. *In re Westchester County Dep't of Social Servs. ex rel. Thomas Dewayne W., 207 A.D.2d 496, 615 N.Y.S.2d 916, 1994 N.Y. App. Div. LEXIS 8400 (N.Y. App. Div. 2d Dep't 1994)*.

On findings of abandonment by mother and permanent neglect by father, children's best interests would be served by terminating both parents' parental rights and freeing children for adoption by their foster parents where children had lived with foster parents since birth, and foster parents were sole parents whom children had ever known. *In re Barbara Luisa A., 266 A.D.2d 156, 699 N.Y.S.2d 38, 1999 N.Y. App. Div. LEXIS 12339 (N.Y. App. Div. 1st Dep't 1999)*.

Trial court erred in ordering continued visitation with a child after the parental rights of the parents were terminated; there was no statutory authority to order continued visitation once the parents' rights were terminated for abandonment pursuant to *N.Y. Soc. Serv. Law § 384-b(4)(b)*, and while postadoption sibling visitation was permissible pursuant to *N.Y. Dom. Rel. Law § 71*, the trial court failed to determine that such visitation was in the best interest of the child as required by that statute. *In re Lovell Raeshawn McC., 308 A.D.2d 589, 764 N.Y.S.2d 714, 2003 N.Y. App. Div. LEXIS 9884 (N.Y. App. Div. 2d Dep't 2003)*.

Trial court properly terminated parent's parental rights to their child pursuant to *N.Y. Soc. Serv. Law § 384-b*; agencies showed by clear and convincing evidence that the parents had abandoned the child, and that the termination was in the best interest of the child. *In re Jeremiah Kwimea T., 10 A.D.3d 691, 781 N.Y.S.2d 784, 2004 N.Y. App. Div. LEXIS 10923 (N.Y. App. Div. 2d Dep't 2004)*.

Evidence adduced at a fact-finding hearing established by clear and convincing evidence that a father abandoned his child during the six-month period before the filing of the petition, and termination of his parental rights was proper pursuant to *N.Y. Soc. Serv. Law § 384-b*. Although part of a caseworker's testimony regarding documents in the case file constituted hearsay, such testimony was properly admitted as relevant and material to the issue of whether termination of parental rights was in the best interest of the child. *In re Saquan L.E., 19 A.D.3d 418, 796 N.Y.S.2d 408, 2005 N.Y. App. Div. LEXIS 6064 (N.Y. App. Div. 2d Dep't 2005)*.

Because an agency failed to carry its heavy burden of establishing that a father had abandoned his child by clear and convincing evidence under *N.Y. Soc. Serv. Law § 384-b(3)(g)*, the family court erred by terminating the father's parental rights and awarding custody and guardianship of the child to the agency for the purpose of adoption.

Matter of Adams H. v James H., 28 A.D.3d 213, 812 N.Y.S.2d 80, 2006 N.Y. App. Div. LEXIS 3974 (N.Y. App. Div. 1st Dep't 2006).

An abandonment proceeding under *Soc Serv Law § 384-b* requires a showing that the respondent is a person whose consent to a child's adoption would be required by *Dom Rel Law § 111*. *In re Malik, 108 Misc. 2d 774, 438 N.Y.S.2d 888, 1980 N.Y. Misc. LEXIS 2932 (N.Y. Fam. Ct. 1980)*.

A petition filed by the Department of Social Services seeking guardianship and custody of a child on the ground of abandonment by respondent natural father within the meaning of *Soc Serv Law § 384-6* was not premature where, although it did not contain a date when contact between father and child allegedly ceased, it referred to a commencement date seven months prior to the petition's filing, and it was uncontroverted that respondent made no effort to contact his daughter for a period which exceeded the statutory minimum of six months, in that he did not write or telephone the child, nor did he furnish the agency which had arranged the child's foster care placement with an address or telephone at which he could be reached. *In re Vunk, 127 Misc. 2d 828, 487 N.Y.S.2d 490, 1985 N.Y. Misc. LEXIS 2745 (N.Y. Fam. Ct. 1985)*.

Action to terminate father's parental rights pursuant to CLS *Soc Serv § 384-b(4)(b)* was abated when child was removed from foster care and returned to her mother, since purpose of terminating parental rights of parents who have abandoned their children in foster care is to enable agency to have children adopted into permanent homes, child was no longer in foster care, and mother had not opted to free child for adoption; question of whether it was in child's best interests to have contact with her father was not subject of petition. *In re Dempsey, 163 Misc. 2d 61, 619 N.Y.S.2d 930, 1994 N.Y. Misc. LEXIS 534 (N.Y. Fam. Ct. 1994)*.

Because the petitions filed by a department of social services did not allege neglect by way of abandonment under *N.Y. Fam. Ct. Act § 1012(f)(ii)* and *N.Y. Soc. Serv. Law § 384-b(5)(a)*, against a mother for leaving her child at a "Safe Haven," and because the facts adduced at an inquest did not support a finding of neglect under the theories that were advanced, the petitions were dismissed with leave to re-plead. *Matter of Doe, 883 N.Y.S.2d 430, 25 Misc. 3d 470, 2009 N.Y. Misc. LEXIS 1844 (N.Y. Fam. Ct. 2009)*.

7. Diligent efforts of agency

Where the termination of the father's parental rights was on the ground of abandonment, no showing that the department of social services engaged in diligent efforts to encourage the father's relationship with the child was required under *N.Y. Soc. Serv. Law § 384-b(5)(b)*. *In re Gabrielle HH., 1 N.Y.3d 549, 772 N.Y.S.2d 643, 804 N.E.2d 964, 2003 N.Y. LEXIS 4099 (N.Y. 2003)*.

In a proceeding seeking an adjudication that the subject infant was an abandoned child and that parental rights be terminated, the petition would be granted where it was supported by the record and there was no requirement that petitioner agency show diligent efforts to encourage and foster interests between separated parents and the child, under *Soc Serv Law § 384-b(5)*, nor did the voluntary placement instrument signed by respondent parent operate to enlarge the statutory duty. *In re Julius P., 100 A.D.2d 741, 473 N.Y.S.2d 633, 1984 N.Y. App. Div. LEXIS 17748 (N.Y. App. Div. 4th Dep't)*, aff'd, *63 N.Y.2d 477, 483 N.Y.S.2d 175, 472 N.E.2d 1003, 1984 N.Y. LEXIS 4681 (N.Y. 1984)*.

Family Court erred as matter of law by holding that Department of Social Services was required to prove agency's "diligent efforts" to encourage parent to visit and communicate with child or agency before respondent's parental rights could be terminated based on abandonment, since CLS *Soc Serv § 384-b* specifically provides that court "shall not require...diligent efforts." *In re Christine F., 147 A.D.2d 942, 147 A.D.2d 980, 538 N.Y.S.2d 738, 1989 N.Y. App. Div. LEXIS 1254 (N.Y. App. Div. 4th Dep't)*, aff'd, *74 N.Y.2d 532, 549 N.Y.S.2d 643, 548 N.E.2d 1294, 1989 N.Y. LEXIS 3348 (N.Y. 1989)*.

Agency was justified in not proceeding further with diligent efforts where agency initially made attempts to determine whether there should be any contact between child and father, and agency thereafter determined from

experts that continued efforts would be injurious to child's best interests. *In re Abdul W., 224 A.D.2d 875, 638 N.Y.S.2d 249, 1996 N.Y. App. Div. LEXIS 1513 (N.Y. App. Div. 3d Dep't 1996)*.

When proceeding to terminate parental rights on ground of abandonment, agency need not prove that it made diligent efforts to strengthen parental relationship. *In re Tasha B, 240 A.D.2d 778, 658 N.Y.S.2d 525, 1997 N.Y. App. Div. LEXIS 6013 (N.Y. App. Div. 3d Dep't 1997)*.

In proceeding by agency to terminate father's parental rights on ground that he abandoned his daughter by failing to visit or communicate with her during 6 months preceding filing of petition, agency, in order to prevail, did not have to show that it made diligent efforts to encourage him to maintain contact with her. *In re Christina S., 251 A.D.2d 982, 674 N.Y.S.2d 550, 1998 N.Y. App. Div. LEXIS 6993 (N.Y. App. Div. 4th Dep't 1998)*.

County social services department had no duty to use diligent efforts to encourage father to have meaningful relationship with his child before it could seek to prove, in proceeding under CLS *Soc Serv § 384-b*, that father's consent to adoption was not required under CLS *Dom Rel § 111* where, inter alia, child was born out of wedlock, father was aware that mother placed child with county social services department on day of birth and that mother surrendered child for adoption within 6 months of birth, and facts to which father stipulated showed absence of any manifestation of his ability and willingness to assume custody of child. *In re Carrie "GG", 273 A.D.2d 561, 709 N.Y.S.2d 247, 2000 N.Y. App. Div. LEXIS 6677 (N.Y. App. Div. 3d Dep't)*, app. denied, *95 N.Y.2d 763, 716 N.Y.S.2d 38, 739 N.E.2d 294, 2000 N.Y. LEXIS 2822 (N.Y. 2000)*.

In proceeding to terminate mother's parental rights, agency did not have to show that it made diligent efforts to encourage mother to maintain contact with her daughter in order to prove abandonment under CLS *Soc Serv § 384-b(5)(b)*. *In re Markus R. , 273 A.D.2d 919, 708 N.Y.S.2d 792, 2000 N.Y. App. Div. LEXIS 6981 (N.Y. App. Div. 4th Dep't 2000)*.

In proceeding to terminate parental rights on ground of abandonment, agency need not show that it used diligent efforts to foster parent-child communication; rather, burden is on parent to show that he or she maintained sufficient contact with child or agency. *In re Chantelle "TT", 281 A.D.2d 660, 721 N.Y.S.2d 417, 2001 N.Y. App. Div. LEXIS 2037 (N.Y. App. Div. 3d Dep't 2001)*.

Termination of a father's parental rights because the father abandoned his two-year-old child in foster care since birth was proper since the father had not seen him, asked the agency (DHS) about him and where he was more than once, contacted his foster parents, or presented plans for his support or visitation, and DHS had no reunification duty in the *N.Y. Soc. Serv. Law § 384-b* abandonment proceedings even though it had located the father, initiated contact, arranged to meet with him, and provided contact information and avenues for him to achieve a meaningful relationship with the child. *In re Devin XX., 20 A.D.3d 639, 797 N.Y.S.2d 661, 2005 N.Y. App. Div. LEXIS 7633 (N.Y. App. Div. 3d Dep't 2005)*.

Department made the required diligent efforts to encourage and strengthen the parent-child relationship where the department offered or referred the mother to classes, visitation, counseling, temporary shelter, transportation, and regular plan reviews; the department also established that the mother failed to develop a realistic plan for the child's future. Considering the mother's failure to consistently visit with her child, adequately establish a stable and safe living environment for him, and meaningfully establish a realistic plan for his future, the trial court properly determined that she permanently neglected her son. *Matter of Syles DD. (Felicia DD.), 91 A.D.3d 1054, 937 N.Y.S.2d 390, 2012 N.Y. App. Div. LEXIS 152 (N.Y. App. Div. 3d Dep't)*, app. denied, *18 N.Y.3d 810, 944 N.Y.S.2d 481, 967 N.E.2d 706, 2012 N.Y. LEXIS 556 (N.Y. 2012)*.

Termination of the father's parental rights was upheld because the agency proved by clear and convincing evidence that it fulfilled its duty because during the period of removal and while the father was incarcerated, the agency offered the father drug treatment and parent counseling services, transportation assistance, and information about available apartments when he stated that he was going to be evicted. Moreover, the agency arranged visits between the father and the children but the father failed to plan for the children's future. *Matter of Caidence M.*

(Francis W.M.), 162 A.D.3d 1539, 78 N.Y.S.3d 558, 2018 N.Y. App. Div. LEXIS 4220 (N.Y. App. Div. 4th Dep't), app. denied, *32 N.Y.3d 905, 113 N.E.3d 946, 89 N.Y.S.3d 112, 2018 N.Y. LEXIS 2852 (N.Y. 2018)*.

Determinations that the child was permanently neglected and to terminate mother's parental rights were upheld because the agency exerted diligent efforts to strengthen her relationship with the child, created a service plan, arranged visitation, discussed with her possible placement resources and referred her for drug treatment but she did not follow through on most of these recommendations and failed to plan for the child's future. *Matter of Timothy GG. (Meriah GG., 163 A.D.3d 1065, 81 N.Y.S.3d 311, 2018 N.Y. App. Div. LEXIS 4944 (N.Y. App. Div. 3d Dep't*, app. denied, *32 N.Y.3d 908, 113 N.E.3d 949, 89 N.Y.S.3d 115, 2018 N.Y. LEXIS 2972 (N.Y. 2018)*, app. denied, *2018 N.Y. LEXIS 2995 (N.Y. Oct. 23, 2018)*.

Family court properly determined that the child was permanently neglected by the father because there was clear and convincing evidence that despite the efforts made by the caseworker to set up a service plan, which required the father to meet monthly with the agency, to comply with a mental health evaluation and treatment, to participate in substance abuse treatment, to complete a parenting skills course, and to visit with the child, the father failed to plan for return of the child. *Matter of Ricardo T., Jr. (Ricardo T., Sr.), 191 A.D.3d 890, 142 N.Y.S.3d 191, 2021 N.Y. App. Div. LEXIS 1056 (N.Y. App. Div. 2d Dep't)*, app. denied, *37 N.Y.3d 914, 177 N.E.3d 216, 155 N.Y.S.3d 153, 2021 N.Y. LEXIS 2417 (N.Y. 2021)*.

In a proceeding pursuant to *Soc Serv Law § 384-b* alleging that a father had abandoned his child, the petition did not need to include allegations concerning the agency's efforts to encourage and strengthen the parental relationship and that the father had failed to visit with the child for more than one year, allegations required by *Family Ct Act § 614*, since those requirements are inapplicable to a proceeding to terminate parental rights based upon an abandonment of a child for a period of six months. *In re L., 108 Misc. 2d 491, 437 N.Y.S.2d 569, 1981 N.Y. Misc. LEXIS 2227 (N.Y. Fam. Ct. 1981)*.

Newborn infant was "abandoned" within meaning of CLS *Soc Serv § 384-b(5)(a)* and thus was freed for adoption without need to show diligent efforts to strengthen parental relationship, where mother left infant at designated "safe haven" site established under CLS *Soc Serv § 372-g* and failed to contact infant or agency during 6-month period after termination proceedings were instituted. *In re Guardianship of Doe, 189 Misc. 2d 512, 733 N.Y.S.2d 326, 2001 N.Y. Misc. LEXIS 484 (N.Y. Fam. Ct. 2001)*.

8. Failure to visit child

Where defendant mother has failed to visit with child or communicate with agency for period in excess of 6 months, she must demonstrate that such failure was due to hardship that permeated her life to such extent that contact was not feasible and that circumstances were of such continuously grave or absorbing character as to explain her inability to set aside one or 2 hours during year to see her child. *In re Catholic Child Care Soc. of Diocese, 112 A.D.2d 1039, 492 N.Y.S.2d 831, 1985 N.Y. App. Div. LEXIS 52242 (N.Y. App. Div. 2d Dep't 1985)*.

Record supported the family court's findings of abandonment and to change the child's permanency goal to be free for adoption because the mother failed to visit and communicate with him for a period of over seven months, although able to do so and not prevented or discouraged from doing so by the agency. *Matter of Max HH. (Kara FF.), 170 A.D.3d 1456, 96 N.Y.S.3d 757, 2019 N.Y. App. Div. LEXIS 2423 (N.Y. App. Div. 3d Dep't 2019)*.

Sound and substantial basis supported the family court's findings that revocation of the suspended judgment and termination of the mother's parental rights was in the daughter's best interests because she had not completed any of the treatment programs required by the family court to address her addiction, and her testimony showed that she had continued to use illegal drugs or misuse prescription medication during at least some of the time period that the suspended judgment was in effect *Matter of Max HH. (Kara FF.), 170 A.D.3d 1456, 96 N.Y.S.3d 757, 2019 N.Y. App. Div. LEXIS 2423 (N.Y. App. Div. 3d Dep't 2019)*.

9. —Established

Mother's alleged difficulties in arranging transportation, problems in receiving mail, and lack of accessible phone service were insufficient reasons for not visiting her child during relevant period where such difficulties did not so permeate her life as to make contact with child unfeasible. *In re John Z., 209 A.D.2d 821, 619 N.Y.S.2d 175, 1994 N.Y. App. Div. LEXIS 11374 (N.Y. App. Div. 3d Dep't 1994)*.

Mother's parental rights were terminated on ground of abandonment where she only saw child twice, both times at hospital within 10 days after child's birth, and never attempted to visit child thereafter. *In re Michelle S, 234 A.D.2d 800, 652 N.Y.S.2d 118, 1996 N.Y. App. Div. LEXIS 12625 (N.Y. App. Div. 3d Dep't 1996)*.

Abandonment was demonstrated by evidence that mother had no scheduled visits with child and no contact with department of social services during 6-month period despite her claim of 2 chance encounters with child and foster mother, since such visits were minimal, sporadic and insubstantial. *In re Alex "MM", 260 A.D.2d 675, 688 N.Y.S.2d 707, 1999 N.Y. App. Div. LEXIS 3275 (N.Y. App. Div. 3d Dep't 1999)*.

Mother's explanation that she did not visit with child because she had heard that there was outstanding warrant for her arrest and that she was receiving treatment for her substance abuse problem fell short of required showing of difficulties so permeating her life as to make contact unfeasible. *In re Alex "MM", 260 A.D.2d 675, 688 N.Y.S.2d 707, 1999 N.Y. App. Div. LEXIS 3275 (N.Y. App. Div. 3d Dep't 1999)*.

Family Court properly terminated mother's parental rights on grounds of abandonment where she had consented to foster care, followed by adoption, after reading document at length and in company of child's paternal grandmother, she did so voluntarily when not suffering from any condition that would have clouded her judgment, and she saw child only twice prior to placement with adoptive parents and never thereafter; her request for pictures of child 4 months after adoption, and her letter 3 months later seeking return of child, were sporadic contacts, insufficient to defeat abandonment petition. *In re Baby Girl "GG", 260 A.D.2d 956, 690 N.Y.S.2d 752, 1999 N.Y. App. Div. LEXIS 4428 (N.Y. App. Div. 3d Dep't)*, app. denied, *93 N.Y.2d 815, 697 N.Y.S.2d 562, 719 N.E.2d 923, 1999 N.Y. LEXIS 2784 (N.Y. 1999)*.

Father abandoned his children, and thus his consent to their adoption was not required, even though burden was incorrectly placed on him to show that he had maintained substantial and continuous relationship with children, where he showed very little interest in children from 1995 onward, he surrendered his visitation rights in exchange for relief from his child support obligations, and he never tried to contribute to children's support or regain visitation until adoption petitions were filed. *In re Sara "HH", 266 A.D.2d 779, 699 N.Y.S.2d 153, 1999 N.Y. App. Div. LEXIS 12161 (N.Y. App. Div. 3d Dep't 1999)*.

Termination of a mother's parental rights solely on the ground of abandonment was proper where the mother was advised of how to regain custody and set up visitation by a county department of children, youth, and families caseworker, yet the mother made no contact with the caseworker and did not visit her child during the relevant period. *In re Kerrianne AA., 1 A.D.3d 835, 767 N.Y.S.2d 308, 2003 N.Y. App. Div. LEXIS 12645 (N.Y. App. Div. 3d Dep't 2003)*, app. denied, *1 N.Y.3d 507, 776 N.Y.S.2d 222, 808 N.E.2d 358, 2004 N.Y. LEXIS 74 (N.Y. 2004)*.

In a proceeding to terminate the parental rights of a mother to her children on the grounds of abandonment or permanent neglect, the trial court properly found that the mother permanently abandoned and neglected her children, where the mother had failed to visit with the children for more than 15 months and the mother had made telephone calls to the agency where the children were boarded threatening to either blow up the agency or to kill a case worker if the children were not returned to her. *In re R., 109 Misc. 2d 1031, 441 N.Y.S.2d 325, 1981 N.Y. Misc. LEXIS 3018 (N.Y. Fam. Ct. 1981)*.

10. —Not established

The Department of Social Services did not establish by clear and convincing evidence that a mother's failure to visit her children constituted abandonment under *Soc Serv Law § 384-b*, where the primary reasons for the mother's failure to visit her children were financial problems, she was taking care of her invalid father, had a nervous breakdown, and was hampered in her attempts to have meaningful communication with her children by virtue of their mental and physical retardation. *In re Rose Marie M., 94 A.D.2d 734, 462 N.Y.S.2d 483, 1983 N.Y. App. Div. LEXIS 18178 (N.Y. App. Div. 2d Dep't 1983)*.

Order terminating a mother's parental rights based on abandonment was reversed because the Family Court erred by precluding the mother from admitting printed out social media messaging that she conducted regularly with the child through her adult son's account, as the frequency and content of the social media communications were relevant in determining whether the mother maintained substantial contact with the child. *Matter of Colby II. (Sheba II.), 145 A.D.3d 1271, 43 N.Y.S.3d 587, 2016 N.Y. App. Div. LEXIS 8262 (N.Y. App. Div. 3d Dep't 2016)*.

In an appeal from an order partially dismissing an application to adjudicate the child to be abandoned, the aunt failed to carry her burden of establishing abandonment by clear and convincing evidence because the aunt presented only one alleged instance where the mother missed visitation with the child; no evidence was offered regarding the mother's contacts with the child, or lack thereof, between May 15, 2017 through the end of October 2017. *Matter of Jaxon Uu. (tammy I.--Nicole H.), 193 A.D.3d 1269, 147 N.Y.S.3d 713, 2021 N.Y. App. Div. LEXIS 2689 (N.Y. App. Div. 3d Dep't 2021)*.

11. Failure to communicate with child

Attendance at Family Court proceeding does not constitute sufficient contact with child to preclude finding of abandonment. *In re Nahiem G., 241 A.D.2d 632, 659 N.Y.S.2d 950, 1997 N.Y. App. Div. LEXIS 7335 (N.Y. App. Div. 3d Dep't 1997)*.

Minimal, sporadic or insubstantial contacts will not be sufficient to defeat otherwise viable claim of abandonment. *In re Nahiem G., 241 A.D.2d 632, 659 N.Y.S.2d 950, 1997 N.Y. App. Div. LEXIS 7335 (N.Y. App. Div. 3d Dep't 1997)*.

Child abandonment petition is not defeated by showing of sporadic and insubstantial contacts where clear and convincing evidence otherwise supports granting of petition. *In re Candice K., 245 A.D.2d 821, 666 N.Y.S.2d 791, 1997 N.Y. App. Div. LEXIS 13183 (N.Y. App. Div. 3d Dep't 1997)*.

In proceeding to terminate parental rights on ground of abandonment, parent's ability to communicate is presumed, absent evidence that lack of such contact was justified. *In re Chantelle "TT", 281 A.D.2d 660, 721 N.Y.S.2d 417, 2001 N.Y. App. Div. LEXIS 2037 (N.Y. App. Div. 3d Dep't 2001)*.

Sound and substantial basis existed to support that parental rights termination was in child's best interests because mother abandoned child; that she pass drug screen was reasonable precondition to visitation and did not impede ability to communicate by phone; her contact with child and/or petitioner only modestly increased since date on which relevant six-month period expired, and reunification was dependent upon successfully completing drug treatment program after release from incarceration. *Matter of Micah L. (rachel L.), 192 A.D.3d 1344, 143 N.Y.S.3d 747, 2021 N.Y. App. Div. LEXIS 1678 (N.Y. App. Div. 3d Dep't 2021)*.

Family court found that a child welfare agency had standing to seek an order declaring that children who were in foster care had been abandoned even though the children had not been in foster care for more than six months, and it held that a mother who left her children with their grandmother before they were placed in foster care and did not communicate with them for more than six months had abandoned them. *Matter of C. Children, 780 N.Y.S.2d 476, 4 Misc. 3d 363, 2004 N.Y. Misc. LEXIS 625 (N.Y. Fam. Ct. 2004)*.

12. —Established

A father's two insubstantial contacts with his children over a two-year period of time did not preclude a finding of abandonment within the meaning of Soc Serv Law § 384-b(5)(b). *In re K., 78 A.D.2d 901, 433 N.Y.S.2d 212, 1980 N.Y. App. Div. LEXIS 13655 (N.Y. App. Div. 2d Dep't 1980)*.

Mother's absence of contact with child during 4-month period was not excused by her claim that she could not contact child while she "waited and waited" for "new person" to come to see her about making phone calls. *In re William PP., 185 A.D.2d 397, 585 N.Y.S.2d 631, 1992 N.Y. App. Div. LEXIS 8882 (N.Y. App. Div. 3d Dep't 1992)*.

Court properly terminated father's parental rights where, after children were adjudicated as neglected and placed in foster care, he left New York and deliberately concealed his whereabouts for 7 months immediately prior to filing of petition, and for more than 3 months thereafter; father's alleged single surreptitious telephone call to one of his 3 children was too insubstantial to defeat otherwise unchallenged proof of total lack of contact establishing abandonment. *In re Jeremy TT., 206 A.D.2d 632, 614 N.Y.S.2d 602, 1994 N.Y. App. Div. LEXIS 7375 (N.Y. App. Div. 3d Dep't 1994)*, app. dismissed, *84 N.Y.2d 1025, 623 N.Y.S.2d 179, 647 N.E.2d 451, 1995 N.Y. LEXIS 97 (N.Y. 1995)*.

In proceeding under CLS Soc Serv § 384-b to terminate father's parental rights for abandonment of child, father's excuses for failing to visit his daughter during requisite 6-month period—that he had alcohol problem and that child's mother told him that order placing daughter in foster care prohibited male visitors—were insufficient where, apart from visitation, father made no attempt to contact his daughter through phone calls, cards, letters, or gifts for nearly 2 years while she was in foster care. *In re Tasha B, 240 A.D.2d 778, 658 N.Y.S.2d 525, 1997 N.Y. App. Div. LEXIS 6013 (N.Y. App. Div. 3d Dep't 1997)*.

Clear and convincing evidence supported finding of abandonment where biological father's only contact with child during relevant 6-month period was at court proceeding where he failed to speak to social services authorities or inquire about child, and he had also failed to have any contact with child for 2 years prior to dispositional hearing. *In re Nahiem G., 241 A.D.2d 632, 659 N.Y.S.2d 950, 1997 N.Y. App. Div. LEXIS 7335 (N.Y. App. Div. 3d Dep't 1997)*.

Mother's one isolated attempt to contact her child in relevant 6-month period was insufficient to avoid finding of abandonment. *In re Erica C., 257 A.D.2d 445, 683 N.Y.S.2d 262, 1999 N.Y. App. Div. LEXIS 172 (N.Y. App. Div. 1st Dep't 1999)*.

Putative father's single inquiry to hospital, through counsel, as to whether child had been born was insufficient to demonstrate that he maintained contact with child, and thus his parental rights were properly terminated on testimony of child's mother, caseworker, and foster parents as to lack of contact. *In re Arianna "SS", 275 A.D.2d 498, 711 N.Y.S.2d 622, 2000 N.Y. App. Div. LEXIS 8432 (N.Y. App. Div. 3d Dep't 2000)*.

Where the father did not contact the father's child for six months and the father did not establish that the father was unable to do so, it was properly determined that the father abandoned the child pursuant to N.Y. Soc. Serv. Law § 384-b(4)(b), (5)(a) and that termination of the father's parents rights and freeing the child for adoption were in the child's best interests pursuant to N.Y. Fam. Ct. Act §§ 623, 631. *Lakeside Family & Children's Servs. v Leon F. (In re Lee P.), 304 A.D.2d 760, 757 N.Y.S.2d 786, 2003 N.Y. App. Div. LEXIS 4290 (N.Y. App. Div. 2d Dep't 2003)*.

Trial court properly terminated the parental rights of a mother and father to a child pursuant to N.Y. Soc. Serv. Law § 384-b on the ground of termination; there was clear and convincing evidence that the parents had failed to communicate with the child in the six months prior to the filing of the termination proceeding, there was no evidence that the parents were prevented or discouraged from such contract, and the termination of rights was in the best interest of the child. *In re Lovell Raeshawn McC., 308 A.D.2d 589, 764 N.Y.S.2d 714, 2003 N.Y. App. Div. LEXIS 9884 (N.Y. App. Div. 2d Dep't 2003)*.

Trial court properly terminated a father' parental rights pursuant to N.Y. Soc. Serv. Law § 384-b; the finding that the father had abandoned the child was based on clear and convincing evidence that he failed to contact the child during the six months prior to filing of the petition, and the agency was not required to obtain the father's consent to the adoption of the child, as the father concededly provided no financial support for the child, and failed to offer any

objective evidence to support his claims of contact through letters, cards, and gifts, *N.Y. Dom. Rel. Law § 111(1)(d)*. *In re Marie Luz C., 6 A.D.3d 304, 775 N.Y.S.2d 305, 2004 N.Y. App. Div. LEXIS 4780 (N.Y. App. Div. 1st Dep't 2004)*.

Where a mother voluntarily moved to another state, leaving her child in the care of her sister, and the only contact during a six-month period was sporadic telephone calls, the mother's unsubstantiated allegation of financial hardship was insufficient to rebut the *N.Y. Soc. Serv. Law § 384-b(5)(a)* presumption that she was able to communicate with her child during the period at issue; consequently, the trial court properly determined that the mother abandoned the child and terminated the mother's parental rights. *In re Kyle K., 13 A.D.3d 1162, 787 N.Y.S.2d 765, 2004 N.Y. App. Div. LEXIS 16354 (N.Y. App. Div. 4th Dep't 2004)*.

In a proceeding pursuant to *N.Y. Soc. Serv. Law § 384-b*, the family court properly found that respondent's children were abandoned and terminated respondent's parental rights, as respondent's failure to maintain contact with the children provided sufficient grounds to find that the children were abandoned. *Matter of Alec B., 34 A.D.3d 1110, 824 N.Y.S.2d 475, 2006 N.Y. App. Div. LEXIS 13800 (N.Y. App. Div. 3d Dep't 2006)*.

13. —Not established

A finding of abandonment against a mother would be precluded by a letter sent by her to the foster care agency within six months of the filing of the abandonment petition asking to be apprised of her children's well-being and requesting that they be placed in the care of their maternal grandmother, and her indirect communication with her children during the six-month period through letters sent to her mother which relayed messages, presents, a photo of herself and her new baby, and a birthday card, in that the statute requires both failure to visit and failure to communicate with a child on the part of a mother in order to warrant a finding of abandonment. *In re Madeline R., 117 Misc. 2d 14, 457 N.Y.S.2d 714, 1982 N.Y. Misc. LEXIS 4009 (N.Y. Fam. Ct. 1982)*.

14. Failure to visit or communicate with child

Parent's repeated failure to visit or communicate with infant, notwithstanding strong encouragement to do so, demonstrates intent to forego parental rights and obligations sufficient to establish abandonment of child. *In re Christina Nina B., 118 A.D.2d 571, 499 N.Y.S.2d 180, 1986 N.Y. App. Div. LEXIS 54427 (N.Y. App. Div. 2d Dep't 1986)*.

On appeal in a case terminating the father's parental rights, even after the father was served with the termination petition, he failed to contact the child even though agency petitioner told him that he could write letters to the child; and although the father contacted the foster parents and spoke with agency petitioner about the petition, those minimal efforts did not preclude a finding of abandonment. *Matter of Najuan W. (Stephon W.), 184 A.D.3d 1111, 126 N.Y.S.3d 258, 2020 N.Y. App. Div. LEXIS 3442 (N.Y. App. Div. 4th Dep't 2020)*.

Finding of abandonment requires that parent evince an intent to forego his parental rights and obligations as manifested by his failure to visit the child and communicate with the child or agency during the six months immediately preceding the initiation of the proceeding and finding that he was neither prevented nor discouraged from doing so by the agency. *In re Kent, 104 Misc. 2d 196, 427 N.Y.S.2d 729, 1980 N.Y. Misc. LEXIS 2300 (N.Y. Fam. Ct. 1980)*.

15. —Established

Parental rights were properly terminated based on "clear and convincing" proof of abandonment by a mother who did not visit or contact her son for several years. *In re John M., 89 A.D.2d 822, 453 N.Y.S.2d 523, 1982 N.Y. App. Div. LEXIS 17960 (N.Y. App. Div. 4th Dep't)*, app. denied, *57 N.Y.2d 605, 1982 N.Y. LEXIS 7163 (N.Y. 1982)*.

Family Court properly determined that father had permanently abandoned his children, despite fact that he was Canadian citizen who was allegedly unable to enter United States due to his criminal record, since such fact did not preclude finding of abandonment based on his failure to visit or communicate with children once they were placed in foster care; pursuant to 8 USCS § 1182, father could have applied for entry into United States for purposes of visitation on either temporary or permanent basis, notwithstanding his immigration status. *In re Charles R., 127 A.D.2d 975, 512 N.Y.S.2d 936, 1987 N.Y. App. Div. LEXIS 43460 (N.Y. App. Div. 4th Dep't 1987)*.

Petitioner established by clear and convincing evidence that respondent abandoned his 2 children by failing to visit or contact them, despite being able to do so, for period of 6 months immediately prior to date on which petition was filed, and fact that respondent attended uniform case review at agency during such 6-month period did not preclude finding of abandonment since he did not initiate meeting or meaningfully participate in it. *In re Loretta Lynn W., 149 A.D.2d 928, 540 N.Y.S.2d 62, 1989 N.Y. App. Div. LEXIS 5934 (N.Y. App. Div. 4th Dep't 1989)*.

Family Court properly determined that mother abandoned her infant son, who came into care and custody of department of social services (DSS) shortly after his birth due to medical complications experienced by him at birth and his need for special after-care which mother was unable to provide, based on proof that mother failed to visit child or communicate with him for 6 months prior to filing of petition, indicating her intention to forgo parental rights and obligations. *In re Joseph H., 185 A.D.2d 682, 587 N.Y.S.2d 62, 1992 N.Y. App. Div. LEXIS 9232 (N.Y. App. Div. 4th Dep't 1992)*.

Mother abandoned her children by failing to visit or communicate with them for more than 6 months preceding filing of termination petitions, despite facts that she was able to do so and was not prevented or discouraged from doing so by foster care agency which had guardianship of children. *In re Cara Lynda V., 235 A.D.2d 543, 653 N.Y.S.2d 859, 1997 N.Y. App. Div. LEXIS 659 (N.Y. App. Div. 2d Dep't 1997)*.

Father's single telephone inquiry and 2 meetings with daughter's caseworker were too sporadic and insubstantial to defeat abandonment petition under CLS Soc Serv § 384-b where he never visited or communicated with daughter during period in question or initiated custody proceeding as he was urged to do. *In re Tasha B, 240 A.D.2d 778, 658 N.Y.S.2d 525, 1997 N.Y. App. Div. LEXIS 6013 (N.Y. App. Div. 3d Dep't 1997)*.

Father's parental rights to his 2 daughters were properly terminated on ground of abandonment where, despite agency's attempts to facilitate visitation, father did not visit daughters between September 1994 and August 1995 except for one occasion when he went to their foster home unannounced and left when he found that they were busy, he did not initiate any telephone contact during that period or send any cards or gifts, and although he made a number of informal contacts with them during 1995 while he was living across street from their church, those brief and accidental encounters were not of sufficient frequency, substance, or quality to defeat clear and convincing evidence of abandonment. *In re Candice K., 245 A.D.2d 821, 666 N.Y.S.2d 791, 1997 N.Y. App. Div. LEXIS 13183 (N.Y. App. Div. 3d Dep't 1997)*.

For purposes of petition to terminate father's parental rights, he abandoned his daughter by failing to visit or communicate with her during 6 months preceding filing of petition, even though he allegedly believed that he had to complete alcohol abuse program before he would be allowed to visit her, where caseworker testified that she informed him that he would be allowed to visit his daughter as long as he was sober, and any such misunderstanding did not account for his failure to communicate with his daughter by telephone, cards, or letters. *In re Christina S., 251 A.D.2d 982, 674 N.Y.S.2d 550, 1998 N.Y. App. Div. LEXIS 6993 (N.Y. App. Div. 4th Dep't 1998)*.

Finding of abandonment was supported by evidence that father, though able to do so, did not visit, telephone of provide financial support for his child for 5 years prior to filing of petition, and that letters he occasionally sent to child, including one during statutory 6-month abandonment period, were for express purpose of defeating statutory presumption of abandonment rather than forging parent-child relationship. *In re Cody Michael B., 258 A.D.2d 421, 685 N.Y.S.2d 733, 1999 N.Y. App. Div. LEXIS 1856 (N.Y. App. Div. 1st Dep't 1999)*.

Mother's parental rights were properly terminated for abandonment of her daughter where she failed to visit daughter or communicate with her or agency during 6-month period immediately preceding filing of abandonment petition. *In re Markus R. , 273 A.D.2d 919, 708 N.Y.S.2d 792, 2000 N.Y. App. Div. LEXIS 6981 (N.Y. App. Div. 4th Dep't 2000)*.

Father's parental rights were properly terminated where he did not overcome presumption of abandonment resulting from his failure to visit or communicate with his children for 6 months immediately preceding filing of petitions, and agency did not discourage contact between father and his children. *In re Joryi N., 281 A.D.2d 548, 721 N.Y.S.2d 821, 2001 N.Y. App. Div. LEXIS 2563 (N.Y. App. Div. 2d Dep't)*, app. denied, *96 N.Y.2d 717, 730 N.Y.S.2d 790, 756 N.E.2d 78, 2001 N.Y. LEXIS 1968 (N.Y. 2001)*.

Mother abandoned her daughter, and thus mother's parental rights were properly terminated, where (1) during relevant 6-month period immediately preceding mother's petition for return of daughter from foster care, mother visited daughter only once and talked to her twice, (2) all 3 of those contacts were initiated by daughter's maternal grandmother, whom daughter was then visiting, and (3) thus, mother did not personally make any effort to visit or telephone daughter during pertinent period. *In re Chantelle "TT", 281 A.D.2d 660, 721 N.Y.S.2d 417, 2001 N.Y. App. Div. LEXIS 2037 (N.Y. App. Div. 3d Dep't 2001)*.

There was no evidence of any efforts made by a parent to visit or communicate with the parent's children. Based on all the evidence, including evidence of the children's positive adjustment to their foster home and the desire of the foster parents to adopt them, the parent had abandoned the children, and termination of the parent's parental rights was proper. *Matter of Jacob WW., 56 A.D.3d 995, 868 N.Y.S.2d 348, 2008 N.Y. App. Div. LEXIS 8714 (N.Y. App. Div. 3d Dep't 2008)*.

Father's parental rights were properly terminated for abandonment as: (1) during the relevant six-month period, he did not contact or otherwise communicate with the child services agency, despite the agency's repeated attempts to contact the father and its requests that he inform them of his plan for the child; (2) the father's only visit with the child was before the six-month period began and was stressful and upsetting for the child because the father was a stranger to her; (3) the father did not appear at a subsequent visit he requested; (4) the custody petition the father filed before the six-month period began was dismissed when he failed to appear; and (5) the father's sporadic cards and gifts did not preclude a finding of abandonment. *Matter of Jazmyne OO. (Maurice OO.), 111 A.D.3d 1085, 975 N.Y.S.2d 786, 2013 N.Y. App. Div. LEXIS 7737 (N.Y. App. Div. 3d Dep't 2013)*.

Trial court properly determined that termination of a mother's parental rights was in her four-year-old son's best interests, as he had been out of her care for most of his life, and the evidence established that contact with her caused him significant distress and that his foster parents were willing to adopt him. *Matter of Jonathan NN. (Michelle OO.), 90 A.D.3d 1161, 934 N.Y.S.2d 568, 2011 N.Y. App. Div. LEXIS 8705 (N.Y. App. Div. 3d Dep't 2011)*, app. denied, *18 N.Y.3d 808, 944 N.Y.S.2d 479, 967 N.E.2d 704, 2012 N.Y. LEXIS 492 (N.Y. 2012)*.

Evidence supported the family courts findings that the mother abandoned the children because she saw the children only twice during the relevant six-month period and she either failed to attend, or confirm that she would be in attendance at, the remainder of her scheduled parenting time. Also, she did not call the children, although provided with the foster mother's phone number and designated times at which she could do so, or send the children any letters, cards or pictures. *Matter of Joshua M. (Brittany N.), 167 A.D.3d 1268, 89 N.Y.S.3d 777, 2018 N.Y. App. Div. LEXIS 8662 (N.Y. App. Div. 3d Dep't 2018)*.

The trial court properly determined that the child was abandoned for purposes of adoption because the grandparents established, by clear and convincing evidence, that the father failed to make any attempt to visit the child, or to communicate with them or the child, since the father's visit with the child in 2010. *Matter of J'Adore, 188 A.D.3d 1059, 136 N.Y.S.3d 103, 2020 N.Y. App. Div. LEXIS 6973 (N.Y. App. Div. 2d Dep't 2020)*.

Family Court did not err in terminating the father's and the mother's parental rights because based upon the evidence in the record, the Family Court properly determined that the father did not maintain substantial and

continuous or repeated contact with the child. *Matter of Elizabeth E. H., 196 A.D.3d 578, 151 N.Y.S.3d 427, 2021 N.Y. App. Div. LEXIS 4449 (N.Y. App. Div. 2d Dep't 2021)*.

Evidence demonstrated that the father had abandoned the child, as the record revealed that during the relevant time, the father did not visit the child or communicate with the child or the petitioner, nor did he provide financial support. *Matter of Elizabeth E. H., 196 A.D.3d 578, 151 N.Y.S.3d 427, 2021 N.Y. App. Div. LEXIS 4449 (N.Y. App. Div. 2d Dep't 2021)*.

On appeal in a case terminating parents' parental rights, the mother failed to adequately plan for the child's future; the mother failed to benefit from the services offered to her; and failed to obtain appropriate housing and employment, and too frequently during parental access resorted to yelling, using profanity, and frightening the child. *Matter of Elizabeth E. H., 196 A.D.3d 578, 151 N.Y.S.3d 427, 2021 N.Y. App. Div. LEXIS 4449 (N.Y. App. Div. 2d Dep't 2021)*.

16. —Not established

Evidence that mother left children with their grandmother for several months while maintaining only some telephone contact, but that mother was cognizant that children, if delivered to grandmother, as temporary caretaker and custodian, would continue to be beneficiaries of grandmother's love and affection while simultaneously being adequately supplied with life's daily necessities was insufficient to support finding of neglect because of abandonment, as totality of mother's actions must be throughly considered in determining whether she evinced intent to forego her parental rights. *In re Marlon S., 131 Misc. 2d 248, 499 N.Y.S.2d 850, 1986 N.Y. Misc. LEXIS 2491 (N.Y. Fam. Ct. 1986)*.

17. Failure to communicate with agency

Finding of a parent's abandonment of the parent's children was based on clear and convincing evidence that the parent failed to contact the children or an agency, although able to do so and not prevented or discouraged from doing so by the agency (*N.Y. Soc. Serv. Law § 384-b(4)(b)*; (5)). A single communication with the agency did not bar a finding of abandonment. *Matter of Elvis Emil J. C., 43 A.D.3d 710, 841 N.Y.S.2d 557, 2007 N.Y. App. Div. LEXIS 9685 (N.Y. App. Div. 1st Dep't)*, app. denied, *9 N.Y.3d 814, 848 N.Y.S.2d 25, 878 N.E.2d 609, 2007 N.Y. LEXIS 3319 (N.Y. 2007)*.

18. —Established

Mother's excuse was insufficient to avoid finding of abandonment where she stated that she did not contact agency which had custody of children, or foster home in which children lived, because she was fugitive and believed that calling or writing would provide her location to United States Marshall and result in her apprehension; to accept such argument, future of children of fugitives would have to be held in abeyance while their parents remained at large. *In re Anthony T., 208 A.D.2d 985, 617 N.Y.S.2d 390, 1994 N.Y. App. Div. LEXIS 9700 (N.Y. App. Div. 3d Dep't 1994)*, app. denied, *85 N.Y.2d 801, 624 N.Y.S.2d 371, 648 N.E.2d 791, 1995 N.Y. LEXIS 157 (N.Y. 1995)*.

Trial court properly found that a mother abandoned her child where she contacted the Greene County Department of Social Services (DSS) only four times after the child entered the care of DSS, even though she filed for custody in response to the petition by DSS, requested assistance in obtaining custody from her caseworker, and completed a parenting skills class. *In re Yvonne N., 16 A.D.3d 789, 791 N.Y.S.2d 673, 2005 N.Y. App. Div. LEXIS 2399 (N.Y. App. Div. 3d Dep't 2005)*.

19. —Not established

Agency failed to establish by clear and convincing evidence that father had abandoned his children where (1) agency made only cursory attempts to locate him, (2) he came forward immediately when mother found him 4 months before petition was filed, (3) he made several contacts with agency during 6-month period preceding filing of petition, during which time he never evinced intent to forego his parental responsibilities, and (4) his contacts with agency were made more difficult due to agency's failure to direct correspondence to correct address. *In re Brown, 139 Misc. 2d 550, 527 N.Y.S.2d 693, 1988 N.Y. Misc. LEXIS 215 (N.Y. Fam. Ct. 1988)*.

20. Failure to communicate with child and agency

To rebut presumption of abandonment arising by reason of failure to contact child or agency for 6-month period immediately preceding filing of petition by social services agency, respondent must show hardship so permeating her life as to make contact not feasible, or that she was discouraged from making contact by agency. *In re Antwan Malik F., 232 A.D.2d 216, 647 N.Y.S.2d 772, 1996 N.Y. App. Div. LEXIS 9961 (N.Y. App. Div. 1st Dep't 1996)*.

Because a father failed to communicate with his children or an agency during the six months immediately preceding the filing of the amended termination petitions, and admittedly had not contacted them since the children came into the agency's care, a presumption of abandonment was created under *N.Y. Soc. Serv. Law § 384-b(5)(a)* that the father failed to rebut. *Matter of Amin Enrique M. v Amin M., 52 A.D.3d 316, 860 N.Y.S.2d 507, 2008 N.Y. App. Div. LEXIS 5284 (N.Y. App. Div. 1st Dep't 2008)*, app. dismissed, *12 N.Y.3d 792, 879 N.Y.S.2d 37, 906 N.E.2d 1071, 2009 N.Y. LEXIS 644 (N.Y. 2009)*.

Termination of the father's parental rights was proper because the father failed to meet the burden to establish that circumstances existed that prevented his contact with the child or agency or that the agency discouraged such contact. Although the mother removed the child from the father's care and took the child to an undisclosed location in violation of the custody arrangement, the father did not report that violation, or make any attempt thereafter to locate the child. *Matter of Najuan W. (Stephon W.), 184 A.D.3d 1111, 126 N.Y.S.3d 258, 2020 N.Y. App. Div. LEXIS 3442 (N.Y. App. Div. 4th Dep't 2020)*.

Parental rights of putative father will be terminated on grounds of abandonment, pursuant to *Social Services Law § 384-b(4)(b)*, (d), where social services agency has proven by clear and convincing evidence that putative father has never had any contact with child or agency since child came into placement 7 years ago. *In re Dana Marie E., 128 Misc. 2d 1018, 492 N.Y.S.2d 340, 1985 N.Y. Misc. LEXIS 3047 (N.Y. Fam. Ct. 1985)*.

While a father testified that he did not know he could contact his children while in prison, he provided no basis for his belief in that regard, and, in any event, his incarceration did not relieve him of the obligation to communicate with petitioner or its representatives; thus, his parental rights were properly terminated based on abandonment. Matter of *Matter of Jamaica M. (Hakeem N.), 90 A.D.3d 1105, 934 N.Y.S.2d 560, 2011 N.Y. App. Div. LEXIS 8522 (N.Y. App. Div. 3d Dep't 2011)*, app. denied, *18 N.Y.3d 806, 940 N.Y.S.2d 215, 963 N.E.2d 792, 2012 N.Y. LEXIS 174 (N.Y. 2012)*.

21. —Established

In a proceeding to terminate parental rights, a determination that respondent had abandoned her child would be sustained where respondent executed a voluntary placement with petitioner County Department of Social Services, failed to keep appointments regarding the child's possible return to her did not visit or communicate with her son or the agency during a six month period, and failed to appear for a review proceeding conducted as required by *Soc Serv Law § 392*. *In re Julius P., 63 N.Y.2d 477, 483 N.Y.S.2d 175, 472 N.E.2d 1003, 1984 N.Y. LEXIS 4681 (N.Y. 1984)*.

Where the father had no contact with either the child or the county department of social services during the six months prior to the filing of the abandonment petition, the reviewing court determined, pursuant to *N.Y. Soc. Serv.*

Law § 384-b(5)(a), that this lack of contact evinced the father's intent to forego the father's parental rights. In re Gabrielle HH., 1 N.Y.3d 549, 772 N.Y.S.2d 643, 804 N.E.2d 964, 2003 N.Y. LEXIS 4099 (N.Y. 2003).

Petition to terminate father's parental rights on ground that he abandoned children by failing to make contact with them or with petitioning agency during 6-month period immediately preceding filing of petition should not have been dismissed since it was undisputed that father did not visit or communicate with children or contact agency during 6 months in issue, his filing of visitation petition during that period did not satisfy his burden to maintain contact where he failed to appear at visitation hearing, and his lack of contact was not justified by showing that he was of low intelligence, depressed, possibly paranoid, agitated, and anxious. In re Alexander V, 179 A.D.2d 913, 578 N.Y.S.2d 708, 1992 N.Y. App. Div. LEXIS 654 (N.Y. App. Div. 3d Dep't 1992).

Respondent's parental rights were properly terminated where undisputed testimony established that respondent failed to contact children or agency for 6 months immediately preceding filing of petition, respondent was not prevented from visiting or communicating with children during that 6-month period, and termination of rights to allow for adoption by foster mother was in best interest of children. *In re Amanda Maying J., 208 A.D.2d 398, 618 N.Y.S.2d 210, 1994 N.Y. App. Div. LEXIS 9658 (N.Y. App. Div. 1st Dep't 1994)*, app. denied, *85 N.Y.2d 801, 624 N.Y.S.2d 371, 648 N.E.2d 791, 1995 N.Y. LEXIS 169 (N.Y. 1995)*.

Parental rights were properly terminated on basis of abandonment where neither parent contacted child or agency for 6 months preceding filing of petition, except for one telephone call that was not followed up by visit. In re Male M., 210 A.D.2d 136, 621 N.Y.S.2d 850, 1994 N.Y. App. Div. LEXIS 12982 (N.Y. App. Div. 1st Dep't 1994).

In proceeding for termination of parental rights, mother abandoned her children where she had no contact with them or agency for at least 6 months, except for one unsuccessful attempt at visitation in which she arrived so late that children already had returned home, and when she did arrive, she did not ask about children or suggest plan for them. In re Barbara Luisa A., 266 A.D.2d 156, 699 N.Y.S.2d 38, 1999 N.Y. App. Div. LEXIS 12339 (N.Y. App. Div. 1st Dep't 1999).

In proceeding to terminate mother's parental rights, her sporadic and insubstantial contacts with county social services department during 6-month period immediately preceding filing of petition were insufficient to preclude finding of abandonment where, despite department's diligent efforts to encourage and strengthen parental relationship, mother failed to substantially and continuously maintain contact with her children or to plan for their future. In re Christina W. , 273 A.D.2d 918, 710 N.Y.S.2d 280, 2000 N.Y. App. Div. LEXIS 6980 (N.Y. App. Div. 4th Dep't 2000).

Finding of abandonment by father was supported by testimony of child's caseworker and father's brother and sister that father had only brief, insubstantial contacts with child, and no contacts at all with agency, for at least 6 months prior to filing of petition. *In re Guardianship & Custody of William Jayquan R., 279 A.D.2d 421, 719 N.Y.S.2d 852, 2001 N.Y. App. Div. LEXIS 916 (N.Y. App. Div. 1st Dep't)*, app. denied, *96 N.Y.2d 714, 729 N.Y.S.2d 441, 754 N.E.2d 201, 2001 N.Y. LEXIS 1428 (N.Y. 2001)*.

Petitioner agency proved by clear and convincing evidence, including testimony of an agency employee and of the children's foster mother, that respondent father abandoned his children by failing to visit or communicate with them or the agency in whose custody they were placed during the six-month period immediately prior to the filing of the agency's petition to terminate his parental rights despite not being prevented or discouraged from doing so. Alkreen "J" v John "K", 288 A.D.2d 785, 733 N.Y.S.2d 306, 2001 N.Y. App. Div. LEXIS 11490 (N.Y. App. Div. 3d Dep't 2001).

Family court properly adjudicated the children of respondent, a father, to be abandoned pursuant to N.Y. Soc. Serv. Law § 384-b, and properly terminated the father's parental rights; the father's minimal efforts at contact with his children or an agency were patently insufficient to undermine the claim of abandonment, and the father acknowledged that the agency did not in any way discourage or prevent him from having contact with his children. Chemung County Dep't of Soc. Servs. v Kiawaun U. (In re Jovantay U.), 298 A.D.2d 641, 749 N.Y.S.2d 103, 2002 N.Y. App. Div. LEXIS 9673 (N.Y. App. Div. 3d Dep't 2002).

Trial court properly terminated a father's parental rights to his children; the agency proved by clear and convincing evidence that the father abandoned the children pursuant to *N.Y. Soc. Serv. Law § 384-b(5)(a)*, as he made no contact with the agency or his children for approximately seven months after he was informed that the children were taken into the agency's custody. *In re Cheyenne S., 20 A.D.3d 748, 798 N.Y.S.2d 269, 2005 N.Y. App. Div. LEXIS 7783 (N.Y. App. Div. 3d Dep't 2005)*.

Department's claim of abandonment was supported by sufficient evidence under circumstances in which testimony adduced during the fact-finding hearing established that the father had no contact with the children during the six-month period preceding the filing of the abandonment petition, that he missed scheduled visitation without explanation, and that the department's caseworkers made numerous attempts to contact him about visitation without success; although the father had two contacts with the department during this time period, such communications were sporadic, minimal, and wholly insufficient to defeat the department's claim of abandonment. *Matter of Malikah MM., 40 A.D.3d 1173, 835 N.Y.S.2d 745, 2007 N.Y. App. Div. LEXIS 5472 (N.Y. App. Div. 3d Dep't 2007)*.

Trial court properly terminated a parent's parental rights upon determining that the Erie County Department of Social Services established by clear and convincing evidence that the parent abandoned the child. The Department established that, in the six months immediately preceding the filing of the petition, the parent failed to communicate with the child and had contact with the Department only while in court and through a single letter to a caseworker (*Social Services Law § 384-b(4)(b)*, (5)(a)). *Matter of Jasmine J., 43 A.D.3d 1444, 844 N.Y.S.2d 533, 2007 N.Y. App. Div. LEXIS 10158 (N.Y. App. Div. 4th Dep't 2007)*.

Father's child was properly found to be an abandoned child under *N.Y. Soc. Serv. Law § 384-b(5)(a)*, and the father's parental rights were properly terminated, as the record showed that, over a two-year period, the department's caseworkers sent the father approximately 17 letters at various addresses to advise him of his rights and obligations and urging him to contact them regarding the child but that the father, who confirmed receiving some of the letters, never replied. The department convincingly established the father's failure to communicate with the child or the department or to visit her in the almost two years of her life, evincing his intent to forgo his parental role and shifting the burden to the father to prove an inability to maintain contact or that he was prevented or discouraged from doing so by the department, which the father did not do. *Matter of Maria E. (Jermaine D.), 94 A.D.3d 1357, 943 N.Y.S.2d 249, 2012 N.Y. App. Div. LEXIS 3260 (N.Y. App. Div. 3d Dep't 2012)*.

Preponderance of the evidence supported the finding that the mother neglected her two children by abandoning them after her arrest because the mother evinced an intent to forgo her parental rights and obligations as manifested by her failure to visit the children or to communicate with the children or the agency, although she was able to do so in the days following her arrest and was not prevented or discouraged from doing so by the agency. *Matter of Kaylee D. (Kimberly D.), 154 A.D.3d 1343, 61 N.Y.S.3d 783, 2017 N.Y. App. Div. LEXIS 7061 (N.Y. App. Div. 4th Dep't 2017)*.

Family court did not err in dismissing the father's custody petition and finding that the child's best interests would not be served by granting custody to the father because the Department of Social Services established extraordinary circumstances through proof that the child had been in foster care since she was one day old and had never met the father. *Matter of Russell J. v Delaware County Dept. of Social Servs., 170 A.D.3d 1433, 96 N.Y.S.3d 742, 2019 N.Y. App. Div. LEXIS 2427 (N.Y. App. Div. 3d Dep't 2019)*.

Family Court did not err in terminating the father's parental rights because clear and convincing evidence established that the father had abandoned the child as in the six months preceding the petition, he made no contact with either the child, agency, or the child's foster parents to inquire about the child's welfare. No evidence was also presented that the case manager, caseworker or foster parents prevented or discouraged the father from making such contact. *Matter of Z, 192 A.D.3d 1361, 143 N.Y.S.3d 744, 2021 N.Y. App. Div. LEXIS 1667 (N.Y. App. Div. 3d Dep't)*, app. denied, *37 N.Y.3d 905, 173 N.E.3d 425, 151 N.Y.S.3d 377, 2021 N.Y. LEXIS 1749 (N.Y. 2021)*.

Evidence showing that mother had no contact with either child or agency for period of 6 months prior to agency filing petition to terminate parental rights, except to notify Soc. Serv. Dept. of her new address, did not inquire about child or attempt to communicate directly with caseworker, was not prevented by agency from making contact and was not physically incapacitated or mentally incompetent, was clear and convincing evidence that mother had abandoned child as term is defined in CLS *Soc Serv § 384-b(5)*. *In re Starr L. B., 130 Misc. 2d 599, 497 N.Y.S.2d 597, 1985 N.Y. Misc. LEXIS 3248 (N.Y. Fam. Ct. 1985)*.

22. —Not established

Family Court properly denied petition to terminate father's parental rights based on abandonment, even though he failed to visit his daughter or personally communicate with her or agency for 6-month period under CLS *Soc Serv § 384-b(4)(b)*, where (1) he had exercised his parental rights and obligations prior to his incarceration by obtaining order of filiation after he learned that mother had executed judicial surrender for adoption, (2) after agency agreed to visitation, father visited daughter 17 times and commenced custody proceeding, which was pending when he was incarcerated, (3) he reasonably decided not to seek visitation at jail because of his concern for daughter's reaction to new surroundings based on his earlier visitation experiences, (4) he did not try to write or call her because she did not yet read or talk, (5) his failure to communicate directly with agency was due largely to his fear that if agency learned of his incarceration it would be used against him in custody proceeding, (6) at father's request, woman with whom he had developed relationship prior to his incarceration sought visitation with, and information about, child, but agency refused to recognize woman's status, and (7) father had made plans for child in event he gained custody. *In re Baby Girl "I", 210 A.D.2d 601, 619 N.Y.S.2d 832, 1994 N.Y. App. Div. LEXIS 12433 (N.Y. App. Div. 3d Dep't 1994)*.

County department of social services failed to show by clear and convincing evidence that a father had abandoned his child; the father visited the child regularly until she absconded from the department's custody, attempts to visit the child or to communicate with her through the department would thereafter have been futile, the father continued to attend monthly meetings with the department where he received updates on the progress in locating the child, and there was no evidence the father did not have direct contact with the child after she absconded. *Matter of Amanda JJ., 53 A.D.3d 725, 861 N.Y.S.2d 185, 2008 N.Y. App. Div. LEXIS 5869 (N.Y. App. Div. 3d Dep't 2008)*.

Order was modified by dismissing the petition insofar as it alleges that the father abandoned the child because the father followed up on a prior attempt to establish paternity that he had initially failed to adequately pursue—definitively established his paternity, while incarcerated, thereafter, throughout the relevant period, he initiated communications with the child's caseworker and participated in a service plan review. *Matter of Jarrett P. (Jeremy P.), 173 A.D.3d 1692, 105 N.Y.S.3d 230, 2019 N.Y. App. Div. LEXIS 4567 (N.Y. App. Div. 4th Dep't)*, app. denied, *34 N.Y.3d 902, 136 N.E.3d 428, 112 N.Y.S.3d 693, 2019 N.Y. LEXIS 3014 (N.Y. 2019)*.

Order was modified by dismissing the petition insofar as it alleges that the father abandoned the child because the father followed up on a prior attempt to establish paternity that he had initially failed to adequately pursue—definitively established his paternity, while incarcerated, thereafter, throughout the relevant period, he initiated communications with the child's caseworker and participated in a service plan review. *Matter of Jarrett P. (Jeremy P.), 173 A.D.3d 1692, 105 N.Y.S.3d 230, 2019 N.Y. App. Div. LEXIS 4567 (N.Y. App. Div. 4th Dep't)*, app. denied, *34 N.Y.3d 902, 136 N.E.3d 428, 112 N.Y.S.3d 693, 2019 N.Y. LEXIS 3014 (N.Y. 2019)*.

A petition brought by the Department of Social Services to terminate parental rights on the ground of abandonment is dismissed, the teen-aged child having been in custody of petitioner for over 10 years, where, although the child's natural father abandoned the child within the meaning of the applicable statutes in that he evinced an intent to forego his parental rights and obligations as manifested by his failure to visit the child and communicate with the child or agency during the six months immediately preceding the initiation of the proceeding and he was neither prevented nor discouraged from doing so by the agency (see *Social Services Law, § 384-b*, subd 5, par [a]; § 384-b, subd 4), the child's mother communicated with the agency concerning the child on the day the petition was received by the Family Court for filing and processing, which was three weeks before she was served with the

summons and petition; the proceeding was initiated when the petition was served on the mother (see Social Services Law, § 384-b, subd 3, par [e]), not when the papers were filed with the court, and therefore the requirement that the mother abandon the child for a period of six months immediately prior to the initiation of the proceeding has not been met. *In re Kent, 104 Misc. 2d 196, 427 N.Y.S.2d 729, 1980 N.Y. Misc. LEXIS 2300 (N.Y. Fam. Ct. 1980)*.

23. Incarceration of parent

While parental rights cannot be terminated solely on basis of incarceration of parent under L, 1983, ch 911, the statutory amendments explicitly recognize the planning responsibility of incarcerated parents and failure to meet those responsibilities may result, as with any other parent, in the termination of parental rights. *In re Gregory B., 74 N.Y.2d 77, 544 N.Y.S.2d 535, 542 N.E.2d 1052, 1989 N.Y. LEXIS 876 (N.Y.)*, reh'g denied, *74 N.Y.2d 880, 547 N.Y.S.2d 841, 547 N.E.2d 96, 1989 N.Y. LEXIS 3101 (N.Y. 1989)*.

Incarceration of parent, standing alone, is insufficient to warrant finding of abandonment under CLS Soc Serv §§ 371, 384-b and 398. *Amrhein v Signorelli, 153 A.D.2d 28, 549 N.Y.S.2d 63, 1989 N.Y. App. Div. LEXIS 15901 (N.Y. App. Div. 2d Dep't 1989)*, app. denied, *76 N.Y.2d 701, 558 N.Y.S.2d 891, 557 N.E.2d 1187, 1990 N.Y. LEXIS 1282 (N.Y. 1990)*.

Father's imprisonment was insufficient to rebut finding of abandonment where there was no evidence that he attempted to write, send gifts, telephone or otherwise maintain relationship with child, or agency, during period of incarceration. *In re Ravon Paul H., 161 A.D.2d 257, 555 N.Y.S.2d 49, 1990 N.Y. App. Div. LEXIS 5083 (N.Y. App. Div. 1st Dep't 1990)*.

In action to dispense with putative father's consent to adoption of infant child, record established that father intended to forego his parental or custodial obligations under CLS Dom Rel § 111(2)(a) since letters and telephone calls made by putative father to petitioner, who was maternal grandmother, during his incarceration for stabbing and strangling of child's unwed mother, did not constitute substantial or repeated contact contemplated by statute. *In re Adoption of Mark L., 172 A.D.2d 158, 567 N.Y.S.2d 697, 1991 N.Y. App. Div. LEXIS 4114 (N.Y. App. Div. 1st Dep't)*, app. denied, *78 N.Y.2d 855, 573 N.Y.S.2d 645, 578 N.E.2d 443, 1991 N.Y. LEXIS 1885 (N.Y. 1991)*.

Family Court properly terminated mother's parental rights where (1) she was incarcerated in 1986 (year of her youngest child's birth) and sentenced to federal prison for 2 years, (2) during incarceration, she gave temporary custody of children to her mother, where they remained until 1989 when maternal grandmother was arrested on drug charges, (3) children were then placed in foster care, (4) in 1988, after being released on parole, mother fled state with 2 of her 4 children but was soon apprehended in Florida, (5) children were sent back to foster care and mother was sent back to prison, (6) mother was paroled to halfway house from which she absconded in 1990, remaining fugitive until she was again apprehended in June 1991, (7) she was then sentenced to additional 10 months in prison, and (8) after her last apprehension, she still failed to contact children for over 5 months. *In re Anthony T., 208 A.D.2d 985, 617 N.Y.S.2d 390, 1994 N.Y. App. Div. LEXIS 9700 (N.Y. App. Div. 3d Dep't 1994)*, app. denied, *85 N.Y.2d 801, 624 N.Y.S.2d 371, 648 N.E.2d 791, 1995 N.Y. LEXIS 157 (N.Y. 1995)*.

Incarceration, in and of itself, is not regarded as hardship so permeating parent's life as to make contact with her child not feasible. *In re Antwan Malik F., 232 A.D.2d 216, 647 N.Y.S.2d 772, 1996 N.Y. App. Div. LEXIS 9961 (N.Y. App. Div. 1st Dep't 1996)*.

Termination of parental rights on finding of abandonment was not precluded by fact that father was incarcerated during relevant 6-month period, nor by his asserted belief in ability of children's mother to care for them. *In re Keani D., 265 A.D.2d 261, 696 N.Y.S.2d 166, 1999 N.Y. App. Div. LEXIS 10905 (N.Y. App. Div. 1st Dep't 1999)*.

Evidence showed that father abandoned his children where he was incarcerated during 6-month period prior to filing of abandonment petitions and remained so at time of fact-finding hearing, he had no direct contact with children or their foster mother during his incarceration, and his letters to agency failed to articulate specific plans for

obtaining employment or providing for children's housing or education on his release from prison. *In re Matthew "YY", 274 A.D.2d 685, 710 N.Y.S.2d 460, 2000 N.Y. App. Div. LEXIS 7802 (N.Y. App. Div. 3d Dep't 2000)*.

In proceeding to terminate father's parental rights, father abandoned his 2 children where his testimony that he repeatedly tried to contact them while he was in prison was contradictory, thus raising credibility issue for Family Court to resolve, and record did not support his claim that county social services department discouraged him from contacting his children. *In re Nicole P., 275 A.D.2d 952, 715 N.Y.S.2d 187, 2000 N.Y. App. Div. LEXIS 9728 (N.Y. App. Div. 4th Dep't 2000)*.

Order terminating an incarcerated father's parental rights was error because there was no basis to find that the father had evinced intent to forgo his parental rights and obligations; the father's testimony showed that he made an effort through a family service specialist during the critical period to resume contact with his children. By improperly applying the permanent neglect standard, the trial court in effect bootstrapped its finding of abandonment to draw an inescapable conclusion that freeing these children for adoption was in their "best interests." *Matter of Medina Amor S., 50 A.D.3d 8, 856 N.Y.S.2d 35, 2008 N.Y. App. Div. LEXIS 140 (N.Y. App. Div. 1st Dep't)*, app. denied, *10 N.Y.3d 709, 859 N.Y.S.2d 394, 889 N.E.2d 81, 2008 N.Y. LEXIS 1391 (N.Y. 2008)*.

Order terminating a biological father's parental rights was affirmed because he failed to supply the names of appropriate resources timely before the children bonded with the foster family, and the termination of his rights to free the children for adoption was found in their best interests based on his incarceration, how the children were living without permanence in his custody, they were thriving in the care of the foster parents, and the foster parents wished to adopt them. *Matter of Bayley W. (Patrick K.), 146 A.D.3d 1097, 45 N.Y.S.3d 265, 2017 N.Y. App. Div. LEXIS 218 (N.Y. App. Div. 3d Dep't)*, app. denied, *29 N.Y.3d 907, 80 N.E.3d 404, 57 N.Y.S.3d 711, 2017 N.Y. LEXIS 1348 (N.Y. 2017)*.

24. —Effect on communication with children or agency

Incarceration of natural father did not preclude finding of abandonment under CLS *Soc Serv § 384-b* where record clearly showed that, for 3 years immediately preceding foster care agency's petition, father made no effort to contact child by mail or telephone; paternal grandmother's communication with child during same period could not be imputed to father in fulfillment of statute expressly requiring parental communication to negate inference of abandonment. *In re Thomas G., 165 A.D.2d 729, 564 N.Y.S.2d 32, 1990 N.Y. App. Div. LEXIS 11176 (N.Y. App. Div. 1st Dep't 1990)*.

Parental rights of natural father, who was incarcerated, were properly terminated since he failed, without good reason, to communicate with agency or child for 6-month period immediately prior to filing of petition to terminate his rights. *In re Lyndell M., 182 A.D.2d 623, 582 N.Y.S.2d 226, 1992 N.Y. App. Div. LEXIS 5633 (N.Y. App. Div. 2d Dep't 1992)*.

Finding of abandonment was supported by evidence that parent, while incarcerated in Jamaica, West Indies, failed to communicate with child or agency for 7 months immediately preceding filing of petition, although not prevented or discouraged from doing so by agency and allowed by prison facilities to write letters and for 6-week period also to make telephone calls. *In re Juan Andres R., 216 A.D.2d 145, 629 N.Y.S.2d 7, 1995 N.Y. App. Div. LEXIS 6625 (N.Y. App. Div. 1st Dep't 1995)*.

Determination that children were abandoned was properly based on fact that, during 6-month abandonment period, father made only one "isolated" attempt to contact agency by way of telephone call to agency from his prison counselor inquiring into possibility of children visiting father at his prison facility, and there was no evidence of any ongoing efforts by him to keep in contact with children outside of abandonment period including period before his incarceration. *In re Oneka O., 249 A.D.2d 233, 672 N.Y.S.2d 316, 1998 N.Y. App. Div. LEXIS 4767 (N.Y. App. Div. 1st Dep't 1998)*.

Family Court properly terminated father's parental rights on ground of abandonment, even though he may not have been aware of foster parents' address and may not have been able to reach them by telephone, since his incarceration did not prevent him from communicating with agency, which he failed to do. *In re Precious Trenee O., 253 A.D.2d 701, 678 N.Y.S.2d 12, 1998 N.Y. App. Div. LEXIS 9694 (N.Y. App. Div. 1st Dep't 1998)*.

In proceeding to terminate mother's parental rights, mother abandoned her child where she was serving long term of incarceration for felony assault and endangering welfare of child who was subject of present proceeding, and she communicated with child only once, by letter, during statutory 6-month period. *In re Elizabeth S., 275 A.D.2d 952, 713 N.Y.S.2d 408, 2000 N.Y. App. Div. LEXIS 9557 (N.Y. App. Div. 4th Dep't)*, app. denied, *95 N.Y.2d 769, 722 N.Y.S.2d 472, 745 N.E.2d 392, 2000 N.Y. LEXIS 3812 (N.Y. 2000)*.

Termination of father's parental rights on ground of abandonment was affirmed, where the father admitted to a lack of any contact with the child since 1996, when he was incarcerated on drug charges, and his efforts to locate the child were sporadic and minimal; such efforts were limited to an inquiry with the maternal grandmother as to the location of the child's mother, and a request to his own mother that she make inquiries with the department of social services at the location of the child's last known address. *In re Annette B. (Anonymous), 2 A.D.3d 721, 769 N.Y.S.2d 587, 2003 N.Y. App. Div. LEXIS 13892 (N.Y. App. Div. 2d Dep't 2003)*, app. dismissed in part, *3 N.Y.3d 653, 782 N.Y.S.2d 691, 816 N.E.2d 563, 2004 N.Y. LEXIS 1728 (N.Y. 2004)*, aff'd, *4 N.Y.3d 509, 796 N.Y.S.2d 569, 829 N.E.2d 661, 2005 N.Y. LEXIS 1061 (N.Y. 2005)*.

Clear and convincing evidence supported a family court's finding that the father abandoned the child where the case records clearly demonstrated that there was a lack of contact between the father and the child and between the father and the foster care agency, even though the father knew for several years that the child was in foster care through the agency; the father contacted the agency only once in that time, the father's incarceration did not preclude contact with either the agency or the child, and there was no evidence that the agency prevented or discouraged the father from contacting the child. Termination of parental rights under *N.Y. Soc. Serv. Law § 384-b(5)(b)* and placement of the child for adoption was proper. *In re Khierk T., 12 A.D.3d 683, 785 N.Y.S.2d 501, 2004 N.Y. App. Div. LEXIS 14490 (N.Y. App. Div. 2d Dep't 2004)*.

Father's consent to his children's adoption in proceedings under *N.Y. Soc. Serv. Law § 384-b* was not required because despite the fact that the father was incarcerated, he failed to establish that he maintained substantial and continuous or repeated contact with the children through the payment of support and either regular visitation or other communication as required by *N.Y. Dom. Rel. Law § 111(1)(d)*. *Matter of Sharissa G. v Richard M. G., 51 A.D.3d 1019, 859 N.Y.S.2d 246, 2008 N.Y. App. Div. LEXIS 4620 (N.Y. App. Div. 2d Dep't 2008)*.

Clear and convincing evidence supported the termination of an incarcerated father's parental rights on grounds of abandonment because the father did not reach out to the child services agency after his February 2015 request for a prison visit was denied, file a petition seeking visitation, or send any cards or letters to the child during the relevant time period, and the caseworker did not discourage the father from communicating with the agency or the child. *Matter of Isaiah OO. (Benjamin PP.), 149 A.D.3d 1188, 51 N.Y.S.3d 240, 2017 N.Y. App. Div. LEXIS 2649 (N.Y. App. Div. 3d Dep't)*, app. denied, *29 N.Y.3d 913, 85 N.E.3d 98, 63 N.Y.S.3d 3, 2017 N.Y. LEXIS 1681 (N.Y. 2017)*.

Fact that father is illiterate and has been incarcerated at state facility since birth of his child does not preclude Dept. of Soc. Serv. from seeking to terminate his parental rights on ground of abandonment for failure to communicate with child or agency, where father was served by agency with notice of petitions brought by agency involving his child while father was represented by counsel, and where it is not self-evident that father's illiteracy, coupled with his incarceration and child's age or other circumstances, barred all forms of communications. *In re Stella B., 130 Misc. 2d 148, 495 N.Y.S.2d 128, 1985 N.Y. Misc. LEXIS 3153 (N.Y. Fam. Ct. 1985)*.

Father who has been incarcerated continuously since birth of child failed to carry out obligations owed by incarcerated parent by failing to make contact with either foster parents or agency, where he had ability to make telephone contact and never followed through with submitting request to department to arrange visitation even though informed of procedure; mere expression of wish that his parents seek to obtain custody of child, in and of

itself, does not rebut inference of father's failure to have minimal contacts with child, thus establishing clear and convincing evidence that father had abandoned child. *In re Starr L. B., 130 Misc. 2d 599, 497 N.Y.S.2d 597, 1985 N.Y. Misc. LEXIS 3248 (N.Y. Fam. Ct. 1985)*.

Commissioner of Social Services' petition seeking designation of children as abandoned would be granted, and mother's motion requesting separate dispositional hearing would be denied, where (1) mother only visited children once, prior to incarceration, (2) she only wrote to children on one occasion covering several-year period, (3) no insurmountable hardship prevented her from communicating with children or contacting agency, and (4) during placement, children lived with their maternal aunt and they wished to remain there and be adopted by her. *Commissioner of Social Servs. ex rel. L. Children v Diane R., 160 Misc. 2d 512, 610 N.Y.S.2d 418, 1994 N.Y. Misc. LEXIS 98 (N.Y. Fam. Ct. 1994)*.

25. — —Not excuse

Orders which terminated parental rights of father with respect to his two children affirmed–children were voluntarily placed in foster care three times between 1982 and 1985; petitions seeking to terminate his parental rights were filed in late 1986, alleging that he failed to visit or communicate with children or petitioner for six months; father's incarceration and residence in drug treatment facility did not automatically excuse him from maintaining contacts required under *Social Services Law § 384-b (5)*; father admitted that he was free to write letters and make telephone calls but he never called children or notified petitioner of his whereabouts; father has failed to show that he was unable to at least communicate with children or petitioner during these periods of confinement; further, he claims that his drug use "debilitated" him in such way as to preclude him from maintaining requisite contacts; yet, he was able to visit at time when he was using drugs, and he failed to introduce any evidence to justify his claim that his drug use precluded him from maintaining contact. *In re I.R., 153 A.D.2d 559, 544 N.Y.S.2d 216, 1989 N.Y. App. Div. LEXIS 10689 (N.Y. App. Div. 2d Dep't 1989)*.

Incarceration does not excuse parent from establishing or maintaining contact with child, since even if visits cannot be arranged, incarcerated parent can maintain contact with child through cards, letters or telephone calls. *In re Anthony M., 195 A.D.2d 315, 600 N.Y.S.2d 37, 1993 N.Y. App. Div. LEXIS 7120 (N.Y. App. Div. 1st Dep't 1993)*.

In proceeding under CLS *Soc Serv § 384-b(5)(b)*, court would affirm order terminating mother's parental right where there was clear and convincing evidence of mother's abandonment of her 2 children during 6-month period preceding petition; neither order of protection nor mother's incarceration prevented her from otherwise contacting her children or agency by telephone or by letter, and evidence of mother's one or 2 contacts with children during her incarceration was insufficient to avoid termination of her parental rights. *In re Orange County Dep't of Soc. Servs., 203 A.D.2d 367, 610 N.Y.S.2d 848, 1994 N.Y. App. Div. LEXIS 3661 (N.Y. App. Div. 2d Dep't 1994)*.

In proceeding to terminate mother's parental rights for abandonment of her children, mother's claim that her incarceration prevented her from communicating with her children and social service agency for statutory 6-month period was contradicted by her admissions that she knew agency's name, was able to make telephone calls while in jail, and had called other members of her family. *In re Stephanie N., 245 A.D.2d 74, 666 N.Y.S.2d 124, 1997 N.Y. App. Div. LEXIS 12838 (N.Y. App. Div. 1st Dep't 1997)*.

Father's incarceration prior to child's birth and at all times thereafter did not excuse his failure to make contact with child or agency. *In re Shakim Ravon B., 257 A.D.2d 547, 685 N.Y.S.2d 20, 1999 N.Y. App. Div. LEXIS 724 (N.Y. App. Div. 1st Dep't 1999)*.

Putative father's incarceration did not excuse his failure to maintain contact with child where incarceration did not prevent him from making collect telephone calls, writing letters or filing petitions in Family Court, and thus did not so permeate his life as to make contact with child unfeasible. *In re Arianna "SS", 275 A.D.2d 498, 711 N.Y.S.2d 622, 2000 N.Y. App. Div. LEXIS 8432 (N.Y. App. Div. 3d Dep't 2000)*.

Father was properly found to have abandoned his son, since his one contact with son during his incarceration was insufficient to avoid termination of his parental rights, and he did not establish good cause for his failure to contact his son; neither his incarceration nor order of protection that directed him to stay away from his son prevented him from otherwise contacting son or foster care agency by telephone or letter. *In re Ronald D., 282 A.D.2d 533, 722 N.Y.S.2d 762, 2001 N.Y. App. Div. LEXIS 3598 (N.Y. App. Div. 2d Dep't 2001)*.

Family court properly terminated respondent father's parental rights to his children on the grounds of abandonment based on his failure to attempt communication or visitation with the children or the respondent agency in whose custody they had been placed; the father's incarceration was no excuse for his failure. *Alkreen "J" v John "K", 288 A.D.2d 785, 733 N.Y.S.2d 306, 2001 N.Y. App. Div. LEXIS 11490 (N.Y. App. Div. 3d Dep't 2001)*.

Because a father's incarceration did not otherwise relieve him of the responsibility to communicate with an agency or his child during the relevant period, even though the father's testimony never subjectively intended to give up his parental rights, the Family Court properly determined that it was in the child's best interests that the father's parental rights be terminated under *N.Y. Soc. Serv. Law § 384-b(5)(a)* and the child freed for adoption. *Matter of Jackie B. v Dennis B., 75 A.D.3d 692, 903 N.Y.S.2d 612, 2010 N.Y. App. Div. LEXIS 5648 (N.Y. App. Div. 3d Dep't 2010)*.

As a father, during six months of incarceration, had only three one-hour supervised visits with his child, and sent him one card and voice mail message, and did not show he was unable to maintain contact with the child, or was prevented or discouraged from doing so by the department of social services, his parental rights were properly terminated due to abandonment under *N.Y. Soc. Serv. Law § 384-b(5)(a)*. *Matter of Ryan Q. (Eric Q.), 90 A.D.3d 1263, 935 N.Y.S.2d 179, 2011 N.Y. App. Div. LEXIS 8847 (N.Y. App. Div. 3d Dep't 2011)*, app. denied, *18 N.Y.3d 809, 944 N.Y.S.2d 480, 967 N.E.2d 705, 2012 N.Y. LEXIS 534 (N.Y. 2012)*.

Clear and convincing evidence supported finding of abandonment to warrant termination of father's parental rights because he did not actively pursue visits with his children during his incarceration or send them any cards, letters or gifts and he did not contact them at all during the relevant six months. *Matter of Damien D. (Ronald D.), 176 A.D.3d 1411, 111 N.Y.S.3d 442, 2019 N.Y. App. Div. LEXIS 7665 (N.Y. App. Div. 3d Dep't 2019)*.

26. —Deprivation of civil rights

In a proceeding to adjudicate a child as abandoned preliminarily to holding an adoption proceeding, the child's putative father, who never married the child's mother but lived with her and who at the time of the proceeding was incarcerated in another jurisdiction, would not be permitted to be a respondent in the abandonment action since, while incarcerated, the putative father lost his civil rights and was not a person whose consent would be required for the adoption of a child and therefore could not be respondent in an abandonment action. *In re W., 87 A.D.2d 988, 450 N.Y.S.2d 118, 1982 N.Y. App. Div. LEXIS 16530 (N.Y. App. Div. 4th Dep't 1982)*.

Termination of a mother's parental rights in a *N.Y. Soc. Serv. Law § 384-b* proceeding was proper because, inter alia, although an appropriate plan to encourage and strengthen the parent-child relationship was offered, the mother's participation was marked by inconsistency, delay, and noncompliance; the mother was resistant to any further grief counseling regarding the death of a younger child which led to the department's involvement and failed to acknowledge any role in that tragedy. Despite repeated advice from the department to end her relationship with a felon who had a history of domestic violence and drug use, she continued the relationship and eventually married him, thus making her home unsafe for the child's return. *Matter of Sharon V. v Melanie T., 85 A.D.3d 1353, 925 N.Y.S.2d 231, 2011 N.Y. App. Div. LEXIS 4698 (N.Y. App. Div. 3d Dep't 2011)*.

Where a father, who has been deprived of his civil rights because of his conviction and sentence to 25 years to life imprisonment in a State correctional institution (*Civil Rights Law, § 79*, subd 1), has abandoned his children, redress on behalf of the children on the grounds of abandonment is unavailable. *In re R., 97 Misc. 2d 694, 412 N.Y.S.2d 257, 1978 N.Y. Misc. LEXIS 2852 (N.Y. Fam. Ct. 1978)*, aff'd, *74 A.D.2d 1009, 1980 N.Y. App. Div. LEXIS 15840 (N.Y. App. Div. 1st Dep't 1980)*.

Statutory grounds, under *Dom Rel L § 111(2)(d)* and Civ R Law § 79, were established to dispense with the consent of the natural father to a child's adoption by foster parents who had cared for the child continuously since he was three months old, where the father had been convicted of aggravated robbery in Texas, had been given an an indeterminate sentence, and was therefore a person who had been deprived of civil rights and whose civil rights had not been restored. Under the circumstances, the statutes in question did not deprive the natural father of either substantive due process or equal protection. *In re G., 107 Misc. 2d 900, 436 N.Y.S.2d 546, 1980 N.Y. Misc. LEXIS 2914 (N.Y. Fam. Ct. 1980)*.

A petition for guardianship and custody of a child would be granted, where respondent's abandonment of the child for a period of "six months immediately prior to the date on which the petition was filed in the court" constituted a viable ground for termination of parental rights under *Soc Serv Law § 384-b*, notwithstanding the fact that respondent had lost his civil rights because of imprisonment. *In re M., 115 Misc. 2d 40, 453 N.Y.S.2d 355, 1982 N.Y. Misc. LEXIS 3625 (N.Y. Sur. Ct. 1982)*.

27. —Tolling

In proceeding to terminate parental rights of respondent on grounds of abandonment, respondent's 2 month incarceration during 6 month abandonment period was not defense to petition, inasmuch as statutory provisions for abandonment and neglect (CLS *Social Services Law § 384-b(b)*) were separate and discrete and related to differing situations, and it was error for Family court to have applied tolling provisions for incarceration found in neglect subdivision to abandonment proceeding. *In re Ulysses T., 66 N.Y.2d 773, 497 N.Y.S.2d 368, 488 N.E.2d 114, 1985 N.Y. LEXIS 17914 (N.Y. 1985)*.

In a proceeding brought by the director of Social Services pursuant to *Soc Serv Law § 384-b(5)* to terminate the father's rights to custody of his infant son, the trial court erred in ruling that the father's incarceration for two months of the statutory six-month period interrupted that period of claimed abandonment by applying the provisions of *Soc Serv Law § 384-b(7)*, since the two subdivisions are discreet sections designed to cover different circumstances and the tolling provisions of subd. 7 did not apply to a petition under subd. 5 and since incarceration does not, ipso facto, interrupt the running of the six-month period when computing the time for abandonment. *In re Ulysses T., 87 A.D.2d 998, 449 N.Y.S.2d 815, 1982 N.Y. App. Div. LEXIS 16542 (N.Y. App. Div. 4th Dep't 1982)*, aff'd, *66 N.Y.2d 773, 497 N.Y.S.2d 368, 488 N.E.2d 114, 1985 N.Y. LEXIS 17914 (N.Y. 1985)*.

28. Separation attributable to acts of other parent or foster parent

In a proceeding wherein a mother was charged with abandoning her children, the Family Court properly found that no intention to abandon the children had been demonstrated, where the record contained proof that the mother had been physically intimidated by the children's father, that he had forcefully evicted her from the marital premises, that he had threatened her to desist from visiting the children and had denied her access to the children, that the mother lacked sophistication and awareness of her legal rights, that the department of social services failed to advise the mother that the father had surrendered the children to the department and failed to give her notice of the proceedings to place the children in foster care, and where the children had been placed in foster care for only a short period of time. *In re AA., 83 A.D.2d 702, 442 N.Y.S.2d 270, 1981 N.Y. App. Div. LEXIS 15018 (N.Y. App. Div. 3d Dep't 1981)*.

29. Separation attributable to acts of agency

In view of *Soc Serv Law § 384-b(5)* prohibiting an agency from interfering with parents' attempts to visit or communicate with their child, but expressly stating that diligent efforts by the agency to encourage visits or communications need not be shown to support a determination that a child is abandoned, the recitals in a voluntary placement instrument, consistent with the requirements of *Soc Serv Law § 384-a*, may not be construed to impose on the agency an obligation of diligent efforts or some intermediate level of conduct greater than that required by

the statute. § 384-a which provides that surrender instruments must contain certain information and advice to the parents, expresses the general statutory policy of fostering the parent-child relationship by means available to the agency, but does not impose an added duty upon the agency to encourage contact between parent and child. *In re Julius P., 63 N.Y.2d 477, 483 N.Y.S.2d 175, 472 N.E.2d 1003, 1984 N.Y. LEXIS 4681 (N.Y. 1984)*.

Father abandoned his children so as to warrant termination of his parental rights, even though there was evidence that agencies either prevented or discouraged father from visiting or communicating with children, where (1) father conceded that it was not until 14 months after children entered foster care that he made first attempt to locate them, (2) more than 2 weeks elapsed after termination petitions were filed before father met with caseworker, and (3) father telephoned agency once within 6 months preceding filing of petitions. *In re Zagary George Bayne G., 185 A.D.2d 320, 586 N.Y.S.2d 615, 1992 N.Y. App. Div. LEXIS 9043 (N.Y. App. Div. 2d Dep't)*, app. denied, *80 N.Y.2d 760, 591 N.Y.S.2d 139, 605 N.E.2d 875, 1992 N.Y. LEXIS 3851 (N.Y. 1992)*.

Father could not avoid termination of his parental rights on basis of abandonment by fact that agency demanded that he obtain order of filiation before he would be allowed to visit child. *In re Male M., 210 A.D.2d 136, 621 N.Y.S.2d 850, 1994 N.Y. App. Div. LEXIS 12982 (N.Y. App. Div. 1st Dep't 1994)*.

Abandonment by father was not proven where social services department had refused to give him name or telephone number of foster parents, and refused to permit him to visit or contact child until he completed various assessments, scheduling of which conflicted with his working hours. *In re Xena "X", 279 A.D.2d 691, 719 N.Y.S.2d 721, 2001 N.Y. App. Div. LEXIS 43 (N.Y. App. Div. 3d Dep't 2001)*.

30. —Established

A mother who temporarily placed her infant daughter with the Department of Social Services for foster care, and who, despite financial and legal obstacles, maintained ties with her daughter, is entitled to have custody of the child, now 13 years old, where the department repeatedly denied the mother's requests and for several years sought to offer the child for adoption by attempting to prove, in successive proceedings and on a variety of grounds, that the mother was unfit; in the various proceedings it was held that the mother had not abandoned or neglected the child and that she was not otherwise unfit, and the prolonged separation of mother and daughter was due to litigation initiated or necessitated by the department's actions and was not the result of any parental neglect. *In re K., 47 N.Y.2d 374, 418 N.Y.S.2d 339, 391 N.E.2d 1316, 1979 N.Y. LEXIS 2083 (N.Y. 1979)*.

31. —Not established

Because a father only made three brief, vague, and uncorroborated inquiries to find his child, his failure to communicate resulted from his own choice, not from the agency's failings; consequently, there was sufficient evidence to terminate the father's parental rights under *N.Y. Soc. Serv. Law § 384-b(4)(b)*, (5) based on abandonment. *Matter of Annette B., 4 N.Y.3d 509, 796 N.Y.S.2d 569, 829 N.E.2d 661, 2005 N.Y. LEXIS 1061 (N.Y. 2005)*.

Father abandoned child by failing to visit or communicate with him for 6 months before filing of petition under CLS *Soc Serv § 384-b* to terminate father's parental rights where father was able to visit and communicate with child and was not prevented or discouraged from doing so by foster care agency. *In re Edward Clayton B., 238 A.D.2d 583, 657 N.Y.S.2d 949, 1997 N.Y. App. Div. LEXIS 4369 (N.Y. App. Div. 2d Dep't 1997)*.

In proceeding under CLS *Soc Serv § 384-b* to terminate father's parental rights for abandonment of child, county social services department did not impermissibly discourage father's contact with child by failing to arrange visitation with her where (1) department had no duty to arrange visitation during 6-month period in question, (2) father had no contact with child for over one year before his offer to provide home for her, (3) during that period, child resided with preadoptive foster family, (4) child's caseworker reasonably deferred visitation to avoid "exposing the child to frustration and confusion" until she could determine father's commitment to reestablishing permanent

relationship with child, and (5) if father had acted on caseworker's advice to file custody petition, he could have applied for order directing department to arrange visitation. *In re Tasha B, 240 A.D.2d 778, 658 N.Y.S.2d 525, 1997 N.Y. App. Div. LEXIS 6013 (N.Y. App. Div. 3d Dep't 1997)*.

In proceeding to terminate father's parental rights, finding that he abandoned his son was not rebutted, even though agency did not encourage father to communicate with his son, where it was not obligated to do so, as specified in CLS *Soc Serv § 384-b(5)(b)*, and agency did not prevent or discourage such contact. *In re Tony Reyes W., 266 A.D.2d 222, 697 N.Y.S.2d 690, 1999 N.Y. App. Div. LEXIS 11079 (N.Y. App. Div. 2d Dep't 1999)*.

Father did not show that he was unable to maintain contact with child during 6-month abandonment period or was discouraged from doing so by agency, despite his testimony that he called caseworker 3 times and was promised tickets and map to agency, and that because caseworker never sent those items to him, she discouraged him from visiting child within meaning of CLS *Soc Serv § 384-b(5)(a)*, where father was unable to say that he made phone calls during abandonment period, there was no basis to disturb Family Court's credibility finding that no such phone calls were ever made, and even if calls were made, agency was under no obligation to arrange visitation. *In re Jackee Shertte C., 269 A.D.2d 229, 703 N.Y.S.2d 116, 2000 N.Y. App. Div. LEXIS 1534 (N.Y. App. Div. 1st Dep't)*, app. denied, *95 N.Y.2d 757, 713 N.Y.S.2d 1, 734 N.E.2d 1212, 2000 N.Y. LEXIS 1774 (N.Y. 2000)*.

No basis existed to conclude that mother did not visit with children due to her mistaken belief that she was not permitted to do so after caseworker attempted to defer visitation pending outcome of clean urine test, where mother lived independently, had telephone, and admittedly knew telephone numbers of caseworker and foster home. *In re Omar "RR", 270 A.D.2d 588, 703 N.Y.S.2d 604, 2000 N.Y. App. Div. LEXIS 2648 (N.Y. App. Div. 3d Dep't 2000)*.

Father's parental rights were properly terminated for abandonment of his son, despite father's claims that he and his companion called foster care caseworker numerous time and left voice mail messages that were never returned, that he did not receive letters or other written communications from caseworker even though he filed address change cards with post office, and that his hernia operation physically prohibited him from visiting his son, where those claims were contradicted by documentary evidence, his own conduct and admissions, and caseworker's testimony that father visited son only 4 times in 16 months and initiated only sporadic telephone contact with her during same period of her involvement in case. *In re Peter "F", 281 A.D.2d 821, 721 N.Y.S.2d 879, 2001 N.Y. App. Div. LEXIS 2994 (N.Y. App. Div. 3d Dep't 2001)*.

Father's parental rights were properly terminated on the ground that he abandoned his daughter pursuant to *N.Y. Soc. Serv. Law § 384-b(5)* where, despite the agency's act of encouraging the father to exercise visitation and follow the family court's directives, the father refused to visit with his daughter after a dispute with the agency's caseworker. *In re June D. S., 288 A.D.2d 904, 732 N.Y.S.2d 324, 2001 N.Y. App. Div. LEXIS 10606 (N.Y. App. Div. 4th Dep't 2001)*.

Because the trial court did not credit the testimony of an incarcerated father that he was discouraged or prevented from communicating with his children, there was no reason to disturb the trial court's termination of the father's parental rights pursuant to *N.Y. Soc. Serv. Law § 384-b* on the ground of abandonment. *Matter of Beauty B. v Ronald B., 54 A.D.3d 330, 862 N.Y.S.2d 579, 2008 N.Y. App. Div. LEXIS 6415 (N.Y. App. Div. 2d Dep't 2008)*.

Father's parental rights to his child were properly terminated as the child was an abandoned child, in that the evidence showed that the father had no contact with the child for nine months. While the father argued that the agency did not respond to his attempts to contact the caseworkers, the caseworkers offered contrary testimony, and it was the trial court's province to resolve the credibility dispute. *Matter of Anthony I., 61 A.D.3d 1320, 877 N.Y.S.2d 520, 2009 N.Y. App. Div. LEXIS 3341 (N.Y. App. Div. 3d Dep't 2009)*.

32. Separation attributable to acts of parent and agency

A determination by the Department of Social Services which terminated a natural mother's interest in her child and freed the child to be placed for adoption could not stand where the reason the natural mother had not visited or

communicated with her child for the preceeding six months was because she was discouraged from doing so by the agency, the foster mother of the child threatened the natural mother and told her not to visit or she would have her arrested, the natural mother was unable to contact the foster family by telephone because they had an unlisted number, and the caseworker who supervised the child wanted the child to be adopted by the foster family. *In re Murrell, 79 A.D.2d 866, 434 N.Y.S.2d 557, 1980 N.Y. App. Div. LEXIS 14282 (N.Y. App. Div. 4th Dep't 1980)*.

Mere fact that foster mother did not like child's father, which caused him to feel uncomfortable in her presence when visiting child, did not rise to level of agency discouragement or prevention of contact precluding termination of father's parental rights based on abandonment. *In re Alexa Ray R., 276 A.D.2d 703, 714 N.Y.S.2d 347, 2000 N.Y. App. Div. LEXIS 10871 (N.Y. App. Div. 2d Dep't 2000)*.

Because a mother and an agency frustrated a father's attempts to discover that a child was his and to include him in a service plan and visitation, pursuant to *N.Y. Dom. Rel. Law § 111*, the father was "consent father" with a constitutional right to veto the child's adoption, which was based on neglect and abandonment under *N.Y. Soc. Serv. Law § 384-b*. *Matter of Heart Share Human Servs. of N.Y., 906 N.Y.S.2d 472, 28 Misc. 3d 1107, 2010 N.Y. Misc. LEXIS 2941 (N.Y. Fam. Ct. 2010)*, rev'd in part, *87 A.D.3d 1140, 930 N.Y.S.2d 456, 2011 N.Y. App. Div. LEXIS 6565 (N.Y. App. Div. 2d Dep't 2011)*.

33. Order of protection

In the termination of parental rights case where the father was accused of abandoning the child, where the father argued that the father believed that an order of protection prohibited the father from contacting the county department of social services regarding the child, the argument failed, as the burden was on the father to remain in contact with the child under *N.Y. Soc. Serv. Law § 384-b*. *In re Gabrielle HH., 1 N.Y.3d 549, 772 N.Y.S.2d 643, 804 N.E.2d 964, 2003 N.Y. LEXIS 4099 (N.Y. 2003)*.

In proceeding pursuant to CLS *Soc Serv § 384-b* to terminate parental rights, agency demonstrated that father had abandoned his children where (1) he was prohibited from visiting children by protective order, but was required to maintain contact with agency, (2) he failed to maintain such contact, and (3) at hearing, he failed to introduce any evidence to explain his complete lack of contact with children and agency. *In re Charmaine T., 173 A.D.2d 625, 570 N.Y.S.2d 209, 1991 N.Y. App. Div. LEXIS 7668 (N.Y. App. Div. 2d Dep't 1991)*.

Court properly terminated mother's parental rights, even though she was subject to order prohibiting her from visiting child due to mother's violent tendencies, since order did not preclude other types of contact with child, mother did not seek to modify visitation order, which was in effect for several years, she did not contact agency about her daughter, and there was no evidence that her mental illness had any effect on her ability to contact child. *In re Naticia Q., 226 A.D.2d 755, 640 N.Y.S.2d 334, 1996 N.Y. App. Div. LEXIS 3457 (N.Y. App. Div. 3d Dep't 1996)*.

Father's failure to visit or communicate with the Department of Social Services regarding his child's care or to plan for the return of the child was a breach of his parental obligation pursuant to *N.Y. Dom. Rel. Law § 111(2)(a)*, after an order of protection had been entered against him which prohibited his contact with the mother or child for a one-year period due to his failure to abide by a prior temporary order of protection and his failure to attend court-ordered mental evaluations; accordingly, a finding that the father had abandoned his child such that termination of his parental rights was merited pursuant to *N.Y. Soc. Serv. Law § 384-b(3)(g)*, (4)(b), (5) was warranted, as the order of protection was not good cause for his failure to have maintained any contact with even the agency. *In re Gabrielle HH., 306 A.D.2d 571, 760 N.Y.S.2d 269, 2003 N.Y. App. Div. LEXIS 6342 (N.Y. App. Div. 3d Dep't)*, aff'd, *1 N.Y.3d 549, 772 N.Y.S.2d 643, 804 N.E.2d 964, 2003 N.Y. LEXIS 4099 (N.Y. 2003)*.

Father was properly found to have abandoned his children under *N.Y. Soc. Serv. Law § 384-b(5)(a)* even though he had been prohibited by court order from seeing them because he continued to have an obligation to maintain contact with the person having legal custody of his children and his failure to keep such contact for six months prior

to the petition being filed indicated he forfeited his parental rights. *In re Oscar L., 8 A.D.3d 569, 779 N.Y.S.2d 218, 2004 N.Y. App. Div. LEXIS 8752 (N.Y. App. Div. 2d Dep't 2004)*.

Although an order of protection prohibited a father from contacting his daughter, his failure to contact the department of social services during his incarceration evinced his intent to forego his parental rights; therefore, the Family Court properly made a finding of abandonment under *N.Y. Soc. Serv. Law § 384-b*, and terminated the father's parental rights. *Matter of Tiffany RR. v Paul RR., 44 A.D.3d 1126, 843 N.Y.S.2d 477, 2007 N.Y. App. Div. LEXIS 10715 (N.Y. App. Div. 3d Dep't 2007)*, app. denied, *9 N.Y.3d 819, 852 N.Y.S.2d 15, 881 N.E.2d 1202, 2008 N.Y. LEXIS 128 (N.Y. 2008)*.

34. Vicarious contact

Visits to child by its paternal grandmother would not be attributable to child's father for purpose of manifesting either parental interest in or communication with child since CLS *Soc Serv § 384-b* expressly requires communication by parent to negate inference of abandonment. *In re Commitment of Crawford, 153 A.D.2d 108, 549 N.Y.S.2d 667, 1990 N.Y. App. Div. LEXIS 164 (N.Y. App. Div. 1st Dep't 1990)*.

Third party did not act as mother's "agent" in communicating with agency where mother was at liberty and could have called agency herself, and thus her failure to contact child or agency during 6-month period gave rise to presumption of abandonment. *In re Kareema Monique B., 211 A.D.2d 577, 621 N.Y.S.2d 608, 1995 N.Y. App. Div. LEXIS 549 (N.Y. App. Div. 1st Dep't 1995)*.

Contact with children by other family members may not be imputed to parent to avoid finding of abandonment. *In re Keani D., 265 A.D.2d 261, 696 N.Y.S.2d 166, 1999 N.Y. App. Div. LEXIS 10905 (N.Y. App. Div. 1st Dep't 1999)*.

Attempts by paternal aunt to visit with children were not attributable to incarcerated father for purposes of negating inference of abandonment. *Maurice Jamel G. v Zachary D., 267 A.D.2d 173, 700 N.Y.S.2d 452, 1999 N.Y. App. Div. LEXIS 13370 (N.Y. App. Div. 1st Dep't 1999)*.

Incarcerated father's alleged vicarious contact with child through his wife during 6-month abandonment period, even if it occurred, did not serve to avoid finding of abandonment. *In re Guardianship of Eric Rafael M., 283 A.D.2d 178, 724 N.Y.S.2d 592, 2001 N.Y. App. Div. LEXIS 4287 (N.Y. App. Div. 1st Dep't 2001)*.

35. Other cases

A mother's and a father's parental rights would be terminated pursuant to *Soc Serv Law § 384-b*, where the record established by clear and convincing evidence that the mother, by reason of her mental illness, was, and for the foreseeable future would be, unable to provide proper and adequate care for her child, and that the mother permanently neglected the child by failing to plan for its future for a period of more that one year, and where uncontradicted testimony established abandonment by the father within the statutory standard. *In re Susan F., 106 A.D.2d 282, 482 N.Y.S.2d 489, 1984 N.Y. App. Div. LEXIS 21348 (N.Y. App. Div. 1st Dep't 1984)*.

Court properly terminated mother's custody of children, and properly refused to issue suspended judgment under CLS *Family Ct Act § 631(b)* which would have given mother opportunity to "get herself together" by enrolling in drug program and preparing herself to be reunited with children, where mother testified that she was living with boyfriend and addicted to "crack cocaine," she did not contest overwhelming evidence of abandonment, she repeatedly refused to act upon referrals for drug rehabilitation, and she failed to show that best interests of children would be served by their return to her. *In re Jose C., 166 A.D.2d 239 (N.Y. App. Div. 1st Dep't 1990)*.

Court properly terminated respondent's parental rights on finding of abandonment where (1) agency established that respondent had no contact with child for 6 months immediately preceding filing of petition, and (2) respondent never established paternity of child, although advised to do so on several occasions, and gave no indication that he

was prepared to accept responsibility of providing for child. *In re Shalena Lee C., 197 A.D.2d 404, 602 N.Y.S.2d 375, 1993 N.Y. App. Div. LEXIS 9487 (N.Y. App. Div. 1st Dep't 1993)*.

Order finding that mother and putative father abandoned one-year-old child would be reversed and matter remanded for de novo hearing where (1) after child was placed in foster care, mother visited her several times before she was arrested in California and incarcerated for more than one year on drug charges, (2) mother had 3 other children in foster care, but court did not allow evidence from other children's case files as to mother's contact during her incarceration, even though it appeared that there might have been relevant information therein as to overall interest shown by mother, (3) there was issue as to whether mother was discouraged from maintaining her contact with child by agency, which appeared to make no efforts to assist in communications with child, (4) court did not allow any development of evidence as to crossover inquiry by mother or her adult daughter with respect to child, (5) proceeding was brought even though mother had contacted agency with regard to other children shortly after her incarceration to set up regular phone calls, and (6) child's caseworker called prison more than once, although he did not speak directly to mother, yet made no attempt to ascertain her intentions before commencement of proceeding. *In re Reality Rashida J., 206 A.D.2d 315, 615 N.Y.S.2d 7, 616 N.Y.S.2d 181, 1994 N.Y. App. Div. LEXIS 8031 (N.Y. App. Div. 1st Dep't 1994)*.

Mother's parental rights were properly terminated due to abandonment where children had lived with foster mother (their maternal aunt) for 4 ½ years and had formed strong bond with her, and mother had no real relationship with her children and had not been involved with them in any meaningful way for long period of time. *Astor Home for Children v Leisa C. H. (In re Charles Clarence C.), 213 A.D.2d 294, 623 N.Y.S.2d 876, 1995 N.Y. App. Div. LEXIS 3066 (N.Y. App. Div. 1st Dep't 1995)*.

Clear and convincing evidence supported finding of child's abandonment where he tested positive for cocaine at birth, mother was permitted to retain custody on condition that she enroll in drug rehabilitation program and cooperate with supervision by Child Welfare Administration (CWA), child was placed in foster care at age 3 months when parents left him with friend and never returned, mother was incarcerated, CWA did not locate mother until some 18 months after child was left with friend, and mother did not attempt to locate child either before or many months after her release. *In re Antwan Malik F., 232 A.D.2d 216, 647 N.Y.S.2d 772, 1996 N.Y. App. Div. LEXIS 9961 (N.Y. App. Div. 1st Dep't 1996)*.

Parent's mere statements that she had taken steps to better herself, without providing any documentation or details of her rehabilitation, or of where she intended to live or of how she would support child, financially and emotionally, were not sufficient "to outweigh a child's right to a positive and nurturing family relationship, especially where, as here, the parent is essentially a stranger." *In re Antwan Malik F., 232 A.D.2d 216, 647 N.Y.S.2d 772, 1996 N.Y. App. Div. LEXIS 9961 (N.Y. App. Div. 1st Dep't 1996)*.

Under interim criteria set forth *in Matter of Raquel Marie X., 76 NY2d 387*, father's consent to adoption of his child was not required under CLS *Dom Rel § 111*, in proceeding under CLS *Soc Serv § 384-b*, where (1) child was born out of wedlock, (2) father was aware that mother placed child with county social services department on day of birth and that mother surrendered child for adoption within 6 months of birth, (3) father denied paternity in proceeding commenced by mother and paid no medical, nursing, or hospital expenses for child or pregnancy, (4) facts to which father stipulated showed absence of any manifestation of his ability and willingness to assume custody of child, and (5) sole manifestation of his interest in child was his contest of present proceeding by department to free child for adoption. *In re Carrie "GG", 273 A.D.2d 561, 709 N.Y.S.2d 247, 2000 N.Y. App. Div. LEXIS 6677 (N.Y. App. Div. 3d Dep't)*, app. denied, *95 N.Y.2d 763, 716 N.Y.S.2d 38, 739 N.E.2d 294, 2000 N.Y. LEXIS 2822 (N.Y. 2000)*.

Where father's only attempts to locate his child were in occasional conversations he had with the child's mother, who was not forthcoming, all of which occurred at least two years prior to the filing of the petition to terminate his parental rights, such perfunctory attempts to locate the child showed only a subjective intent not to forgo parental rights and were insufficient to overcome the presumption of abandonment under *N.Y. Soc. Serv. Law § 384-b(4)(b)*, (5), raised by the father's failure to contact the agency or the child during the six-month period immediately preceding the filing of the petition. *In re Tyeisha Harriett S., 293 A.D.2d 417, 741 N.Y.S.2d 216, 2002 N.Y. App. Div. LEXIS 4373 (N.Y. App. Div. 1st Dep't 2002)*.

Upon clear and convincing proof of abandonment of her five children for the six-month period before the filing of the petitions, the finding that the best interest of the children would be served by freeing them for adoption by their foster mother, and the mother's failure to show a reasonable excuse for her default and that she had a meritorious defense, orders terminating her parental rights were affirmed. *Family Support Sys. Unlimited, Inc. v Jeanette W. (In re Tenisha Tishonda T.), 302 A.D.2d 534, 755 N.Y.S.2d 277, 2003 N.Y. App. Div. LEXIS 1651 (N.Y. App. Div. 2d Dep't 2003)*.

Where the mother was defaulted for failing to appear at the fact-finding hearing in a *N.Y. Soc. Serv. Law § 384-b* termination of parental rights case, the mother's motion to vacate the default was properly denied, as the mother failed to satisfy the mother's burden under N.Y. *C.P.L.R. 5015(a)(1)*; the mother's excuse for failing to attend, the unpredictability of the subway, was unreasonable given that the mother had been to the courthouse before, and the mother did not establish a meritorious defense to the finding of abandonment. *In re Ricky V., 4 A.D.3d 368, 770 N.Y.S.2d 881, 2004 N.Y. App. Div. LEXIS 1032 (N.Y. App. Div. 2d Dep't 2004)*.

In a proceeding to terminate parental rights, wherein the respondent putative father has defaulted in appearing and answering and has not supported or contacted the family since leaving the mother's home in 1975, respondent's parental rights are terminated on the ground of abandonment (*Social Services Law, § 384-b*, subd 5, par [a]). *In re R., 98 Misc. 2d 910, 414 N.Y.S.2d 982, 1979 N.Y. Misc. LEXIS 2976 (N.Y. Fam. Ct. 1979)*.

A proceeding to terminate the parental rights of the parents of a retarded and autistic child who had been institutionalized in foster care for over six years, on the asserted grounds of abandonment and permanent neglect, would be dismissed where the child's maternal grandmother, who stood in loco parentis to the child, had been primarily responsible for his care prior to the child's placement and had exhibited a continuing concern for the child's health and welfare, where the petitioner child care agency failed to substantiate its claim that the child was no longer in need of foster care in the residential treatment center and was therefore an appropriate candidate for adoption, which would require the severance of parental ties, in that the child could not function in a "normal" family home, and his family was unable to provide him with the extraordinary care he needed, and where the termination of parental rights and adoption of a child who needed continuing foster care in order to receive essential treatment and services did not accord with the policy underlying *Soc Serv Law § 384-b*, especially in light of the fact that the transfer of custody as a condition precedent to the placement of children in residential treatment facilities had earlier been held unconstitutional. *In re Jamal B., 119 Misc. 2d 808, 465 N.Y.S.2d 115, 1983 N.Y. Misc. LEXIS 3599 (N.Y. Fam. Ct. 1983)*.

Parental rights of unknown parents were terminated where an unknown mother placed a newborn child at a designated safe haven site and failed to contact the child or social services department during the six months after the termination proceedings were instituted; the child was found to have been abandoned, as defined by *N.Y. Soc. Serv. Law § 384-b(5)(a)*. *In re Guardianship of Doe, 189 Misc. 2d 512, 733 N.Y.S.2d 326, 2001 N.Y. Misc. LEXIS 484 (N.Y. Fam. Ct. 2001)*.

B. Mental Incapacity

36. Generally

At psychiatric examination pursuant to proceeding to terminate respondent's parental rights due to chronic mental illness, despite Mental Health Service policy preventing psychiatrist from conducting examination with attorney present, court will allow attorneys for all parties to attend. *In re Guardianship of Alexander L., 112 A.D.2d 902, 493 N.Y.S.2d 157, 1985 N.Y. App. Div. LEXIS 52120 (N.Y. App. Div. 1st Dep't 1985)*.

Foster parent was entitled to foster care benefits at special rate where (1) finding of State Department of Social Services that child placed in foster parent's care had not been certified by qualified psychiatrist or psychologist as having behavioral disorder requiring high degree of supervision improperly discounted fact that psychiatrist twice recommended special rate based on examinations, conducted over one year apart, that showed multiple behavioral

problems, (2) fact that psychiatrist's report did not explicitly state why extra supervision was necessary as result of those problems was not reason to conclude that extra supervision was unnecessary, and (3) testimony of foster parent and his recently deceased wife amply showed additional and significant burdens that proper supervision of child required. *Timmons v New York State Dep't of Soc. Servs., 275 A.D.2d 623, 713 N.Y.S.2d 55, 2000 N.Y. App. Div. LEXIS 9159 (N.Y. App. Div. 1st Dep't 2000)*.

Law Guardian could not force the Department of Social Services to lobby for the termination of a mother's parental rights, based on her alleged mental incapacity if, in its judgment, such action was not in the child's best interest. *Matter of Joseph G., 24 A.D.3d 900, 807 N.Y.S.2d 149, 2005 N.Y. App. Div. LEXIS 13905 (N.Y. App. Div. 3d Dep't 2005)*.

Because a Law Guardian concentrated on a mother's alleged mental illness to support termination of her parental rights, he could complain that the Family Court erred in failing to address other grounds; but, even accepting that the Department failed to satisfy the requirements of *N.Y. Soc. Serv. Law § 384-b(3)(l)(i)* and erred in failing to join the Law Guardian's petition to terminate the mother's parental rights, any such error was harmless given that there simply was nothing in the statute that compelled the Department to adopt or advocate a particular position at the ensuing evidentiary hearing. *Matter of Joseph G., 24 A.D.3d 900, 807 N.Y.S.2d 149, 2005 N.Y. App. Div. LEXIS 13905 (N.Y. App. Div. 3d Dep't 2005)*.

Trial court properly terminated respondent's parental rights to her children pursuant to *Social Services Law § 384-b(4)(c)*, as clear and convincing evidence established that respondent was suffering from mental illness to such an extent that if the children were returned to her custody, they would have been in danger of becoming neglected; however, the appellate court found that in the case of such a termination a family court could, in those cases in which the court deemed it appropriate, exercise its discretion in determining whether some form of post-termination contact with the biological parent was in the best interests of the child, and a remand was required for a hearing on the issue of post-termination contact. *Matter of Kahlil S. v Mamie W.-K., 35 A.D.3d 1164, 830 N.Y.S.2d 625, 2006 N.Y. App. Div. LEXIS 15575 (N.Y. App. Div. 4th Dep't 2006)*, app. denied, *38 A.D.3d 1370, 831 N.Y.S.2d 91, 2007 N.Y. App. Div. LEXIS 3291 (N.Y. App. Div. 4th Dep't 2007)*, app. dismissed, *8 N.Y.3d 977, 836 N.Y.S.2d 546, 868 N.E.2d 229, 2007 N.Y. LEXIS 1028 (N.Y. 2007)*.

Termination of parental rights on account of mental incapacity requires that parent be found not only presently incapable of providing proper and adequate care for a child but also incapable for the foreseeable future (*Social Services Law, § 384-b*, subd 4, par [c]). *In re R., 98 Misc. 2d 910, 414 N.Y.S.2d 982, 1979 N.Y. Misc. LEXIS 2976 (N.Y. Fam. Ct. 1979)*.

The consent of a child over the age of 14 years is required pursuant to section 111 (subd 1, par [a]) of the Domestic Relations Law in a proceeding to terminate the rights of her parents on the ground of mental illness or mental retardation (*Social Services Law, § 384-b*, subd 4, par [c]) for the purpose of freeing her for adoption; the court may consider the wishes of the child in determining whether her best interests would be served in this limited instance. *In re Gross, 102 Misc. 2d 1073, 425 N.Y.S.2d 220, 1980 N.Y. Misc. LEXIS 2060 (N.Y. Fam. Ct. 1980)*.

Case law addressing mental retardation and permanent termination of parental rights under CLS *Soc Serv § 384-b(4)(c)* and (6)(e) were inapplicable to neglect proceeding under CLS Family Ct Act art 10. *In re Loraida G., 183 Misc. 2d 126, 701 N.Y.S.2d 822, 1999 N.Y. Misc. LEXIS 562 (N.Y. Fam. Ct. 1999)*.

37. Constitutionality

In proceedings to terminate parental rights pursuant to *Soc Serv Law §§ 384-b(4)(c)* and *384-b(6)(a)* on the ground of mental illness, there was no merit to the parents' arguments that the sections violated due process and equal protection or authorized termination of rights on the basis of a parent's status as mentally ill, since the sections provide a significant procedural safeguard for the natural parent's rights by authorizing termination only when specific and definite criteria are met and when necessary in the best interests of the child, and it was the parent's conduct and relationship with the child, not his or her status per se, that formed the predicate for terminating

parental rights. *In re Guardianship of Nereida S., 57 N.Y.2d 636, 454 N.Y.S.2d 61, 439 N.E.2d 870, 1982 N.Y. LEXIS 3593 (N.Y. 1982)*.

There was no per se requirement of a separate dispositional hearing for consideration of long-term foster care where the subject child had been in the care of an authorized agency for more than a year prior to the petition to commit guardianship and custody to the agency, and where by clear and convincing evidence, the child's parents were shown to be presently and for the foreseeable future unable, by reason of mental retardation, to provide proper and adequate care for the child. The particularized testimony from medical witnesses as required by Soc Serv Law § 384-b[6][e], and from lay witnesses who had known, examined and worked with the parents over a long period, supporting their conclusions as to the parents' retardation and inability to parent for the foreseeable future, with no countervailing evidence of the parents' alleged recent progress constituted clear and convincing proof of the statutory standards. A separate dispositional hearing for consideration of long-term foster care would have been a redundancy not mandated by statute, and the best interests of the child were served by freeing her for the permanence and stability of adoption. Soc Serv Law § 384-b(4)(c) is not an unconstitutional infringement on the fundamental rights of intellectually limited parents without a justifiable compelling State interest or a rational basis. *In re Joyce T., 65 N.Y.2d 39, 489 N.Y.S.2d 705, 478 N.E.2d 1306, 1985 N.Y. LEXIS 15846 (N.Y. 1985)*.

Section 384-b does not violate constitution simply because it provides for termination of parental rights; although statute treats mentally ill parents differently from other parents, distinction does not violate rights of mentally ill parents to equal protection of the law unless distinction is arbitrary and capricious; statute reasonably promotes substantial state interest in the welfare of children and rests upon real and substantial differences between mentally ill parents who are incapable of caring for their children and all other parents; fact that statute does not provide for long-term foster care as alternative to termination of parental rights does not render it violative of equal protection standards; failure to provide separate dispositional hearing for mentally ill parents does not violate procedural due process requirements since statute has high standard of proof and exacting test; statute is not unconstitutionally vague, and does not punish status rather than conduct. *In re Guardianship of M., 82 A.D.2d 217, 83 A.D.2d 925, 443 N.Y.S.2d 214, 1981 N.Y. App. Div. LEXIS 11345, 1981 N.Y. App. Div. LEXIS 15379 (N.Y. App. Div. 1st Dep't 1981)*, aff'd, *57 N.Y.2d 636, 454 N.Y.S.2d 61, 439 N.E.2d 870, 1982 N.Y. LEXIS 3593 (N.Y. 1982)*.

CLS Soc Serv § 384-b(6)(e) does not violate procedural due process and is not rendered unconstitutional for requiring only one psychiatric opinion in order to permanently terminate parental rights, despite requirement of at least 2 psychiatrists in other civil and criminal proceedings, since statute specifically authorizes parent, as well as petitioning agency, to submit other psychiatric, psychological or medical evidence relevant to case, parent is free to cross-examine court-appointed psychiatrist at hearing, and statute merely sets forth minimum requirement of testimony by psychiatric expert. *In re Edward R., 123 A.D.2d 866, 507 N.Y.S.2d 647, 1986 N.Y. App. Div. LEXIS 60982 (N.Y. App. Div. 2d Dep't 1986)*.

CLS Soc Serv § 384-b(4)(c) and (6) were not unconstitutional as applied to mentally ill parent since termination of rights of mentally ill parent is justified by compelling state interests—to protect child from parent who is incapable of caring and planning for child, and child's interest in being afforded opportunity to enjoy normal, positive and permanent relationship with stable and nurturing parents. *In re Stephen B., 176 A.D.2d 1204, 576 N.Y.S.2d 701, 1991 N.Y. App. Div. LEXIS 13868 (N.Y. App. Div. 4th Dep't 1991)*, app. denied, *79 N.Y.2d 752, 580 N.Y.S.2d 198, 588 N.E.2d 96, 1991 N.Y. LEXIS 5113 (N.Y. 1991)*, app. dismissed, *79 N.Y.2d 914, 581 N.Y.S.2d 666, 590 N.E.2d 251, 1992 N.Y. LEXIS 5023 (N.Y. 1992)*.

Section 384-b (subd 4, par [c]) of the Social Services Law which provides for the termination of parental rights on the grounds that the "parents, whose consent to adoption of the child would otherwise be required . . . are presently and for the foreseeable future unable, by reason of mental illness or mental retardation, to provide proper and adequate care for a child" is constitutionally infirm in that it violates the due process clause of the Constitution since the due process clause protects freedom of choice in matters of family life and the State may not deprive a parent of his child on the basis of the status of a person who suffers from a disease; provision is also in conflict with the equal protection clause of the Constitution since the rights involved in familial relationships are fundamental rights, subject to the strict scrutiny test and there is no compelling State interest for upholding the statute; the legislative

purposes of the statute, the welfare of the child and the objective of conservation of State funds cannot be met in this instance because a continuation of the long-term foster care arrangements rather than termination of parental rights would be in the best interest of the children; furthermore, the Constitution recognizes higher values than speed and efficiency. *In re Gross, 102 Misc. 2d 1073, 425 N.Y.S.2d 220, 1980 N.Y. Misc. LEXIS 2060 (N.Y. Fam. Ct. 1980)*.

Soc Serv Law § 384-b, which authorizes termination of parental custody and commitment to guardianship of a minor child on the ground that the parent, by reason of mental illness or mental retardation, is unable to provide proper and adequate care of the child who has been in the care of an authorized agency for one year or more, is a constitutionally rational method of balancing the primacy of the natural parent's rights and the best interests of the child. *In re N. Children, 107 Misc. 2d 763, 435 N.Y.S.2d 1018, 1981 N.Y. Misc. LEXIS 2095 (N.Y. Fam. Ct. 1981)*.

Soc Serv Law § 381-b, which allows the state to seek termination of parental rights of a mentally ill parent on grounds that the parent is unable to provide proper care for children by reason of the mental illness, is not unconstitutional as a violation of due process. *In re P., 108 Misc. 2d 181, 437 N.Y.S.2d 225, 1981 N.Y. Misc. LEXIS 2176 (N.Y. Fam. Ct. 1981)*.

Agency did not consider a plan of reunification due to the mother's mental incapacity even though the mother proved she was capable of caring for her children; the mother was entitled to equal protection and due process. *In re Guardianship & Custody of W.W. Children, 190 Misc. 2d 258, 736 N.Y.S.2d 567, 2001 N.Y. Misc. LEXIS 919 (N.Y. Fam. Ct. 2001)*.

38. Discrimination

In a proceeding brought by the director of a county department of social services pursuant to *Soc Serv Law § 384-b*, in which the director sought an order appointing him guardian of an infant on the basis that the infant's mother was presently and for the foreseeable future unable to provide proper and adequate care by reason of mental illness, the proceeding would be dismissed since the section under which the director sought the order denies benefits to and discriminates against the handicapped in violation of the federal Rehabilitation Act of 1973 and, as such, violates the supremacy clause of the federal constitution. *In re Roth, 109 Misc. 2d 699, 440 N.Y.S.2d 806, 1980 N.Y. Misc. LEXIS 2945 (N.Y. Fam. Ct. 1980)*.

Father, whose brain injury resulted in substantial life-long deficit in memory and judgment that was not subject to remediation and rendered him presently and for foreseeable future unable to provide needed care for his son, was not discriminated against in violation of Americans With Disabilities Act (ADA) on basis that petitioner failed to make reasonable accommodations for his disability by providing services that would enable him to parent his son as (1) termination of parental rights proceedings do not appear to be "services, programs, or activities" such that ADA would apply, and (2) proof indicated that his condition would not lend itself to usual counseling or training often provided to parents who aim to reunite with their children in foster care. *In re Chance Jahmel B., 187 Misc. 2d 626, 723 N.Y.S.2d 634, 2001 N.Y. Misc. LEXIS 95 (N.Y. Fam. Ct. 2001)*.

39. Diligent efforts of agency

In proceeding pursuant to CLS *Soc Serv § 384-b* to adjudicate child as child of mentally ill or mentally retarded parents and to terminate parental rights, Department of Social Services was not required to prove that it made diligent efforts to encourage and strengthen parental relationship or show that such efforts would have been detrimental to child. *In re Jammie CC., 149 A.D.2d 822, 540 N.Y.S.2d 27, 1989 N.Y. App. Div. LEXIS 4861 (N.Y. App. Div. 3d Dep't 1989)*.

In proceeding to have parental rights of respondent parents terminated on grounds of mental illness and/or mental retardation (see, *Social Services Law § 384-b*), petitioner was not required to allege and prove that it made diligent efforts to encourage and strengthen parental relationship or show that such efforts would have been detrimental to

child since necessity of proving diligent efforts required in permanent neglect proceeding is not required in proceeding to terminate parental rights due to mental illness or mental retardation–diligent efforts requirement in neglect proceeding is specifically required by statute (see, Social Services Law § 384-b [7] [a])–it is not, however, required by statute in proceeding such as this (see, Social Services Law § 384-b [6]), and such requirement shall not be read into statute. *In re Jammie CC., 149 A.D.2d 822, 540 N.Y.S.2d 27, 1989 N.Y. App. Div. LEXIS 4861 (N.Y. App. Div. 3d Dep't 1989)*.

Diligent efforts by social services department to encourage and strengthen parent-child relationship need not be shown in proceeding to terminate parental rights due to mental illness. *In re Rosemary ZZ., 154 A.D.2d 734, 545 N.Y.S.2d 948, 1989 N.Y. App. Div. LEXIS 12417 (N.Y. App. Div. 3d Dep't)*, app. denied, *75 N.Y.2d 702, 551 N.Y.S.2d 906, 551 N.E.2d 107, 1989 N.Y. LEXIS 4410 (N.Y. 1989)*.

In proceeding to terminate parental rights based on parent's mental incapacity, no proof is required of child care agency's diligent efforts to encourage and strengthen parental relationship. *In re Karen Y., 156 A.D.2d 823, 550 N.Y.S.2d 67, 1989 N.Y. App. Div. LEXIS 15867 (N.Y. App. Div. 3d Dep't 1989)*, app. denied, *75 N.Y.2d 710, 556 N.Y.S.2d 247, 555 N.E.2d 619, 1990 N.Y. LEXIS 918 (N.Y. 1990)*.

Where department of social services (DSS) established that mother suffered from mental illness and retardation and was presently and for foreseeable future unable to care adequately for her disabled children by reason of her condition, it was not necessary for DSS to prove that it engaged in diligent efforts to encourage, strengthen and nurture parent-child relationship. *In re Harry K., 270 A.D.2d 928, 706 N.Y.S.2d 657, 2000 N.Y. App. Div. LEXIS 3355 (N.Y. App. Div. 4th Dep't 2000)*.

Trial court erred in dismissing two proceedings to terminate a mother's parental rights pursuant to *N.Y. Soc. Serv. Law § 384-b(4)(c)*; the trial court erred in reading a diligent efforts requirement into the statute, which provided for termination of parental rights based on mental retardation. *In re "Male" W., 308 A.D.2d 546, 764 N.Y.S.2d 842, 2003 N.Y. App. Div. LEXIS 9686 (N.Y. App. Div. 2d Dep't 2003)*.

In a proceeding to terminate parental rights based upon the parent's mental retardation, the agency with custody of the child would be required to affirmatively plead and prove by clear and convincing evidence that it had fulfilled its statutory duty to exercise diligent efforts to strengthen the parent-child relationship and to reunite the family, and the court would only consider and determine whether the parent has fulfilled his or her duties to maintain contact with and plan for the future of the child when that duty has been deemed satisfied. *In re Viana Children, 124 Misc. 2d 543, 476 N.Y.S.2d 750, 1984 N.Y. Misc. LEXIS 3236 (N.Y. Fam. Ct. 1984)*.

40. Burden of proof

In two proceedings to terminate parental rights pursuant to *Soc Serv Law § 384-b(4)(c)* on the ground of mental illness, the Family Court improperly dismissed the petitions where there was clear and convincing proof that the respective parents were presently and for the foreseeable future unable, by reason of mental illness, to provide proper and adequate care for their children. *In re Guardianship of Nereida S., 57 N.Y.2d 636, 454 N.Y.S.2d 61, 439 N.E.2d 870, 1982 N.Y. LEXIS 3593 (N.Y. 1982)*.

Appellate Division's dismissal of the father's appeal in the termination of parental rights case had no record support or legal basis as he did not fail to appear, plead or proceed to trial because, although he did not appear in person, he appeared at the fact-finding hearing through counsel; the family court acknowledged counsel's appearance and did not treat the father as a party in default; the family court proceeded to a fact-finding hearing on the disputed petition, rather than by inquest; the fact that counsel stayed silent during the proceedings did not support finding the father in default; and the father had no obligation to present proof, but rather needed only to put the Department of Children and Family Services to its burden. *Onondaga Cnty. Dept. of Child. & Fam. Servs. v Maurice S., 38 N.Y.3d 933, 2022 N.Y. LEXIS 388 (N.Y. 2022)*.

County department of social services met its burden of proving by clear and convincing evidence that a mother permanently neglected her child due to her illicit drug use, failure to address her addiction and mental health issues, failure to engage with the child and otherwise failing to make progress in achieving permanency goals, despite the department's diligent efforts to encourage and strengthen the parental relationship. *Matter of Frank Q. (Laurie R.), 2022 N.Y. App. Div. LEXIS 2768 (N.Y. App. Div. 3d Dep't 2022)*.

41. Mental illness

In a proceeding for the termination of parental rights under *Soc Serv Law § 384-b(1)*, the issue of the natural mother's mental condition was before the court although the plaintiff agency had not appealed from that portion of the court's order that dismissed the cause of action alleging mental illness, where the entire transcript of a previous consolidated trial concerning another child was offered by the mother and admitted without objection, thus placing into evidence case records for both children and mental health studies, previous hospitalizations, and testimony concerning the mental capacity of the natural mother to care for her children. *In re Suzanne N.Y., 77 A.D.2d 433, 433 N.Y.S.2d 580, 1980 N.Y. App. Div. LEXIS 13361 (N.Y. App. Div. 1st Dep't 1980)*, rev'd, *54 N.Y.2d 824, 443 N.Y.S.2d 722, 427 N.E.2d 1187, 1981 N.Y. LEXIS 3040 (N.Y. 1981)*.

Existence of dispositional order in original neglect proceeding, whereby child was placed in custody of commissioner of social services for 9-month period, did not preclude commissioner from instituting proceeding to terminate parental rights pursuant to CLS *Soc Serv § 384-b(4)(a)* on basis of mother's mental illness since placement of child with commissioner had ending date, and issue of whether mother's mental illness would preclude her from caring for child after that date was not resolved in original proceeding. *In re Denise Emily K., 154 A.D.2d 596, 546 N.Y.S.2d 424, 1989 N.Y. App. Div. LEXIS 13449 (N.Y. App. Div. 2d Dep't 1989)*, app. denied, *75 N.Y.2d 707, 554 N.Y.S.2d 476, 553 N.E.2d 1024, 1990 N.Y. LEXIS 585 (N.Y. 1990)*.

Evidence supported the termination of a mother's parental rights where a psychiatrist testified, inter alia, that the mother suffered from a mental disease and that, based on the nature of the illness, the severity of the symptoms, and the mother's noncompliance with and refusal to seek treatment, reached her conclusion that the mother was unable to care for her child; there was no statutory provision providing for a suspended judgment when parental rights were terminated based on mental illness. *In re Ernesto Thomas A., 5 A.D.3d 380, 772 N.Y.S.2d 708, 2004 N.Y. App. Div. LEXIS 2150 (N.Y. App. Div. 2d Dep't 2004)*.

Evidence that a mother suffered from paranoid schizophrenia, a chronic illness that prevented her from providing proper care for her children presently and for the foreseeable future and put them at risk of neglect, was sufficient to terminate her parental rights and transfer custody and guardianship of the children to an adoption agency. *In re Winston Lloyd D., 7 A.D.3d 706, 777 N.Y.S.2d 175, 2004 N.Y. App. Div. LEXIS 7013 (N.Y. App. Div. 2d Dep't 2004)*.

Because a father's own testimony established that the manner in which the psychological interviews were conducted did not deprive him of a fair opportunity to be heard, and because the proof of his pedophilia and antisocial personality disorder was adequate to terminate his parental rights under *N.Y. Soc. Serv. Law § 384-b(4)(c)*, his child was properly adjudicated to be the child of a mentally ill parent. *Matter of Casey L. (Joseph L.), 68 A.D.3d 1497, 891 N.Y.S.2d 537, 2009 N.Y. App. Div. LEXIS 9388 (N.Y. App. Div. 3d Dep't 2009)*.

Finding in a sibling's termination of parental rights proceeding, that respondent parent's mental illness made the parent unfit, was given collateral estoppel effect in a child neglect proceeding relating to the subject child. *Matter of Jasmine R., 800 N.Y.S.2d 307, 8 Misc. 3d 904, 234 N.Y.L.J. 4, 2005 N.Y. Misc. LEXIS 1317 (N.Y. Fam. Ct. 2005)*.

42. —Particular disorders or illnesses

Court properly terminated parental rights where court-qualified psychiatrist testified that father had "narcissistic personality disorder" with schizotypal features, and that disease manifested itself by his sexual abuse of children and his having placed children in foster care, despite his own bad experience with foster care, in order to pursue his own education. *In re Guardianship of Melissa R., 209 A.D.2d 155, 617 N.Y.S.2d 763, 1994 N.Y. App. Div. LEXIS 10760 (N.Y. App. Div. 1st Dep't 1994)*, app. denied, *85 N.Y.2d 803, 624 N.Y.S.2d 374, 648 N.E.2d 794, 1995 N.Y. LEXIS 337 (N.Y. 1995)*.

Court properly terminated mother's parental rights where court-appointed psychiatrist diagnosed her as suffering from multiple personality disorder and borderline personality disorder, concluded that those conditions rendered her incapable of caring for her children to extent that they would be in danger of becoming neglected if they were returned to her, and testified that she was not likely to improve significantly. *In re Jarred R., 236 A.D.2d 888, 654 N.Y.S.2d 64, 1997 N.Y. App. Div. LEXIS 1909 (N.Y. App. Div. 4th Dep't 1997)*.

Mother, who suffered from paranoid undifferentiated schizophrenia, was presently and for foreseeable future unable to provide proper and adequate care for her 2 children. *In re Juliana V., 249 A.D.2d 314, 671 N.Y.S.2d 105, 1998 N.Y. App. Div. LEXIS 3773 (N.Y. App. Div. 2d Dep't 1998)*.

Finding of father's mental illness warranting termination of his parental rights was supported by court-appointed psychiatrist's uncontroverted testimony that (1) father suffered from debilitating mental illness known as antisocial personality disorder, (2) there was no known medication for it, (3) prognosis for father was poor, (4) as result, father presently and for foreseeable future lacked basic insight and skills necessary to provide proper parenting, and (5) child would be at risk of both physical and emotional harm if returned to father's custody. *In re Commitment of Raymond W., 263 A.D.2d 366, 693 N.Y.S.2d 27, 1999 N.Y. App. Div. LEXIS 7798 (N.Y. App. Div. 1st Dep't 1999)*.

Department proved by clear and convincing evidence that a mother was presently, and for the foreseeable future, unable to provide adequate care for her children due to mental illness within the meaning of *N.Y. Soc. Serv. Law § 384-b(4)(c)*, (6)(a), based on the testimony of a psychiatrist and a psychologist that the mother had paranoid schizophrenia which impaired her judgment and ability to care for her children and that her condition was unlikely to improve, as she refused treatment. *In re Philip R. (Anonymous), 293 A.D.2d 547, 740 N.Y.S.2d 421, 2002 N.Y. App. Div. LEXIS 3529 (N.Y. App. Div. 2d Dep't 2002)*.

Family court properly terminated a mother's parental rights to her three children pursuant to *N.Y. Soc. Serv. Law § 384-b*; the mother suffered from a personality disorder and other mental diseases which had made her violent toward the children, and refused to seek treatment. *In re Dayjah Ann B., 13 A.D.3d 518, 787 N.Y.S.2d 103, 2004 N.Y. App. Div. LEXIS 15570 (N.Y. App. Div. 2d Dep't 2004)*.

Recurrent major depressive disorder, attention deficit hyperactivity disorder, anxiety disorder not otherwise specified, and mixed personality disorder with borderline and antisocial features that affected mother's ability to care for her children now or in the forseeable basis were mental incapacities. The conditions affected the mother's behavior, feelings, thinking, and judgment. *Matter of Alexis X., 23 A.D.3d 945, 804 N.Y.S.2d 481, 2005 N.Y. App. Div. LEXIS 13254 (N.Y. App. Div. 3d Dep't 2005)*, app. denied, *6 N.Y.3d 710, 814 N.Y.S.2d 599, 847 N.E.2d 1172, 2006 N.Y. LEXIS 617 (N.Y. 2006)*.

Because a psychologist determined that a mother suffered from schizoaffective disorder, depressive type and that her child would be at risk of being neglected if returned to her, the family court properly terminated the mother's parental rights under *N.Y. Soc. Serv. Law § 384-b(4)(c)*. *Matter of Dederia S.C., 26 A.D.3d 375, 809 N.Y.S.2d 189, 2006 N.Y. App. Div. LEXIS 1952 (N.Y. App. Div. 2d Dep't 2006)*.

Because a mother suffered from schizophrenia, she was unable to properly and adequately care for her child, and the child would be at risk if returned to her care; therefore, the mother's parental rights were properly terminated in accordance with *N.Y. Soc. Serv. Law § 384-b(3)(g)*, (4)(c). *Matter of Ayodele Ademoli J., 45 A.D.3d 686, 846 N.Y.S.2d 249, 2007 N.Y. App. Div. LEXIS 11805 (N.Y. App. Div. 2d Dep't 2007)*.

Manic depressive mental illness suffered by respondent mother is grounds for sustaining a guardianship petition (*Social Services Law, § 384-b*, subd 4, par [c]). *In re S., 98 Misc. 2d 650, 414 N.Y.S.2d 477, 1979 N.Y. Misc. LEXIS 2126 (N.Y. Fam. Ct. 1979)*.

Since extreme alcohol addiction, a chronic mental disability which impairs or destroys a person's "capacity to function normally" (*Mental Hygiene Law, § 1.03*, subd 13), does not constitute mental illness, the parental rights of respondent father may not be terminated based upon the ground that his alcoholism constitutes a mental illness (*Social Services Law, In re S., 98 Misc. 2d 650, 414 N.Y.S.2d 477 (1979)*.

Father's brain injury which resulted in substantial and life-long deficit in his thinking and judgment that was not subject to remediation, and which rendered him presently and for foreseeable future unable to provide needed care for his son, constituted mental illness that warranted termination of parental rights *In re Chance Jahmel B., 187 Misc. 2d 626, 723 N.Y.S.2d 634, 2001 N.Y. Misc. LEXIS 95 (N.Y. Fam. Ct. 2001)*.

43. —Termination proper

A mother's parental rights to her child were properly terminated where the child had been placed in foster care four days after her birth with the mother's permission and had remained there for nine years and where the Commissioner of Social Services of Westchester County had established by clear and convincing evidence that the mother was then and for the foreseeable future unable, by reason of mental illness, to provide proper and adequate care for the child within the meaning of *Soc Serv Law § 384-b(4)*. *In re R., 81 A.D.2d 616, 437 N.Y.S.2d 705, 1981 N.Y. App. Div. LEXIS 11116 (N.Y. App. Div. 2d Dep't 1981)*.

A mother's and a father's parental rights would be terminated pursuant to *Soc Serv Law § 384-b*, where the record established by clear and convincing evidence that the mother, by reason of her mental illness, was, and for the foreseeable future would be, unable to provide proper and adequate care for her child, and that the mother permanently neglected the child by failing to plan for its future for a period of more that one year, and where uncontradicted testimony established abandonment by the father within the statutory standard. *In re Susan F., 106 A.D.2d 282, 482 N.Y.S.2d 489, 1984 N.Y. App. Div. LEXIS 21348 (N.Y. App. Div. 1st Dep't 1984)*.

Court would affirm order which terminated parental rights of natural mother of 9 ½ -year-old child who had been in foster care since he was 6 weeks old where (1) uncontroverted testimony of court-appointed psychiatrist detailed mother's schizophrenic condition, (2) court-appointed psychiatrist and 2 social workers agreed that mother's judgment in child-rearing matters was such that she could not provide for child's needs, and (3) psychiatrist was of opinion that child would be in imminent danger of becoming impaired if returned to custody of mother. *In re Donald B., 151 A.D.2d 477, 542 N.Y.S.2d 267, 1989 N.Y. App. Div. LEXIS 7480 (N.Y. App. Div. 2d Dep't 1989)*.

Termination of respondent father's parental rights due to mental incapacity would not be reversed on ground that, during period when children were in foster care, child care agency withheld contact with children and failed to ascertain whether its services could have assisted father in providing adequate care for them, since serious nature of father's mental illness, diagnosed as paranoid schizophrenia with history of 4 psychiatric commitments, criminal arrests, and resistance to taking prescribed medication, supported expert's opinion that under his care children's home life would have to be monitored virtually 24 hours per day. *In re Karen Y., 156 A.D.2d 823, 550 N.Y.S.2d 67, 1989 N.Y. App. Div. LEXIS 15867 (N.Y. App. Div. 3d Dep't 1989)*, app. denied, *75 N.Y.2d 710, 556 N.Y.S.2d 247, 555 N.E.2d 619, 1990 N.Y. LEXIS 918 (N.Y. 1990)*.

Natural mother's parental rights were properly terminated on basis of mental incapacity, despite testimony of mother's psychiatrist that mother might improve in future if she were to take her medication and continue in therapy, where testimony of court-appointed psychiatrist was that mother suffered from "chronic schizo-affective disorder" which would endanger welfare of child, and such testimony was not contradicted by mother's psychiatrist. *In re Sheila S., 180 A.D.2d 687, 580 N.Y.S.2d 67, 1992 N.Y. App. Div. LEXIS 1449 (N.Y. App. Div. 2d Dep't)*, app. denied, *80 N.Y.2d 754, 587 N.Y.S.2d 906, 600 N.E.2d 633, 1992 N.Y. LEXIS 1661 (N.Y. 1992)*.

Court properly granted petition to terminate mother's parental rights on basis of her mental illness where (1) psychiatrist who performed court-ordered evaluation unequivocally testified that she suffered from chronic schizophrenia (paranoid type), that her "disordered thinking" would grossly interfere with her ability to raise children, and that she would be unable for foreseeable future to care for her children due to her mental illness, and (2) psychiatrist who evaluated mother at her request did not dispute such findings and conclusions except to state that her condition might improve if she were put on particular type of medication, but that she was not good candidate for that particular medication. *In re Brett J., 206 A.D.2d 595, 613 N.Y.S.2d 1007, 1994 N.Y. App. Div. LEXIS 7365 (N.Y. App. Div. 3d Dep't)*, app. denied, *84 N.Y.2d 807, 621 N.Y.S.2d 516, 645 N.E.2d 1216, 1994 N.Y. LEXIS 3469 (N.Y. 1994)*.

Court properly terminated father's parental rights where (1) expert testimony on behalf of both father and social services officials agreed that he had chronic undifferentiated form of schizophrenia or schizoaffective disorder, episodes of which most likely would recur in future, and (2) it was undisputed that he was presently incapable of maintaining custody of child who was 11 years old and who had been in foster care since age 6. *In re Gilberto D., 207 A.D.2d 706, 616 N.Y.S.2d 593, 1994 N.Y. App. Div. LEXIS 8922 (N.Y. App. Div. 1st Dep't 1994)*.

It was in children's best interest to grant custody to foster parents where (1) mother was more severely disabled than father, and was unable to watch over children for more than few hours at time or to work outside home, thus requiring father to bear responsibility for financial stability of family and also provide for children's daily care, (2) nature of father's illness rendered it highly unlikely that he would be able to do so at least in near future, (3) his periods of decompensation, for which he had been hospitalized 3 times since children were born, had been linked to his inability to cope with frustrations of daily life and to increased household stress, (4) he had found it difficult to obtain steady work and his current occupation as taxi driver did not guarantee employment on regular basis, (5) mother's condition was additional cause of stress to him, and (6) there was evidence that children had been neglected during recent visits with parents. *Gambino v Vargas, 209 A.D.2d 893, 619 N.Y.S.2d 203, 1994 N.Y. App. Div. LEXIS 11644 (N.Y. App. Div. 3d Dep't 1994)*.

Mother's parental rights were properly terminated under CLS *Soc Serv § 384-b* where she had suffered from mental illness for many years and was currently and for foreseeable future unable, by virtue of her illness, to care for her child, who had been removed from her care and custody soon after birth, and court-appointed psychiatrist testified at length regarding her examination of mother, her review of mother's medical and other records, and basis for her conclusion that mother suffered from "schizophrenia, undifferentiated type, chronic." *In re Patrick H., 245 A.D.2d 510, 666 N.Y.S.2d 492, 1997 N.Y. App. Div. LEXIS 13223 (N.Y. App. Div. 2d Dep't 1997)*.

Trial court properly terminated a mother's parental rights to her children pursuant to *N.Y. Soc. Serv. Law § 384-b*, as there was clear and convincing evidence that the mother was, by reason of mental illness, presently and for the foreseeable future unable to provide proper and adequate care for her children. *In re Eric X.J. St. Vincent's Servs., 4 A.D.3d 528, 772 N.Y.S.2d 374, 2004 N.Y. App. Div. LEXIS 1820 (N.Y. App. Div. 2d Dep't 2004)*.

Family court, pursuant to *N.Y. Soc. Serv. Law § 384-b(4)(c)*, properly terminated the mother's parental rights on mental illness grounds, as a psychiatrist, after interviewing the mother and reviewing the mother's records, opined that the chronic nature of the mother's illness, the severity of the mother's symptoms, and the mother's lack of insight about the mother's illness posed a risk of neglect to the child in the present and foreseeable future. *In re Karyn Katrina D., 19 A.D.3d 592, 797 N.Y.S.2d 536, 2005 N.Y. App. Div. LEXIS 6909 (N.Y. App. Div. 2d Dep't 2005)*.

Record supported the trial court's determination terminating parental rights, in proceedings pursuant to *N.Y. Soc. Serv. Law § 384-b*; a psychologist opined that the mother's mental illness prevented her from adequately parenting the child, as she manifested paranoid and delusional thinking and resisted treatment. and a clinical psychologist found that the father's impaired behavior would place the child at risk of harm. *Matter of Henry W., 31 A.D.3d 940, 818 N.Y.S.2d 348, 2006 N.Y. App. Div. LEXIS 9215 (N.Y. App. Div. 3d Dep't)*, app. denied, *7 N.Y.3d 711, 823 N.Y.S.2d 771, 857 N.E.2d 66, 2006 N.Y. LEXIS 2688 (N.Y. 2006)*.

Termination of a mother's parental rights pursuant to *N.Y. Soc. Serv. Law § 384-b* was affirmed. A court-appointed psychologist testified that the mother suffered from severe anxiety and disabling depression and was mentally ill, and that the mother's children would be in danger of neglect and possible abuse if they were returned to her. *Matter of Charity A., 38 A.D.3d 1276, 832 N.Y.S.2d 736, 2007 N.Y. App. Div. LEXIS 3490 (N.Y. App. Div. 4th Dep't 2007)*.

Because a mother suffered from generalized anxiety disorder, panic disorder, borderline personality disorder, was dependent on anxiolytics, and abused cocaine, pursuant to *N.Y. Soc. Serv. Law § 384-b(3)(g)*, her parental rights were properly terminated since she was unable to properly and adequately care for her child by reason of mental illness. *Matter of Alexander James R. v Francine Mindy G., 48 A.D.3d 820, 853 N.Y.S.2d 136, 2008 N.Y. App. Div. LEXIS 1712 (N.Y. App. Div. 2d Dep't 2008)*.

Termination of the parental rights of mentally ill parents was proper, based on testimony of a clinical psychologist who diagnosed the mother with a borderline personality disorder with significant dependent traits, and the father with an antisocial personality disorder with narcissistic features. *Matter of Adrianahmarie SS. (Harold SS.), 99 A.D.3d 1072, 953 N.Y.S.2d 697, 2012 N.Y. App. Div. LEXIS 6992 (N.Y. App. Div. 3d Dep't 2012)*.

Clear and convincing evidence supported terminating a mother's parental rights on grounds of mental illness because the mother suffered from several psychological disorders, did not follow through with mental health treatment, and exhibited a lack of insight into the severity of her own problems; the psychologist who performed the court-ordered evaluation concluded the mother was unlikely to seek out treatment in the future and, as a result, she would remain unable to properly raise a child. *Matter of Angel SS. (Caroline SS.), 129 A.D.3d 1119, 10 N.Y.S.3d 697, 2015 N.Y. App. Div. LEXIS 4608 (N.Y. App. Div. 3d Dep't 2015)*.

Clear and convincing evidence supported terminating a mother's and a father's parental rights on grounds of mental illness because the father suffered from, inter alia, antisocial personality disorder, intermittent explosive disorder, and substance abuse disorder, the mother suffered from, inter alia, borderline personality disorder with dependent features, unspecified anxiety disorder, and specific learning disabilities in reading and written expression, and neither parent sought treatment. *Matter of Summer SS. (Thomas SS.), 139 A.D.3d 1118, 29 N.Y.S.3d 706, 2016 N.Y. App. Div. LEXIS 3461 (N.Y. App. Div. 3d Dep't 2016)*.

Clear and convincing evidence supported terminating a father's parental rights on the basis of mental illness because, inter alia, the father's primary mental illness diagnosis was personality disorder and the psychiatric issues substantially contributed to the father's substance use, which exacerbated his psychological issues, and the father was unable to presently care for the children and it was unlikely he would be able to provide adequate care for the foreseeable future. *Matter of Duane II. (Andrew II.), 151 A.D.3d 1129, 56 N.Y.S.3d 360, 2017 N.Y. App. Div. LEXIS 4259 (N.Y. App. Div. 3d Dep't)*, app. denied, *29 N.Y.3d 918, 86 N.E.3d 560, 64 N.Y.S.3d 668, 2017 N.Y. LEXIS 2629 (N.Y. 2017)*.

Clear and convincing evidence supported terminating a mother's parental rights based on mental illness because the mother was diagnosed with "fairly severe" borderline personality disorder and opioid use disorder, the mother was not likely to improve within two to four years given the lack of "positive indicators," and the mother's emotional volatility, poor judgment, and lack of impulse control put the children in danger of neglectful behavior. *Matter of Jazmyne II. (Meagan JJ.), 151 A.D.3d 1123, 55 N.Y.S.3d 802, 2017 N.Y. App. Div. LEXIS 4252 (N.Y. App. Div. 3d Dep't 2017)*.

Termination of father's parental rights was proper because ample evidence established that father suffered from a profound mental illness and that such mental illness, together with his borderline intellectual functioning, rendered him unable to provide proper and adequate care for child. *2021 N.Y. App. Div. LEXIS 3589*.

44. — —Repeated hospitalizations

Determination that mother, by reason of mental illness as defined in CLS *Soc Serv § 384-b(4)(c)*, was presently and for foreseeable future unable to provide proper and adequate care for her infant, was supported by evidence of

mother's medical records, which included history of frequently repeated hospitalizations for psychotic episodes within 6-year period, and interview of her by court-appointed psychiatrist, who diagnosed her as suffering from chronic paranoid schizophrenia. *In re Sunja S., 175 A.D.2d 132, 571 N.Y.S.2d 826, 1991 N.Y. App. Div. LEXIS 9786 (N.Y. App. Div. 2d Dep't)*, app. denied, *78 N.Y.2d 861, 576 N.Y.S.2d 219, 582 N.E.2d 602, 1991 N.Y. LEXIS 4730 (N.Y. 1991)*.

In proceeding under CLS *Soc Serv § 384-b* to terminate parental rights, Family Court properly determined that mother was unable to provide adequate care for children due to mental illness where court-appointed psychiatrist who examined mother and reviewed medical records detailing her history of hospitalizations for suicidal ideations, hallucinations and assaultive behavior testified unequivocally that she suffered from personality disorder with paranoid tendencies giving rise to danger that children would be neglected or abused if returned to her. *In re Norma Jean H., 179 A.D.2d 759, 578 N.Y.S.2d 649, 1992 N.Y. App. Div. LEXIS 676 (N.Y. App. Div. 2d Dep't)*, app. denied, *79 N.Y.2d 758, 584 N.Y.S.2d 446, 594 N.E.2d 940, 1992 N.Y. LEXIS 1265 (N.Y. 1992)*.

Mother's parental rights should have been terminated where (1) she had been institutionalized for most of her life from ages 13 to 28, (2) while released from in-patient psychiatric care shortly before proceeding, she remained in out-patient facility which provided supervised schedule, meals, and medication, (3) psychiatrist opined that her mental disease was not curable, medication prescribed to her to control her explosive behavior did not guarantee against future relapses, and she could not independently care for child in light of her inability to handle stress effectively, and (4) her history included recurrent explosive behavior such as threats to hospital staff, fire-setting, alcohol abuse, and punching her stomach during pregnancy with express desire of killing child. *In re Thomas G., 183 A.D.2d 716, 583 N.Y.S.2d 294, 1992 N.Y. App. Div. LEXIS 6552 (N.Y. App. Div. 2d Dep't 1992)*.

Clear and convincing evidence established that mother was presently and for foreseeable future unable to provide proper care for her child due to mental illness, warranting termination of her parental rights pursuant to CLS *Soc Serv § 384-b(4)(c)*, where mother suffered from severe and long-term mental illness prominently characterized by acute chronic psychotic and self-destructive behavior, including numerous suicide attempts and extensive hospitalization. *In re Belinda S., 189 A.D.2d 679, 592 N.Y.S.2d 372, 1993 N.Y. App. Div. LEXIS 353 (N.Y. App. Div. 1st Dep't)*, app. denied, *81 N.Y.2d 706, 597 N.Y.S.2d 936, 613 N.E.2d 968, 1993 N.Y. LEXIS 691 (N.Y. 1993)*.

Uncontroverted evidence established mother's inability to care for her child, now and in foreseeable future, where psychiatrist's testimony and report characterized mother's schizo-affective disorder as progressive and manic and involving, inter alia, delusions, hallucinations, gross thought disorder, catatonia, accelerated agitated behavior, manic-depressive episodes, paranoia, and suicidal ideation, and her disorder was long-standing, with history of at least 8 hospitalizations and institutionalization, compounded by her noncompliance with medication and treatment. *In re Michelle H., 228 A.D.2d 440, 643 N.Y.S.2d 646, 1996 N.Y. App. Div. LEXIS 6205 (N.Y. App. Div. 2d Dep't 1996)*, app. dismissed, *89 N.Y.2d 978, 656 N.Y.S.2d 735, 678 N.E.2d 1352, 1997 N.Y. LEXIS 266 (N.Y. 1997)*.

Family Court properly terminated parental rights of mother based on clear and convincing evidence that she suffered from severe mental illness for more than 30 years, characterized by recurring cycle of psychiatric hospitalizations, sometimes for extended periods of time, and that she functioned at marginal level throughout her entire adult life. *In re Guardianship of Luisa Lara M., 236 A.D.2d 267, 654 N.Y.S.2d 8, 1997 N.Y. App. Div. LEXIS 1268 (N.Y. App. Div. 1st Dep't 1997)*.

Court properly terminated mother's parental rights where she suffered from severe mental illness for more than 20 years characterized by recurring cycle of psychiatric hospitalizations, she had functioned at only marginal level throughout her entire adult life, and there was no evidence that she might be capable of adequately caring for her child in foreseeable future. *In re Custody & Guardianship of Christine Marie R., 236 A.D.2d 308, 654 N.Y.S.2d 134, 1997 N.Y. App. Div. LEXIS 1491 (N.Y. App. Div. 1st Dep't 1997)*.

Finding of mother's mental illness under CLS *Soc Serv § 384-b(4)(c)* was supported by clear and convincing evidence where there was unchallenged and unequivocal expert testimony as to her recurring cycle of psychiatric hospitalizations and drug abuse, marginal functional existence throughout her adult life, poor prognosis, and

children's special needs. *In re Guardianship of Gabrielle S., 245 A.D.2d 24, 664 N.Y.S.2d 788, 1997 N.Y. App. Div. LEXIS 12506 (N.Y. App. Div. 1st Dep't 1997)*.

Mother's parental rights to child were properly terminated where mother had suffered from severe mental illness for more than 15 years, characterized by recurring cycle of psychiatric hospitalizations, sometimes for extended periods, she had functioned at only marginal level throughout her adult life, she was presently incapable of caring adequately for child, and there was no evidence of any prospect that she would be able to do so in foreseeable future. *In re Guardianship of Sanovia G., 245 A.D.2d 207, 666 N.Y.S.2d 596, 1997 N.Y. App. Div. LEXIS 13323 (N.Y. App. Div. 1st Dep't 1997)*.

Parental rights of mother of child in foster care shall be terminated and her consent for adoption shall be dispensed with where social services agency has proven clearly and convincingly that mother is unable to provide proper and adequate care for child owing to her mental illness, where mother has been in and out of State hospitals for several years with her prognosis upon discharge always stated as guarded. *In re Dana Marie E., 128 Misc. 2d 1018, 492 N.Y.S.2d 340, 1985 N.Y. Misc. LEXIS 3047 (N.Y. Fam. Ct. 1985)*.

45. — —Lack of compliance with treatment

Mother's inability to care for her child due to mental illness was established by clear and convincing evidence consisting of testimony of certified psychiatrist, based on his examination of mother, documenting her history of psychotic acts of violence on command of hallucinated voices, her lack of basic living skills, lack of family support, impaired judgment, and her continuing symptoms of mental illness, together with her pattern of discontinuing her medication and follow-up therapy when released from in-patient hospital status; testimony was supported by that of social worker and by agency records and mother's record from psychiatric center. *In re Andre Jermaine R., 138 A.D.2d 380, 525 N.Y.S.2d 664, 1988 N.Y. App. Div. LEXIS 2097 (N.Y. App. Div. 2d Dep't 1988)*.

Evidence supported finding that mother suffered from mental disease or illness that affected her ability to properly care for her children, where she had refused to insure that children attend counseling as directed by prior orders, and 4 mental health professionals testified that she suffered from some form of mental illness, that she repeatedly refused treatment for her condition, that without treatment her condition would likely deteriorate and limit her ability to properly care for her children, and that children were acutely in need of counseling; mother's discontinuance of one interview after only 15 minutes confirmed her consistent pattern of lack of cooperation. *In re Jesse DD., 223 A.D.2d 929, 636 N.Y.S.2d 925, 1996 N.Y. App. Div. LEXIS 592 (N.Y. App. Div. 3d Dep't)*, app. denied, *88 N.Y.2d 803, 645 N.Y.S.2d 445, 668 N.E.2d 416, 1996 N.Y. LEXIS 786 (N.Y. 1996)*.

Finding that respondent was not capable of caring for her children by reason of mental disease was supported by clear and convincing evidence where (1) court-appointed psychiatrist testified that respondent was diagnosed as having schizophrenia, continued to display symptoms of schizophrenia although disease was currently in remission, lacked insight into her disease, and refused to take prescribed medications, and (2) respondent's mother testified that respondent manifested bizarre behavior. *In re Lonette Monique C., 236 A.D.2d 880, 653 N.Y.S.2d 760, 1997 N.Y. App. Div. LEXIS 1863 (N.Y. App. Div. 4th Dep't 1997)*, reh'g denied, *1997 N.Y. App. Div. LEXIS 4872 (N.Y. App. Div. 4th Dep't Apr. 25, 1997)*, app. denied, *92 N.Y.2d 816, 684 N.Y.S.2d 187, 706 N.E.2d 1211, 1998 N.Y. LEXIS 4914 (N.Y. 1998)*.

Mother's parental rights to child were properly terminated under CLS *Soc Serv § 384-b(4)(c)* where she had history of chronic mental illness since 1987, she required repeated and sometimes extended hospitalizations, her compliance with treatment and recognition of severity of her illness were poor, court-appointed psychiatrist concluded that mother would not be able to provide proper care for child in foreseeable future, and mother's psychiatrist, although stating that mother could care for child during periods of stability, admitted that such was not case during periods of decomposition, could not say whether mother was likely to remain compliant with her treatment, and offered no opinion as to whether child would be at risk of neglect if returned to mother. *In re Shannon Monique W., 245 A.D.2d 86, 666 N.Y.S.2d 121, 1997 N.Y. App. Div. LEXIS 12785 (N.Y. App. Div. 1st Dep't 1997)*, app. denied, *91 N.Y.2d 809, 670 N.Y.S.2d 404, 693 N.E.2d 751, 1998 N.Y. LEXIS 621 (N.Y. 1998)*.

Father, by reason of mental illness, was presently and for foreseeable future unable to provide proper and adequate care for his child where court-appointed psychiatrist testified that (1) father had history of drug and alcohol abuse, was suffering from paranoid schizophrenia, and had been hospitalized for mental illness on several occasions over past 13 or 14 years, (2) there was strong possibility that father would resume using illegal drugs and stop taking his prescribed antipsychotic medication, and (3) child would be in danger of becoming neglected if placed in father's custody. *In re Casey J., 251 A.D.2d 1002, 674 N.Y.S.2d 239, 1998 N.Y. App. Div. LEXIS 7017 (N.Y. App. Div. 4th Dep't 1998)*.

Court properly adjudicated father to be mentally ill and terminated his parental rights where, for better part of his adult life, he was unwilling or unable to recognize extent of his mental illness and identify goals and work to resolve them by participating in meaningful treatment, and evidence indicated that, left untreated, his anxiety and impulse control problems would cause him to have difficulty dealing with stresses common in raising children. *In re Shane "PP", 283 A.D.2d 725, 724 N.Y.S.2d 788, 2001 N.Y. App. Div. LEXIS 4879 (N.Y. App. Div. 3d Dep't)*, app. denied, *96 N.Y.2d 720, 733 N.Y.S.2d 372, 759 N.E.2d 371, 2001 N.Y. LEXIS 3070 (N.Y. 2001)*.

Court properly concluded that mother was, and for foreseeable future would remain, unable to care for her children by reason of mental illness where (1) expert testimony that she suffered from uncontrolled paranoid schizophrenia, and that her noncompliance with treatment interfered with her ability to adequately parent her children, was supported by fact that she had been hospitalized for mental illness at least 6 times, and (2) argument that she might be able to properly care for her children with proper medication and treatment was unsupported by unrefuted history of her noncompliance. *In re Harris "AA", 285 A.D.2d 755, 727 N.Y.S.2d 769, 2001 N.Y. App. Div. LEXIS 7375 (N.Y. App. Div. 3d Dep't 2001)*.

Termination of mother's parental rights was upheld where mother's inability to acknowledge existence of her mental illness and to address and undertake the treatment required therefor was sufficient evidence to support finding of permanent neglect; the mother's untreated mental illness created a potentially harmful situation to the child and supported the conclusion that the mother had made no meaningful attempt to deal with the very problem that precipitated the child's initial removal. *In re Robert "XX", 290 A.D.2d 753, 736 N.Y.S.2d 199, 2002 N.Y. App. Div. LEXIS 451 (N.Y. App. Div. 3d Dep't 2002)*.

Clear and convincing evidence was presented that a mother's parental rights to her two minor children should be terminated under *N.Y. Soc. Serv. Law § 384-b(4)(c)* due to her mental illness because a court-appointed psychologist testified that the children were at risk for being neglected due to the mother's psychotic disorder, for which she did not seek treatment. *Matter of Tamaine William B., 38 A.D.3d 767, 832 N.Y.S.2d 622, 2007 N.Y. App. Div. LEXIS 3737 (N.Y. App. Div. 2d Dep't 2007)*.

Termination of the mother's parental rights to the children under *N.Y. Fam. Ct. Act § 614(1)*, *N.Y. Soc. Serv. Law § 384-b(7)(a)* was proper as the caseworker referred her to mental health counseling and parenting classes that she did not attend, and the mother failed to adequately plan for the children's future because she did not alleviate the conditions that led to their removal from their home. *Matter of Neal TT. (Deborah UU.), 97 A.D.3d 869, 948 N.Y.S.2d 184, 2012 N.Y. App. Div. LEXIS 5265 (N.Y. App. Div. 3d Dep't 2012)*.

46. — —Future inability to care for child

In a proceeding to terminate the parental rights of a mother the court properly terminated her rights by reason of her mental illness pursuant to *Soc Serv Law § 384-b(4)(c)*, where the record established that the mother's mental condition, diagnosed as schitzophrenia by a psychiatrist, was such that returning her children would place them in imminent danger of becoming neglected children and that this mental condition would continue in the foreseeable future. *In re "YY", 89 A.D.2d 930, 453 N.Y.S.2d 957, 1982 N.Y. App. Div. LEXIS 18117 (N.Y. App. Div. 3d Dep't)*, app. denied, *57 N.Y.2d 607, 1982 N.Y. LEXIS 7215 (N.Y. 1982)*.

Mother's future inability to care for children due to mental illness was established by testimony of examining psychiatrist, who stated that mother would be danger to her children without treatment, and by psychiatric hospital

records which revealed that (1) mother was inpatient on 3 separate occasions and had been diagnosed as suffering from schizoaffective disorder, (2) her last 2 admissions were precipitated by knife assaults on her boyfriend, (3) she occasionally walked around house with large kitchen knives, and (4) she had refused to take her medication or participate in prescribed "aftercare" program. *In re Vaketa Y., 141 A.D.2d 892, 528 N.Y.S.2d 932, 1988 N.Y. App. Div. LEXIS 6073 (N.Y. App. Div. 3d Dep't 1988)*.

In proceeding pursuant to CLS *Soc Serv § 384-b* to terminate 22-year-old mother's parental rights on ground of mental illness, clear and convincing proof established that mother would be unable to provide care for child in foreseeable future where (1) court-appointed psychiatrist testified that mother was schizophrenic and had been hospitalized at least 6 times before and after birth of child and that, due to series of "schizophrenic breaks" precipitated by her failure to take prescribed medication, mother was functioning at deteriorated intellectual level and was incapable of learning child care skills, (2) mother's own psychiatrist conceded that stress of having child returned to her could cause another schizophrenic break and further hospitalization, and (3) 4 social workers testified as to their unsuccessful attempts to teach basic child care to mother. *In re Camille M., 143 A.D.2d 755, 533 N.Y.S.2d 464, 1988 N.Y. App. Div. LEXIS 10029 (N.Y. App. Div. 2d Dep't 1988)*.

Mother's parental rights were properly terminated on ground that she was currently, and for foreseeable future, unable to provide proper care to child by reason of mental illness where 5 ½ -year-old child had been placed in home for children in May 1985, home commenced instant action in May 1987, and evidence showed that court-appointed psychiatrist (1) examined mother one week before hearing, (2) diagnosed chronic schizophrenia, (3) unequivocally testified that mother would be unable to care for child, and (4) was in accord with psychiatrist of out-patient hospital facility where mother had been treated for 2 years without substantial improvement. *In re Sharon P. I., 153 A.D.2d 942, 545 N.Y.S.2d 749, 1989 N.Y. App. Div. LEXIS 11932 (N.Y. App. Div. 2d Dep't 1989)*.

Commissioner of social service met his burden to prove by clear and convincing evidence that mother's mental illness rendered her unable to provide adequate care for child and would do so for foreseeable future where (1) court-appointed psychiatrist testified that mother, who had been hospitalized at least 13 times for acute psychotic episodes, suffered from chronic schizophrenia which even in remission produced symptoms of impaired judgment and illogical thinking, and that mother would be unqualified to care for child in foreseeable future, (2) mother's treating psychiatrist agreed that she suffered from serious mental illness but concluded that, with support service, she might be able to care for child in foreseeable future, and (3) mother's treating psychiatrist conceded, however, that mother might not be able to raise child even with support services. *In re Denise Emily K., 154 A.D.2d 596, 546 N.Y.S.2d 424, 1989 N.Y. App. Div. LEXIS 13449 (N.Y. App. Div. 2d Dep't 1989)*, app. denied, *75 N.Y.2d 707, 554 N.Y.S.2d 476, 553 N.E.2d 1024, 1990 N.Y. LEXIS 585 (N.Y. 1990)*.

Clear and convincing evidence, including testimony by the court-appointed psychiatrist as well as the medical records documenting the mother's history of mental illness, supported the family court's finding under *N.Y. Soc. Serv. Law § 384-b(4)(c)* that appellant mother was presently and, for the foreseeable future, unable, due to mental illness, to provide proper and adequate care for her children; the decision to terminate the mother's parental rights was upheld. *Lisa B. v Louise Wise Servs. (In re Guardianship of Antonio Tyrone B.), 298 A.D.2d 128, 747 N.Y.S.2d 232, 2002 N.Y. App. Div. LEXIS 9214 (N.Y. App. Div. 1st Dep't 2002)*.

Termination of parental rights of a mother to her children was proper; there was clear and convincing evidence, under *N.Y. Soc. Serv. Law § 384-b(4)(c)*, that the mother was presently, and for the foreseeable future, unable to provide proper and adequate care for the subject children by reason of her mental illness. *In re Savion S., 6 A.D.3d 451, 774 N.Y.S.2d 358, 2004 N.Y. App. Div. LEXIS 3878 (N.Y. App. Div. 2d Dep't 2004)*.

Mother's parental rights were terminated after expert testified that her ability to adequately care for her children now or in the foreseeable future was affected by her recurrent major depressive disorder, attention deficit hyperactivity disorder, anxiety disorder not otherwise specified, and mixed personality disorder with borderline and antisocial features. *Matter of Alexis X., 23 A.D.3d 945, 804 N.Y.S.2d 481, 2005 N.Y. App. Div. LEXIS 13254 (N.Y. App. Div. 3d Dep't 2005)*, app. denied, *6 N.Y.3d 710, 814 N.Y.S.2d 599, 847 N.E.2d 1172, 2006 N.Y. LEXIS 617 (N.Y. 2006)*.

Family Court properly found that a mother was presently and for the foreseeable future unable, by reason of mental illness, to provide proper and adequate care for her child (*N.Y. Soc. Serv. Law § 384-b(4)(c)*). A psychologist opined that due to the nature of the mother's illness, the mother's lack of insight about her illness, and her inability to act in accordance with her child's needs due to her illness, the child, if returned to the mother, would be at risk of being neglected in the present and in the foreseeable future. *Matter of Tyler Shannara S., 38 A.D.3d 560, 832 N.Y.S.2d 576, 2007 N.Y. App. Div. LEXIS 2590 (N.Y. App. Div. 2d Dep't 2007)*.

Family court properly determined that it was in the child's best interests to terminate the mother's parental rights and to free him for adoption by his foster parents, with whom he had lived for the vast majority of his life because the mother was presently and for the foreseeable future unable, by reason of mental illness, to provide proper and adequate care for the child; the mother suffered from schizoaffective disorder. *Matter of Kasimir Lee D. (Jasmaine D.), 198 A.D.3d 754, 156 N.Y.S.3d 260, 2021 N.Y. App. Div. LEXIS 5622 (N.Y. App. Div. 2d Dep't 2021)*, app. denied, *38 N.Y.3d 901, 2022 N.Y. LEXIS 361 (N.Y. 2022)*.

47. — —Multiple factors

Clear and convincing evidence supported determination to terminate mother's parental rights on basis of her mental illness where court-appointed psychiatrist testified (1) that mother suffered from borderline personality disorder and schizophrenia, paranoid type, (2) that she was unable to care for her children and would continue to be unable to care for her children for foreseeable future, and (3) that she consistently resisted treatment and was apparently unwilling or unable to acknowledge that she was mentally ill. *In re Donald LL., 188 A.D.2d 899, 591 N.Y.S.2d 876, 1992 N.Y. App. Div. LEXIS 14628 (N.Y. App. Div. 3d Dep't 1992)*.

County department of social services met its burden of proving by clear and convincing evidence that mother, by reason of mental illness, was presently and for foreseeable future unable to provide proper and adequate care for her child, and that it was likely that child would be in danger of becoming neglected child if placed in her care and custody, where examining psychiatrist gave uncontradicted testimony that mother had suffered from paranoid schizophrenia for at least 20 years, that she failed to understand her mental illness or need for medication, and that her prognosis for long-term stable level of rational performance was poor. *In re James J., 207 A.D.2d 960, 616 N.Y.S.2d 827, 1994 N.Y. App. Div. LEXIS 10126 (N.Y. App. Div. 4th Dep't 1994)*.

Family Court properly granted petition terminating mother's parental rights due to mental illness where (1) board-certified psychiatrist based his diagnosis of chronic paranoid schizophrenia on his interview with mother, review of her hospital records for last 2 years, and background information from mother's sister, (2) he testified that mother had been hospitalized on several occasions during 2 years prior to petition, (3) hospital records indicated that she was delusional and "heard voices" (she believed that certain persons were harassing her through her television and she heard voices in ventilating system), (4) she admitted to psychiatrist that she used drugs, (5) she had history of failing to take medication prescribed for her and also failed to attend counseling, and (6) psychiatrist concluded that she had very little insight into her illness. *In re Johnine Rebecca C., 209 A.D.2d 1029, 620 N.Y.S.2d 26, 1994 N.Y. App. Div. LEXIS 12074 (N.Y. App. Div. 4th Dep't 1994)*.

Termination of parental rights was warranted by unrefuted evidence of respondent's chronic, degenerating mental condition, frequent hospitalization, and failure to adhere to any treatment plan, as well as conclusion of court-appointed psychiatrist that there was no possibility of improvement in foreseeable future. *In re Guardianship & Custody of Angela Marie N., 223 A.D.2d 423, 636 N.Y.S.2d 758, 1996 N.Y. App. Div. LEXIS 348 (N.Y. App. Div. 1st Dep't)*, app. denied, *88 N.Y.2d 814, 651 N.Y.S.2d 15, 673 N.E.2d 1242, 1996 N.Y. LEXIS 3237 (N.Y. 1996)*.

Termination of mother's parental rights under CLS *Soc Serv § 384-b(4)(c)* was supported by clear and convincing evidence that she was presently, and for foreseeable future would be, unable to provide proper and adequate care for her children, including proof of her long history of chronic mental illness requiring frequent hospitalization, failure to adhere to any treatment plan and conclusion of court-appointed psychiatrist that there was no possibility of improvement in foreseeable future. *In re Aridyse Ashley J., 242 A.D.2d 438, 662 N.Y.S.2d 47, 1997 N.Y. App. Div. LEXIS 8793 (N.Y. App. Div. 1st Dep't)*, app. denied, *91 N.Y.2d 803, 668 N.Y.S.2d 558, 691 N.E.2d 630, 1997 N.Y.*

LEXIS 4186 (N.Y. 1997), app. denied, *91 N.Y.2d 803, 668 N.Y.S.2d 558, 691 N.E.2d 630, 1997 N.Y. LEXIS 4202 (N.Y. 1997)*.

Termination of father's parental rights was warranted on evidence of his mental illness for more than 10 years, his poor compliance with treatment, his failure to recognize that he needed help, and psychiatrist's opinion that he would not be able to provide proper care for children. *In re Guardianship & Custody of Joseph Alfred R., 279 A.D.2d 308, 718 N.Y.S.2d 833, 2001 N.Y. App. Div. LEXIS 152 (N.Y. App. Div. 1st Dep't 2001)*.

Where a court-appointed psychiatrist testified that a mother suffered from schizoaffective disorder and mixed-personality and opined that, based on the long-term nature of the illness, the mother's history of poor judgment and poor impulse control, and the mother's tendency to stop taking her medication, the mother's child would be at risk of neglect in the present and in the foreseeable future if the child was returned to the mother, such evidence supported the family court's conclusion that a mother was, by reason of mental illness, presently and for the foreseeable future unable to provide proper and adequate care for her child within the meaning of N.Y. Soc. Serv. Law § 384-b(4)(c). *Ass'n to Benefit Children/Variety House for Children v Sharon R. (In re Heather Rose R.), 301 A.D.2d 530, 753 N.Y.S.2d 526, 2003 N.Y. App. Div. LEXIS 179 (N.Y. App. Div. 2d Dep't 2003)*.

The trial court properly terminated a mother's parental rights to her children pursuant to N.Y. Soc. Serv. Law § 384-b; an agency established that the mother was presently and in the foreseeable future unable to adequately care for the children based on mental illness, as a court-appointed psychiatrist testified, without contradiction, that even if the mother took her medication, there was a serious possibility that the stress of raising the children could cause her to become actively psychotic, which would place the welfare of the children in danger. *In re Jon C., 305 A.D.2d 592, 759 N.Y.S.2d 756, 2003 N.Y. App. Div. LEXIS 5671 (N.Y. App. Div. 2d Dep't 2003)*.

Pursuant to N.Y. Soc. Serv. Law § 384-b(4)(c), the evidence was clearly sufficient to support the family court's determination terminating the mother's parental rights to her children based on her mental illness because (1) a court-appointed psychologist testified that she suffered from antisocial personality disorder, causing her to behave impulsively and act with disregard to the rights and well-being of others; (2) the psychologist expressed the opinion that because the mother's condition was chronic, pervasive, and highly resistant to treatment, and because she had little insight into her behavioral problems, it was very likely that her children would be placed at risk if they were returned to her; (3) the expert's opinion was supported by the mother's own account of her erratic behavior, including prior convictions for assaulting one of her husband's girlfriends with a fork, possessing a loaded gun in a car in which she and her child were passengers, and removing her children from foster care and taking them to Ohio in violation of a court order; and (4) the mother rejected treatment while incarcerated for custodial interference. *In re Rashawn L.B., 8 A.D.3d 267, 778 N.Y.S.2d 57, 2004 N.Y. App. Div. LEXIS 7465 (N.Y. App. Div. 2d Dep't 2004)*.

Agency established by clear and convincing evidence that the mother was, presently and for the foreseeable future, unable to provide proper and adequate care for the child by reason of mental illness, as defined in N.Y. Soc. Serv. Law § 384-b(3)(g), (4) (c), (6)(a). Moreover, the evidence of the mother's history of repeated incarceration, her mental illness, and poor prognosis for recovery; her continuing failure to cooperate with probation, parole, recommended services, and the ordered mental health evaluation; and her chaotic and unstable lifestyle, among other things, amply supported the family court's finding that termination of the mother's parental rights and freeing the special needs child for adoption were in the child's best interests. *In re Kyle F., 14 A.D.3d 822, 787 N.Y.S.2d 523, 2005 N.Y. App. Div. LEXIS 257 (N.Y. App. Div. 3d Dep't 2005)*.

Termination of a mother's parental rights was proper under N.Y. Soc. Serv. Law § 384-b(4)(c) where the testimony of the court-appointed psychologist established that the mother suffered from paranoid schizophrenia and that, due to her illness, her lack of insight about her illness, and the likelihood that increased stress could further exacerbate her mother's symptoms, the children would be at risk of being neglected in the present and foreseeable future. *In re Michael W., 15 A.D.3d 670, 790 N.Y.S.2d 232, 2005 N.Y. App. Div. LEXIS 2016 (N.Y. App. Div. 2d Dep't 2005)*.

Termination of a father's parental rights on the basis of mental illness under N.Y. Soc. Serv. Law § 384-b(4)(c) was appropriate based on testimony by a licensed psychologist who examined the father that indicated that, inter alia,

the father's delusional disorder could affect his judgment in caring for his children in that he might make unwarranted assumptions regarding their motivation for behavior, hold grudges, and act in a controlling manner. *Matter of Jenna KK., 50 A.D.3d 1216, 855 N.Y.S.2d 700, 2008 N.Y. App. Div. LEXIS 2862 (N.Y. App. Div. 3d Dep't)*, app. denied, *11 N.Y.3d 703, 864 N.Y.S.2d 807, 894 N.E.2d 1198, 2008 N.Y. LEXIS 2527 (N.Y. 2008)*.

48. —Termination not proper

In a proceeding to terminate parental custody, the order granting the petition would be reversed where, although the evidence was sufficient to support the finding of the present inability of the natural mother to care for her child by reason of mental illness, it was not sufficient to support the finding that the mother would be unable to care for her child for the foreseeable future. While evidence of past and present condition may be of such character and probative worth to warrant an inference as to future inability even in the absence of professional opinion evidence, such on inference alone cannot serve as the clear and convincing proof required for termination of the parental relationship in the face of the considered opinion expressed by the court-appointed psychiatrist that the mother might well be able at some future though undeterminable time through therapy and medication properly to care for her child. *In re Hime Y., 52 N.Y.2d 242, 437 N.Y.S.2d 286, 418 N.E.2d 1305, 1981 N.Y. LEXIS 2120 (N.Y. 1981)*.

In proceeding pursuant to CLS *Soc Serv § 384-b* and CLS Family Ct Act Art 6 to permanently terminate parental rights on ground of permanent neglect due to mental illness, mother was entitled to dismissal of petition, notwithstanding agency's contention that mother had refused to cooperate with agency's supervised home visitation and thereby failed to plan for child's return, where (1) mother, with assistance of her therapists, took significant steps on her own through psychotherapy and educational and vocational programs to improve her ability to parent, but agency did little or nothing to assist her in such efforts, (2) both parent and child expressed desire to be together, and there was loving relationship, and (3) caseworker acknowledged that mother showed concern for child's well-being and school progress. *In re Erica J., 154 A.D.2d 595, 546 N.Y.S.2d 423, 1989 N.Y. App. Div. LEXIS 13510 (N.Y. App. Div. 2d Dep't 1989)*.

Despite mother's mental illness, termination of her parental rights as to her older child would not be in that child's best interests where both mother and child desired continued contact, and law guardian opposed termination; however, child would remain in custody of Commissioner of Social Services and petitioning agency. *In re Guardianship of Gabrielle S., 245 A.D.2d 24, 664 N.Y.S.2d 788, 1997 N.Y. App. Div. LEXIS 12506 (N.Y. App. Div. 1st Dep't 1997)*.

Trial court erred in terminating a father's parental rights for mental illness and in finding that a father was incapable of caring for a child and would be so incapable for the foreseeable future as an expert testified that it was not possible for her to state that the father would always be unable to care for the child or whether the father's mental illness precluded him from being able to care for the child within a reasonable time. *In re Lina Catalina R., 21 A.D.3d 563, 800 N.Y.S.2d 589, 2005 N.Y. App. Div. LEXIS 8682 (N.Y. App. Div. 2d Dep't 2005)*.

County social service agency did not meet its burden of showing, by clear and convincing evidence, that parents were unable to provide proper care for their children due to the parents' mental illnesses pursuant *N.Y. Fam. Ct. Act § 622* and *N.Y. Soc. Serv. Law § 384-b(3)(g)(i)*; a termination of their parental rights could not stand, as a psychologist's testimony did not particularize the harm that would befall the children due to the parents' mental illnesses. *Matter of Arielle Y., 61 A.D.3d 1061, 876 N.Y.S.2d 529, 2009 N.Y. App. Div. LEXIS 2472 (N.Y. App. Div. 3d Dep't 2009)*.

Family court erred in terminating a mother's parental rights on the basis of mental illness because the family court failed to obtain the required expert testimony. *Matter of Elijah W.L. (Omisa S.C.), 146 A.D.3d 782, 44 N.Y.S.3d 206, 2017 N.Y. App. Div. LEXIS 163 (N.Y. App. Div. 2d Dep't)*, app. denied, *29 N.Y.3d 907, 80 N.E.3d 404, 57 N.Y.S.3d 711, 2017 N.Y. LEXIS 1322 (N.Y. 2017)*.

Family court erred in proceeding with termination of mother's parental rights based on her alleged mental illness without statutorily-required examination because there was no evidence that she refused to be evaluated nor did

she make herself unavailable by departing from state or by concealing herself therein. Further, her placement in Capital District Psychiatric Center was involuntary and, despite her release, no further attempt was made to schedule an evaluation. *Matter of Rahsaan I. (Simone J.), 180 A.D.3d 1162, 119 N.Y.S.3d 609, 2020 N.Y. App. Div. LEXIS 1269 (N.Y. App. Div. 3d Dep't 2020)*, app. dismissed, *202 A.D.3d 1401, 159 N.Y.S.3d 923, 2022 N.Y. App. Div. LEXIS 1193 (N.Y. App. Div. 3d Dep't 2022)*.

Petition to terminate parental rights for mental illness was denied, although mother's mental illness was shown to result in her present and future inability to care for her child, where petitioning agency failed to provide proof as to where child currently resided and whether he was in care of Commissioner of Social Services for requisite one year prior to filing of petition. *In re Guardianship & Custody of J. Christopher F., 179 Misc. 2d 516, 685 N.Y.S.2d 883, 1999 N.Y. Misc. LEXIS 29 (N.Y. Fam. Ct. 1999)*.

49. Mental retardation

In permanently terminating parents' parental rights on the grounds of mental retardation, the Family Court erred in refusing to consider long-term foster care as a preferable alternative to parental termination since, although the Legislature has expressed a preference for avoiding long-term foster care (*Soc Serv Law § 384-b(1)(b)*), the statute provides that a permanent alternative home should be sought only when the natural parents cannot otherwise provide a normal family home and when continued foster care is not an appropriate plan for the child, and the termination of parental rights is not warranted and certainly not mandated, if such is not in the child's best interests, even when the statutory requirements for termination have been established. In the instant proceeding the record indicated the parents made extensive efforts to continue a relationship with their child and the Law Guardian testified that substantial bonding had taken place between the child and his natural parents. *In re Christopher T., 101 A.D.2d 997, 476 N.Y.S.2d 691, 1984 N.Y. App. Div. LEXIS 18715 (N.Y. App. Div. 4th Dep't 1984)*, app. dismissed, *63 N.Y.2d 603, 480 N.Y.S.2d 1024, 469 N.E.2d 102, 1984 N.Y. LEXIS 5304 (N.Y. 1984)*, aff'd, *65 N.Y.2d 39, 489 N.Y.S.2d 705, 478 N.E.2d 1306, 1985 N.Y. LEXIS 15846 (N.Y. 1985)*.

In proceeding under CLS *Soc Serv § 384-b* in which county department of social services petitioned for custody of 5 minor children, department was not collaterally estopped from litigating issue of mother's alleged mental retardation based on fact that she previously had been subjected to psychological examination in context of neglect proceeding under CLS Family Ct Act Art 10, since it was unclear whether prior proceeding (or psychiatric examination it entailed) addressed mother's alleged mental retardation; in any case, issue of whether mother was mentally retarded as defined in § 384-b(6)(b) was not actually litigated in prior proceeding. *In re Iliana C., 206 A.D.2d 473, 614 N.Y.S.2d 448, 1994 N.Y. App. Div. LEXIS 7445 (N.Y. App. Div. 2d Dep't 1994)*.

Fact that social services department's allegation of mother's mental retardation was established did not leave Family Court with sole option of terminating her parental rights. *In re Michael E., 241 A.D.2d 635, 659 N.Y.S.2d 578, 1997 N.Y. App. Div. LEXIS 7325 (N.Y. App. Div. 3d Dep't 1997)*.

In order to terminate parental rights on the ground of mental retardation under *N.Y. Soc. Serv. Law § 384-b(3)(g)*, (4)(c), the petitioning agency must demonstrate by clear and convincing evidence that a respondent is presently, and for the foreseeable future will be, unable to provide proper and adequate care for his or her children by reason of the respondent's mental retardation. *Tiffany S. v Emily S., 302 A.D.2d 758, 755 N.Y.S.2d 745, 2003 N.Y. App. Div. LEXIS 1538 (N.Y. App. Div. 3d Dep't)*, app. denied, *100 N.Y.2d 503, 761 N.Y.S.2d 595, 791 N.E.2d 961, 2003 N.Y. LEXIS 1019 (N.Y. 2003)*.

Termination of parental relationship is proper where natural mother is mentally retarded to extent that child would be in danger of neglect if returned to her and it is unlikely in the foreseeable future that she will be capable or available to be trained to a degree where she can adequately care for the child. The infant should not be held in limbo for an indefinite period of time for the purposes of training respondent in the area of child care since such program would be prolonged with no guarantee of success. *In re Guardianship of Strausberg, 92 Misc. 2d 620, 400 N.Y.S.2d 1013, 1977 N.Y. Misc. LEXIS 2597 (N.Y. Fam. Ct. 1977)*.

It was in a child's best interest to be in the custody of her grandmother because, inter alia, a surrogate's court had found that the mother was a mentally retarded person as defined by N.Y. Surr. Ct. Proc. Act § 1750(1), and this disability, combined with other circumstances, was ample proof of extraordinary circumstances for purposes of N.Y. Dom. Rel. Law § 72(2); neither the department nor the mother presented proof of any problems during the grandmother's visitation with the child. The only option offered by the mother and the department was an indefinite continuation of the child in foster care, but foster care was designed to be a short term plan. *Matter of Joyce A.S. v Amber L.M., 899 N.Y.S.2d 571, 27 Misc. 3d 1101, 243 N.Y.L.J. 74, 2010 N.Y. Misc. LEXIS 676 (N.Y. Fam. Ct. 2010)*.

50. —Termination proper

Adoption, rather than long-term foster care, would be in best interests of 3 children of sole custodial parent who had been determined to be mentally retarded and unable to provide adequate care, despite evidence of some positive bonding between parent and one child, where bonding was not sufficient to overcome presumption of adoption, and each child had developmental problems which had been alleviated somewhat by placement in foster care and which would be further ameliorated by long-term irrevocable permanent placement; however, adoption need not preclude visitation with parent or among siblings. *In re Elizabeth Q., 126 A.D.2d 905, 511 N.Y.S.2d 181, 1987 N.Y. App. Div. LEXIS 42014 (N.Y. App. Div. 3d Dep't 1987)*.

Trial court properly terminated the father's parental rights with respect to his daughter on the grounds of mental retardation and permanent neglect because the Jefferson County Department of Social Services established by clear and convincing evidence that the father suffered from sub-average intellectual functioning to such an extent that if the child was placed in or returned to the custody of the father, the child would be in danger of becoming a neglected child; the Department further established that the father was presently and for the foreseeable future unable to provide proper and adequate care for his daughter, and that the father was resistant to any of the assistance or services offered to him and was unwilling or unable to change and provide a safe and appropriate home for his daughter. *In re Angie M. P., 291 A.D.2d 932, 737 N.Y.S.2d 490, 2002 N.Y. App. Div. LEXIS 1121 (N.Y. App. Div. 4th Dep't)*, app. denied, *98 N.Y.2d 602, 744 N.Y.S.2d 762, 771 N.E.2d 835, 2002 N.Y. LEXIS 1013 (N.Y. 2002)*.

A mother's parental rights were properly terminated pursuant to N.Y. Soc. Serv. Law § 384-b, as an agency proved by clear and convincing evidence that the mother presently and for the foreseeable future would be unable to care for the children by reason of mental retardation. *In re Karan Ann B. (Anonymous), 293 A.D.2d 673, 740 N.Y.S.2d 630, 2002 N.Y. App. Div. LEXIS 3949 (N.Y. App. Div. 2d Dep't 2002)*.

The trial court properly terminated a mother's parental rights to her children; by reason of her mental retardation, the mother was unable presently and for the foreseeable future to provide proper and adequate care for the subject children, N.Y. Soc. Serv. Law § 384-b(4)(c), and the trial court did not make its finding of future incapacity based solely on the mother's present incapacity. *In re Melody Xena A., 297 A.D.2d 613, 747 N.Y.S.2d 481, 2002 N.Y. App. Div. LEXIS 8805 (N.Y. App. Div. 1st Dep't 2002)*.

Trial court properly terminated a mother's parental rights to her children based on mental retardation pursuant to N.Y. Soc. Serv. Law § 384-b(6)(b), because testimony by two psychologists established by clear and convincing evidence that the mother, by reason of mental retardation, was and would be unable to care for her children, and the trial court properly found that termination of parental rights was in the best interests of the children. *Fulton County Dep't of Soc. Servs. v Lavetta ZZ. (In re Cheryl YY.), 302 A.D.2d 632, 754 N.Y.S.2d 705, 2003 N.Y. App. Div. LEXIS 865 (N.Y. App. Div. 3d Dep't 2003)*.

Trial court properly terminated a mother's parental rights to children pursuant to N.Y. Soc. Serv. Law § 384-b(4)(c); an agency established by clear and convincing evidence, N.Y. Soc. Serv. Law § 384-b(3)(g), that the mother was unable, by reason of mental retardation, to provide proper and adequate care for the children. *In re Samantha R., 306 A.D.2d 487, 761 N.Y.S.2d 520, 2003 N.Y. App. Div. LEXIS 7390 (N.Y. App. Div. 2d Dep't 2003)*.

Termination of the father's parental rights based on a finding that the father was mentally retarded was upheld where the father was offered and attended weekly visitations, which focused on providing the father with "hands on" experience, yet the father continued to require direction in caring for the child and had to be encouraged to interact with the child. The father's lack of progress was not surprising given that two psychologists found the father to be moderately mentally retarded and opined that a child placed in the father's home would be at risk of being neglected. *Matter of Adam NN., 33 A.D.3d 1187, 822 N.Y.S.2d 673, 2006 N.Y. App. Div. LEXIS 12736 (N.Y. App. Div. 3d Dep't 2006)*, app. denied, *8 N.Y.3d 802, 830 N.Y.S.2d 698, 862 N.E.2d 790, 2007 N.Y. LEXIS 100 (N.Y. 2007)*.

51. —Termination not proper

Trial court properly denied an agency's petition pursuant to *N.Y. Soc. Serv. Law § 384-b* to terminate a mother's parental rights; the mother had not permanently neglected the child, and her mild mental retardation did not render her permanently unable to care for the child. *In re Donovan R., 10 A.D.3d 398, 781 N.Y.S.2d 658, 2004 N.Y. App. Div. LEXIS 10190 (N.Y. App. Div. 2d Dep't 2004)*.

Authorized child care agency's failure to provide remedial services oriented toward mildly mentally retarded mother's disability makes it difficult if not impossible to determine whether mental retardation renders mother presently and for foreseeable future unable to care for children, necessary for termination of parental rights. *In re Children, 131 Misc. 2d 81, 499 N.Y.S.2d 587, 1986 N.Y. Misc. LEXIS 2479 (N.Y. Fam. Ct. 1986)*.

52. Mental retardation and mental illness

Family Court did not err in relying on opinion of court-appointed psychiatrist, rather than opinion of parents' expert witness, in concluding that parents were unable to provide adequate care for their child because of father's mental illness and mother's mental retardation. *In re Kimberly J., 216 A.D.2d 940, 629 N.Y.S.2d 142, 1995 N.Y. App. Div. LEXIS 7278 (N.Y. App. Div. 4th Dep't)*, app. denied, *87 N.Y.2d 801, 637 N.Y.S.2d 688, 661 N.E.2d 160, 1995 N.Y. LEXIS 4937 (N.Y. 1995)*.

53. —Termination proper

In proceeding pursuant to CLS *Soc Serv § 384-b* to adjudicate child as child of mentally ill or mentally retarded parents and to terminate parental rights, court properly terminated parental rights where evidence showed (1) that parents were both mentally retarded and mentally ill, and (2) that parents were unable now and in foreseeable future to provide proper and adequate care for child. *In re Jammie CC., 149 A.D.2d 822, 540 N.Y.S.2d 27, 1989 N.Y. App. Div. LEXIS 4861 (N.Y. App. Div. 3d Dep't 1989)*.

Mother's parental rights were properly terminated due to her mental retardation and mental illness where (1) psychiatrist and psychologist testified that her condition manifested itself in persistent "impulsivity," violence, paranoia and impaired judgment, (2) prognosis for improvement was "almost negligible," (3) prior findings of neglect had been entered against her resulting in foster care for 2 children, whom she had named "Starsky" and "Hutch" after popular television show, and (4) she had previously been found to be unable to care for third child, whom she had abused. *In re Starsky Roy K., 150 A.D.2d 685, 541 N.Y.S.2d 558, 1989 N.Y. App. Div. LEXIS 6875 (N.Y. App. Div. 2d Dep't 1989)*.

Family Court's termination of mentally retarded mother's parental rights due to mental incapacity would sustained, notwithstanding testimony of her expert indicating that intensive training could elevate her skills to point where she would be able to provide adequate care for children, where clinical psychologist appointed by court to examine her opined that success in using state-of-the-art techniques in training mentally retarded had been in area of rote tasks and that there had been no success in training them in parenting skills. *In re Karen Y., 156 A.D.2d 823, 550*

N.Y.S.2d 67, 1989 N.Y. App. Div. LEXIS 15867 (N.Y. App. Div. 3d Dep't 1989), app. denied, *75 N.Y.2d 710, 556 N.Y.S.2d 247, 555 N.E.2d 619, 1990 N.Y. LEXIS 918 (N.Y. 1990)*.

While mother clearly loved her children, record supported termination of her parental rights due to permanent neglect based on her mental illness and retardation where, inter alia, psychologist who assessed her testified that her retardation made it difficult for her to anticipate problems and plan for future, that she suffered from high levels of stress and anxiety and had difficulty controlling her outbursts, and that she did not appear capable of managing her own affairs independently. *In re Joshua O., 227 A.D.2d 695, 641 N.Y.S.2d 475, 1996 N.Y. App. Div. LEXIS 4775 (N.Y. App. Div. 3d Dep't 1996)*.

Trial court properly terminated a mother's parental rights to her children where: (1) the mother was mentally retarded and while her personality disorder might improve, the mother's mental infirmity made her unable to safely care for her children, (2) one expert's statement that there was a slight possibility that in the future the mother might be able to care for her children with 24-hour per day help did not conflict with the other expert's opinion that the mother could not safely care for her children, (3) an expert's testimony that the mother's intellectual deficits were noted early in life satisfied *N.Y. Soc. Serv. Law § 384-b(6)(b)*, (4) despite the mother's increased involvement and desire to improve, there was no meaningful change in her ability to care for her children, and (5) the children had bonded with their foster family, and the foster parents planned to adopt the children. *In re Deborah I., 6 A.D.3d 771, 774 N.Y.S.2d 205, 2004 N.Y. App. Div. LEXIS 3698 (N.Y. App. Div. 3d Dep't 2004)*.

Trial court properly terminated a father's parental rights to his children on grounds of mental retardation and mental illness pursuant to *N.Y. Soc. Serv. Law § 384-b(4)(c)*, as testimony by a psychologist was sufficient to establish the father's mental retardation and mental illness, and the termination was in the best interest of the children, because they had very little contact with the father in the years prior to termination, and it was unlikely that he would ever be able to provide for them. *In re Andrew U., 22 A.D.3d 926, 802 N.Y.S.2d 281, 2005 N.Y. App. Div. LEXIS 11208 (N.Y. App. Div. 3d Dep't 2005)*.

Mother's parental rights were terminated after a psychologist opined that she (1) had a cognitive disorder manifested in numerous neuropsychological deficits in memory, attention, planning skills, mental control, and impulsivity, and (2) in addition to learning and reading disabilities, had suffered from a personality disorder that prevented her from acting in the children's best interests out of dependency on them and a fear of losing their love. *Matter of Roseanna X. v Joyce Z., 22 A.D.3d 993, 802 N.Y.S.2d 793, 2005 N.Y. App. Div. LEXIS 11468 (N.Y. App. Div. 3d Dep't 2005)*.

Termination of the mother's parental rights was upheld where the mother had severe attentional issues which resulted in difficulty with cognitive discipline and concentration, and a psychologist opined that the mother had major weaknesses in her verbal problem-solving skills. *Matter of Adam NN., 33 A.D.3d 1187, 822 N.Y.S.2d 673, 2006 N.Y. App. Div. LEXIS 12736 (N.Y. App. Div. 3d Dep't 2006)*, app. denied, *8 N.Y.3d 802, 830 N.Y.S.2d 698, 862 N.E.2d 790, 2007 N.Y. LEXIS 100 (N.Y. 2007)*.

In the context of *N.Y. Soc. Serv. Law §§ 384-b(4)(c)*, a family court properly found clear and convincing evidence that a mother was unable, by reason of mental illness and mental retardation, to provide proper and adequate care for two children. Two Family Court Mental Health Services psychologists found that, by reason of her mental disabilities, if the children were returned to the mother they would be at risk of being neglected in the present and for the foreseeable future, while a third psychologist testified for the mother, and opined that she was not mentally ill or mentally retarded and could, in the future, adequately parent her children; the family court properly credited opinions of the Mental Health Services psychologists over the mother's expert, and did not err in drawing the strongest possible negative inference against the mother. *Matter of Amanda Ann B., 38 A.D.3d 537, 832 N.Y.S.2d 59, 2007 N.Y. App. Div. LEXIS 2557 (N.Y. App. Div. 2d Dep't 2007)*.

While a mother's panic disorder might have improved with medication, her personality disorder was largely untreatable and her intelligence quotient would not increase; consequently, pursuant to *N.Y. Soc. Serv. Law § 384-b(4)(c)*, it was in the children's best interests to be freed for a permanent home, despite the existence of their bond with the mother. *Matter of Charles FF. v Mitzi E., 44 A.D.3d 1137, 844 N.Y.S.2d 455, 2007 N.Y. App. Div. LEXIS*

10686 (N.Y. App. Div. 3d Dep't 2007), app. denied, *9 N.Y.3d 817, 851 N.Y.S.2d 126, 881 N.E.2d 222, 2008 N.Y. LEXIS 26 (N.Y. 2008)*.

Clear and convincing evidence supported terminating a father's parental rights on the ground of mental illness because the father, inter alia, had a longstanding diagnosis of bipolar disorder, a pattern of noncompliance with medication and psychotherapy treatment, multiple mental-health-related hospitalizations, limited insight into his condition and how it negatively affected the children, exhibited anger, hostility, and distrust towards the agency, and refused to follow his service plan. *Matter of Alicia K. (Cain K.), 167 A.D.3d 891, 89 N.Y.S.3d 722, 2018 N.Y. App. Div. LEXIS 8638 (N.Y. App. Div. 2d Dep't 2018)*.

Family court's grant of petitioner's application, in a proceeding to adjudicate the subject child to be the child of an intellectually disabled parent, and terminated mother's parental rights was proper because the expert's testimony and the underlying evaluations were sufficient to establish by clear and convincing evidence that the mother had an intellectual disability, and as a result, she was unable, both presently and for the foreseeable future, to properly care for the child. *Matter of Amirah P. (Aisha P.), 187 A.D.3d 1432, 133 N.Y.S.3d 329, 2020 N.Y. App. Div. LEXIS 6398 (N.Y. App. Div. 3d Dep't 2020)*, app. denied, *36 N.Y.3d 907, 166 N.E.3d 539, 142 N.Y.S.3d 465, 2021 N.Y. LEXIS 462 (N.Y. 2021)*.

54. —Termination not proper

An order dismissing an adoption petition would be affirmed where the record did not establish by clear and convincing evidence that the father of the child was presently and for the foreseeable future unable, by reason of mental illness or mental retardation, to provide proper and adequate care for his child as required by *Soc Serv Law § 384-b(4)(c)* and *Dom Rel Law § 111*, and therefore the father's consent to the adoption could not be dispensed with. *Isaacson v Manashel, 92 A.D.2d 894, 459 N.Y.S.2d 884, 1983 N.Y. App. Div. LEXIS 17288 (N.Y. App. Div. 2d Dep't 1983)*.

Although evidence of mother's neglect of children showed that she was "perilously close" to having her parental rights terminated on ground of permanent neglect, evidence nevertheless supported Family Court's dismissal of proceeding by Commissioner of Social Services of City of New York to terminate parental rights, free children for adoption, and commit children to custody of commissioner, where psychiatrist, testifying as expert for commissioner, stated that mother was suffering from mild mental retardation and chronic schizophrenia but that he was unable to rule out possibility that she could be rehabilitated sufficiently to be able to provide adequate care for children. *In re Shaneek Christal W., 122 A.D.2d 215, 504 N.Y.S.2d 748, 1986 N.Y. App. Div. LEXIS 59542 (N.Y. App. Div. 2d Dep't 1986)*.

55. Evidence, generally

Trial court properly terminated the parental rights of a mother to her child pursuant to *N.Y. Soc. Serv. Law § 384-b*; evidence of the mother's mental condition constituted clear and convincing proof of the mother's inability to care for her child, now and in the foreseeable future. *In re Danielle C., 6 A.D.3d 530, 774 N.Y.S.2d 431, 2004 N.Y. App. Div. LEXIS 4423 (N.Y. App. Div. 2d Dep't 2004)*.

56. —Psychiatric evidence

In proceeding under CLS *Soc Serv § 384-b*, psychiatrist appointed by Family Court to examine mother and evaluate her condition was not precluded from testifying on ground that he also performed consultation services for county, absent evidence of bias. *In re Hannah C., 132 A.D.2d 659, 518 N.Y.S.2d 32, 1987 N.Y. App. Div. LEXIS 49204 (N.Y. App. Div. 2d Dep't 1987)*.

In proceeding under CLS *Soc Serv § 384-b* to terminate mother's parental rights on basis of her mental illness, opinion rendered by court-appointed psychiatrist was not suspect due to alleged inaccuracies in medical records where (1) records were received into evidence without objection, and (2) records were duly certified and constituted prima facie evidence of facts contained therein under CLS *CPLR §§ 4518(c)* and *2306(a)*. *In re Donald LL., 188 A.D.2d 899, 591 N.Y.S.2d 876, 1992 N.Y. App. Div. LEXIS 14628 (N.Y. App. Div. 3d Dep't 1992)*.

In proceeding to terminate mother's parental rights to child, expert testimony that mother was presently and for foreseeable future unable, by reason of mental illness, to provide proper and adequate care for child concerned matter requiring professional or skilled knowledge and thus was not impermissibly allowed opinion testimony by expert on ultimate issue of fact. *In re Guardianship of Sanovia G., 245 A.D.2d 207, 666 N.Y.S.2d 596, 1997 N.Y. App. Div. LEXIS 13323 (N.Y. App. Div. 1st Dep't 1997)*.

Dispositional hearing was not prerequisite to termination of parental rights in light of evidence of mental illness provided by psychiatrist who interviewed mother and reviewed her medical records. *Jemanja B. v Maritza B., 287 A.D.2d 298, 731 N.Y.S.2d 361, 2001 N.Y. App. Div. LEXIS 9350 (N.Y. App. Div. 1st Dep't 2001)*.

The trial court properly terminated a mother's parental rights to her child pursuant to *N.Y. Soc. Serv. Law § 384-b(4)(c)*, because there was clear and convincing evidence to support the conclusion that she was, by reason of mental illness, presently and for the foreseeable future unable to provide proper and adequate care for her daughter, as a court-appointed psychiatrist testified that due to the mother's longstanding schizophrenia the child, if returned to the mother, would be at risk of being neglected in the present and in the foreseeable future. *In re Erica D. (Anonymous) (2002, 2d Dept) 294 App Div 2d 435, 742 NYS2d 112*.the opinion of a third psychologist that the mother was not mentally ill merely raised a question of credibility for the family court to determine. *Wayne County Dep't of Soc. Servs. v Pamela S. (In re Damion S.), 300 A.D.2d 1039, 752 N.Y.S.2d 476, 2002 N.Y. App. Div. LEXIS 12974 (N.Y. App. Div. 4th Dep't 2002)*.

Court-appointed clinical psychologist's clinical interview of respondent mother and the psychologist's review of numerous documents, including the mother's mental health records, provided a sufficient basis for the psychologist's conclusion that the mother suffered from a mental illness under *N.Y. Soc. Serv. Law § 384-b(6)(a)*. *In re Trebor "UU", 295 A.D.2d 648, 743 N.Y.S.2d 605, 2002 N.Y. App. Div. LEXIS 5819 (N.Y. App. Div. 3d Dep't 2002)*.

Mother's parental rights were terminated because clear and convincing proof, in the unrebutted testimony of a court-appointed psychiatrist who interviewed the mother and reviewed her medical records, showed that the mother was then, and for the foreseeable future, would be unable by reason of her mental illness to provide proper and adequate care for her children. *In re Nina D., 6 A.D.3d 702, 775 N.Y.S.2d 377, 2004 N.Y. App. Div. LEXIS 4919 (N.Y. App. Div. 2d Dep't 2004)*.

Because a licensed psychologist's report and testimony established a father's mental illness without any refutation, the family court properly terminated the father's parental rights under *N.Y. Soc. Serv. Law § 384-b*. *Matter of Michael WW., 29 A.D.3d 1105, 814 N.Y.S.2d 797, 2006 N.Y. App. Div. LEXIS 6131 (N.Y. App. Div. 3d Dep't 2006)*.

Mother's parental rights were improperly terminated on the ground of mental illness because, although the county agency introduced forensic reports of a qualified psychologist, the family court could not address the legal sufficiency of the county agency's proof under *N.Y. Soc. Serv. Law § 384-b(6)(c)* without the psychologist's testimony. *Matter of Robert M. P.-D. v Anna Marie P., 31 A.D.3d 560, 818 N.Y.S.2d 277, 2006 N.Y. App. Div. LEXIS 9134 (N.Y. App. Div. 2d Dep't 2006)*.

Given, inter alia, the testimony of a psychologist which was based upon his extensive review of information along with his first-hand evaluation, and according due deference to the trial court, clear and convincing evidence supported the court's termination of a mother's parental rights under *N.Y. Soc. Serv. Law § 384-b* based on her mental illness. *Matter of Shawndalaya II., 46 A.D.3d 1172, 847 N.Y.S.2d 772, 2007 N.Y. App. Div. LEXIS 13147 (N.Y. App. Div. 3d Dep't 2007)*, app. denied, *10 N.Y.3d 703, 854 N.Y.S.2d 104, 883 N.E.2d 1011, 2008 N.Y. LEXIS 298 (N.Y. 2008)*.

Because a licensed clinical psychologist testified that a mother's personality disorder and its features, exacerbated by her borderline intellectual functioning, endangered the children's welfare and precluded her from caring for them for the immediate future, her parental rights were properly terminated pursuant to *N.Y. Soc. Serv. Law § 384-b(4)(c)*, (6). *Matter of Karen GG. v Marline HH., 72 A.D.3d 1156, 898 N.Y.S.2d 685, 2010 N.Y. App. Div. LEXIS 2629 (N.Y. App. Div. 3d Dep't)*, app. denied, *14 N.Y.3d 713, 904 N.Y.S.2d 695, 930 N.E.2d 769, 2010 N.Y. LEXIS 1273 (N.Y. 2010)*.

Decision adjudicating a parent's children to be the children of a mentally ill parent and terminating parental rights was improper, as a proper foundation was not laid for the admission of testimony of two psychologists, and without this evidence, the decision was not supported by clear and convincing evidence. *Matter of Anthony WW. v Michael WW., 86 A.D.3d 654, 927 N.Y.S.2d 407, 2011 N.Y. App. Div. LEXIS 5705 (N.Y. App. Div. 3d Dep't)*, app. denied, *17 N.Y.3d 897, 933 N.Y.S.2d 646, 957 N.E.2d 1150, 2011 N.Y. LEXIS 3175 (N.Y. 2011)*.

In a proceeding brought by a county department of social services pursuant to *section 384-b of the Social Services Law* seeking the guardianship and custody of a child on the ground that the child's mother is unable, due to mental illness, to provide proper and adequate care for the child, the mother is entitled, pursuant to section 384-b (subd 6, par [e]) of the Social Services Law which provides that the parent shall have the right to submit psychiatric or medical evidence, to have a psychiatrist appointed to examine her and testify on her behalf in order to question the expertise of other psychiatrists to attempt to show that other psychiatrists cannot make valid diagnoses or predictions, since the fact that the mother is unable to pay for the expense of a psychiatrist is not a reason to deny her a right expressly bestowed by the Legislature, and she is free to select the type of proof she will submit without limitation and is not limited to presenting only evidence of the results of a psychiatric examination; the proof proposed by the mother dealing with the competence and expertise of psychiatrists constitutes psychiatric or medical evidence within the meaning of section 384-b (subd 6, par [e]) of the Social Services Law. *In re Roth, 97 Misc. 2d 834, 412 N.Y.S.2d 568, 1979 N.Y. Misc. LEXIS 2009 (N.Y. Fam. Ct. 1979)*.

57. —Evidence of mental illness

In a proceeding pursuant to *Soc Serv Law § 384-b* to place dependent children with an authorized agency for adoption without the consent of the mother, the record was sufficient to support the trial court's finding that the mother, by reason of mental illness, was at that time and for the foreseeable future unable to provide proper care for her children where a psychiatrist testified that the mother had been confined to approximately 15 state hospitals for the insane in the previous 17 years and that it was his expert opinion that she suffered from chronic schizophrenia that made it highly unlikely that she would ever be able to function independently. *In re C., 82 A.D.2d 857, 440 N.Y.S.2d 46, 1981 N.Y. App. Div. LEXIS 14543 (N.Y. App. Div. 2d Dep't 1981)*.

Evidence supported termination of father's parental rights where (1) court-appointed psychiatrist testified that father was suffering from "chronic schizophrenia undifferentiated, in incomplete remission," and that it was unlikely "in the foreseeable future that there would be a significant change from [his] current functioning" or that he would "be able to adequately take care of his daughter," and (2) psychiatrist who testified on father's behalf did not dispute those conclusions and opined that, at best, he possibly could be adequate parent in 5 to 10 years. *In re Jessica SS., 234 A.D.2d 865, 651 N.Y.S.2d 693, 1996 N.Y. App. Div. LEXIS 12850 (N.Y. App. Div. 3d Dep't 1996)*.

Mother's mental illness, putting children in danger of being neglected if they were returned to her, supported termination of her parental rights where her illness extended over her entire adult life, including more than 15 hospitalizations, she was delusional in recent interviews with court-appointed psychiatrist, and her treating psychiatrist testified only that she "might" under some circumstances be able to care for children; it was immaterial that experts disagreed about specific diagnosis. *In re Theone A. A., 282 A.D.2d 290, 724 N.Y.S.2d 39, 2001 N.Y. App. Div. LEXIS 3906 (N.Y. App. Div. 1st Dep't 2001)*.

Family court's termination of the mother's parental rights on the ground of mental illness pursuant to *N.Y. Soc. Serv. Law § 384-b(4)(c)* was affirmed where (1) the family court's determination was supported by clear and convincing evidence, (2) the mere possibility that the mother's condition, with proper treatment, could have improved in the

future was insufficient to vitiate the family court's conclusion, (3) two of the psychologists were in agreement that the mother was afflicted with a mental disease or condition to such an extent that, if the children were returned to her they would have been in danger of becoming neglected children, N.Y. Soc. Serv. Law § 384-b(6)(a), and thus it was of no moment that they disagreed regarding the exact nature of that mental disease or condition, (4) the testimony and the accompanying records were sufficient to establish the totality of the mother's mental illness by clear and convincing evidence, and (5) the opinion of a third psychologist that the mother was not mentally ill merely raised a question of credibility for the family court to determine. *Wayne County Dep't of Soc. Servs. v Pamela S. (In re Damion S.), 300 A.D.2d 1039, 752 N.Y.S.2d 476, 2002 N.Y. App. Div. LEXIS 12974 (N.Y. App. Div. 4th Dep't 2002)*.

Trial court's determination that a mother could not provide proper care for her children by reason of the mother's mental retardation was based on clear and convincing evidence, as the mother lacked ability to make decisions commonly required of parents, and lacked an insight into the nature of her mental problems. Tiffany S. v Emily S., 302 A.D.2d 758, 755 N.Y.S.2d 745, 2003 N.Y. App. Div. LEXIS 1538 (N.Y. App. Div. 3d Dep't), app. denied, *100 N.Y.2d 503, 761 N.Y.S.2d 595, 791 N.E.2d 961, 2003 N.Y. LEXIS 1019 (N.Y. 2003)*.

Family court properly terminated a mother's parental rights to her children pursuant to N.Y. Soc. Serv. Law § 384-b(4)(c), (6)(a); testimony by a court-appointed psychiatrist supported the family court's finding that the mother suffered from mental illness and was unable to care for the children. In re Lashawn Shanteal R., 14 A.D.3d 467, 789 N.Y.S.2d 20, 2005 N.Y. App. Div. LEXIS 595 (N.Y. App. Div. 1st Dep't 2005).

In a termination of parental rights case based on the mother's mental illness, a licensed psychologist testified that he evaluated the mother on two separate occasions, administered several tests, reviewed the agency's files and spoke with her intensive case manager, prior therapist, treating psychiatrist, homemaker, and others before forming his opinion that the mother would never be able to adequately care for her child; he testified that she had a lengthy history of mental illness and suffered from a major depressive disorder, and, although she had made recent improvements, he opined that she would ultimately relapse. The testimony of her own psychiatrist was not to the contrary and he did not refute the claim that she was likely to relapse; thus, termination of the mother's parental rights based on her mental illness was appropriate under N.Y. Soc. Serv. Law § 384-b(4)(c). Matter of Ashley L. v Madeline L., 22 A.D.3d 915, 802 N.Y.S.2d 283, 2005 N.Y. App. Div. LEXIS 11206 (N.Y. App. Div. 3d Dep't 2005).

Because a social services agency could submit other medical evidence in addition to an expert's testimony, and because the children did not first have to be freed for adoption, the trial court properly adjudicated the children to be the children of a mentally ill parent, and terminated the mother's parental rights under N.Y. Soc. Serv. Law § 384-b. Matter of Peter GG., 33 A.D.3d 1104, 822 N.Y.S.2d 668, 2006 N.Y. App. Div. LEXIS 12498 (N.Y. App. Div. 3d Dep't 2006).

Termination of a mother's parental rights pursuant to N.Y. Soc. Serv. Law § 384-b was proper on the basis that the mother was mentally ill because even though the mother's therapist testified that the mother might improve enough to adequately parent her child, the possibility of an improvement was insufficient to overturn the family court's decision; a court-appointed psychologist testified that the mother suffered from a mental illness, specifically, an untreatable learning disorder, not otherwise specified, and a mixed personality disorder with antisocial, borderline, narcissistic and histrionic traits, and that the possibility of significant improvement was extremely low. Matter of Evelyn B., 37 A.D.3d 991, 830 N.Y.S.2d 804, 2007 N.Y. App. Div. LEXIS 1962 (N.Y. App. Div. 3d Dep't 2007).

Family court's determination that a father's illness rendered him unable to care for his children "presently and for the foreseeable future" under Social Services Law § 384-b(4)(c), (3)(g), was supported by clear and convincing evidence given the conclusion of a psychologist opined, based on a review of the father's records and history, as well as her own testing and two personal examinations of him, that due to the father's paranoia, problems with orientation to time, place and situation, and deficiencies in judgment, among other things, the father lacked the capacity to care for himself or his children, and that such incapacity would persist for the foreseeable future, and given the documentary evidence and the testimony of multiple caseworkers, which corroborated the psychologist's observations and ultimate conclusion; while a psychiatrist, who had examined and treated the father regarding his

competency to stand trial in the related criminal proceeding, did testify on behalf of the father, such testimony was of limited probative value because the psychiatrist did not testify on the issues germane to the family court proceedings at issue on appeal, such as the father's ability to care for himself and his children or to function in society. *Matter of August ZZ. v Matthew ZZ., 42 A.D.3d 745, 840 N.Y.S.2d 184, 2007 N.Y. App. Div. LEXIS 8385 (N.Y. App. Div. 3d Dep't 2007)*.

58. — —Sufficient evidence

Family Court properly determined that mother was unable to care for her child presently or in foreseeable future due to mental illness where court-appointed psychiatrist provided unequivocal testimony that mother should not be primary caretaker, medical records reflected her frequent and extensive hospitalizations and institutionalizations for chronic schizophrenia dating back 17 years, and her own demeanor and testimony at hearing demonstrated disorientation as to time, paranoia, and lack of understanding of her condition. *In re Edward R., 123 A.D.2d 866, 507 N.Y.S.2d 647, 1986 N.Y. App. Div. LEXIS 60982 (N.Y. App. Div. 2d Dep't 1986)*.

Termination of mother's parental rights on ground of mental illness was supported by clear and convincing evidence based on psychiatric testimony that (1) mother suffered from chronic residual schizophrenia and was "paranoid volitional," (2) mother refused to accept professional therapy to improve her condition, and (3) child would be in imminent danger of becoming neglected if returned to mother's custody. *In re Ann Marie D., 127 A.D.2d 764, 512 N.Y.S.2d 157, 1987 N.Y. App. Div. LEXIS 53411 (N.Y. App. Div. 2d Dep't 1987)*.

In proceeding pursuant to CLS *Soc Serv § 384-b* to adjudicate child as child of mentally ill or mentally retarded parents and to terminate parental rights, Department of Social Services showed by clear and convincing evidence that parents were mentally ill where psychiatrist and 2 psychologists all concurred that parents were afflicted with chronic personality disorders which indicated that child would be neglected if returned to their custody. *In re Jammie CC., 149 A.D.2d 822, 540 N.Y.S.2d 27, 1989 N.Y. App. Div. LEXIS 4861 (N.Y. App. Div. 3d Dep't 1989)*.

Although readoptive homes had not been found for all 6 subject children, termination of mother's parental rights was in best interests of all of them where uncontroverted expert testimony proved that mother was presently, and for foreseeable future would be, unable, by reason of mental illness, to provide proper care for her children; under most optimistic prognosis, mother would need at least 7 years of therapy and medications before her condition could be normalized. *In re Guardianship & Custody of Roselyn Mercedes F., 238 A.D.2d 222, 657 N.Y.S.2d 8, 1997 N.Y. App. Div. LEXIS 4068 (N.Y. App. Div. 1st Dep't 1997)*.

Mother's parental rights were properly terminated for mental illness where she had long history of psychiatric treatment, she had not responded to medication, she believed that she could talk to television and to angels and that sun followed her around, social worker testified that mother exhibited inappropriate behavior when caring for child, and psychiatrist testified that mother was schizophrenic, that her psychological problems would continue, and that she would not be able to care for child in times of stress. *In re Christine K., 255 A.D.2d 513, 680 N.Y.S.2d 615, 1998 N.Y. App. Div. LEXIS 12619 (N.Y. App. Div. 2d Dep't 1998)*.

Evidence supported termination of mother's parental rights based on mental illness where psychiatrist from Family Court Mental Health Services testified that she suffered from personality disorder with dependent, passive-aggressive and paranoid features, that she had longstanding bipolar disorder which was in partial remission, and that she had history of neglect and inability to act in accordance with her children's needs due to her personality disorder. *Harlem Dowling - Westside Ctr. for Children & Family Servs. ex rel. Ebony Shaquiera C. v Marion L.C., 264 A.D.2d 845, 695 N.Y.S.2d 590, 1999 N.Y. App. Div. LEXIS 9431 (N.Y. App. Div. 2d Dep't 1999)*, app. dismissed, *94 N.Y.2d 890, 706 N.Y.S.2d 77, 727 N.E.2d 574, 2000 N.Y. LEXIS 149 (N.Y. 2000)*.

Finding of mother's mental illness under CLS *Soc Serv § 384-b(4)(c)*, in proceeding to terminate her parental rights, was supported by proof of her lengthy history of mental illness, her poor compliance with treatment plans, and opinion of psychiatrist; psychiatrist's inability to review all of mother's clinical records did not require discrediting

psychiatrist's testimony. *In re Guardianship of Elizabeth J., 282 A.D.2d 315, 724 N.Y.S.2d 581, 2001 N.Y. App. Div. LEXIS 3867 (N.Y. App. Div. 1st Dep't 2001)*.

The totality of the evidence (expert opinion), clearly and convincingly, established the mother's mental illness and that it had a significant impact on her parenting abilities and she was not, nor would she be in the foreseeable future, able to adequately care for her 10-year-old Asperger's Syndrome (mild autism) affected child, and so the appeals court affirmed termination of the mother's parental rights. *In re Joshua "F", 291 A.D.2d 742, 737 N.Y.S.2d 704, 2002 N.Y. App. Div. LEXIS 2117 (N.Y. App. Div. 3d Dep't 2002)*.

Adjudication in a *N.Y. Soc. Serv. § 384-b* proceeding that the mother was afflicted with a mental illness and, by reason of her mental illness, was presently and for the foreseeable future unable to provide proper and adequate care for the children was proven by clear and convincing evidence. Psychologist's opinions were based on observations and tests. *Matter of Roseanna X. v Joyce Z., 22 A.D.3d 993, 802 N.Y.S.2d 793, 2005 N.Y. App. Div. LEXIS 11468 (N.Y. App. Div. 3d Dep't 2005)*.

In a proceeding pursuant to *N.Y. Soc. Serv. Law § 384-b* to terminate parental rights on the ground of mental illness, proof offered by a county agency, including the testimony of a community services worker and a psychologist, showed by clear and convincing evidence that due to mental illness, a mother was unable to provide adequate care for the subject child. The community services worker testified that the mother exhibited "unusual behavior" during her visits with the child, including inspecting the child's anus on every visit, constantly clipping his fingernails, and on one occasion even eating the clippings; this was sufficient to meet the statutory requirement, § 384-b(4)(c). *Matter of Eagle Ins. Co. v Gueye, 26 A.D.3d 192, 810 N.Y.S.2d 26, 2006 N.Y. App. Div. LEXIS 1616 (N.Y. App. Div. 1st Dep't 2006)*.

There was sufficient expert evidence to support the Family Court's determination that a mother suffered from a mental illness such that she was unable to care for her child presently and for the foreseeable future, in a proceeding pursuant to *N.Y. Soc. Serv. Law § 384-b* to terminate her parent rights; a psychologist explained that the mother presented a risk of sexual offending behavior and she had not made sufficient progress to combat this behavior. *In re Chelsea KK, 28 A.D.3d 849, 812 N.Y.S.2d 173, 2006 N.Y. App. Div. LEXIS 4091 (N.Y. App. Div. 3d Dep't)*, app. denied, *7 N.Y.3d 704, 819 N.Y.S.2d 871, 853 N.E.2d 242, 2006 N.Y. LEXIS 1780 (N.Y. 2006)*.

Agency met its burden of proving by clear and convincing evidence that a mother, by reason of mental illness, was presently and for the foreseeable future unable to provide proper and adequate care for her children (*N.Y. Soc. Serv. Law § 384-b(4)(c)*). The testimony of its expert was unequivocal that the mother was so disturbed in her behavior, feeling, thinking, and judgment that, if her child were returned to her custody, she would be in danger of becoming a neglected child (§ 384-b(6)(a)). *Matter of Robin Victoria P. v Joy P.C.B., 34 A.D.3d 292, 824 N.Y.S.2d 81, 2006 N.Y. App. Div. LEXIS 13441 (N.Y. App. Div. 1st Dep't 2006)*.

Because there was sufficient psychiatric evidence that the parents were unable to provide proper and adequate care for their children by reason of mental illness, pursuant to *N.Y. Soc. Serv. Law § 384-b(4)(c)*, their parental rights were properly terminated. *Matter of Darren HH. v Amber HH., 72 A.D.3d 1147, 898 N.Y.S.2d 315, 2010 N.Y. App. Div. LEXIS 2641 (N.Y. App. Div. 3d Dep't)*, app. denied, *15 N.Y.3d 703, 906 N.Y.S.2d 817, 933 N.E.2d 216, 2010 N.Y. LEXIS 1402 (N.Y. 2010)*.

Because there was evidence from two psychologists who performed court-ordered evaluations of a mother that the mother was, and for the foreseeable future would remain, unable to provide proper and adequate care for her children by reason of mental illness, pursuant to *N.Y. Soc. Serv. Law § 384-b(4)(c)*, her parental rights were properly terminated. *Matter of Burton C. (Marcy C.), 91 A.D.3d 1038, 937 N.Y.S.2d 362, 2012 N.Y. App. Div. LEXIS 145 (N.Y. App. Div. 3d Dep't 2012)*.

59. — —Insufficient evidence

The Family Court improperly granted a petition to terminate the parental rights of a natural mother on the ground of her mental illness pursuant to Soc Serv Law § 384-b(4)(c), where the quality and quantity of the psychiatric testimony was insufficient to satisfy the requirement of strict adherence to the statutory mandate of Soc Serv Law § 384-b(3)(g) requiring production of "clear and convincing proof" of a parent's present and future inability to care for his or her child because of mental illness, in that the psychiatric examination was brief and occurred approximately nine months prior to the hearing, there was no articulated basis for the testimony concerning the extent of the mother's illness and its manifestations, and the inferences as to future condition apparently drawn from the mother's past behavior were not adequately supported. *In re Guardianship of B., 57 N.Y.2d 641, 454 N.Y.S.2d 63, 439 N.E.2d 872, 1982 N.Y. LEXIS 3594 (N.Y. 1982)*.

Evidence did not support termination of parental relationship where petitioner, whose out-of-wedlock child was voluntarily placed with the Department of Social Services, had been treated as an in-patient and in a halfway house for schizophrenia and continued to see a psychiatrist, and there was testimony that petitioner was in remission although she might have a recurrence of her illness, and the record unequivocally established that she was not disabled by any acute mental illness at the time of the hearing on her application for termination of the child's placement for adoption. *In re "GG", 69 A.D.2d 311, 419 N.Y.S.2d 275, 1979 N.Y. App. Div. LEXIS 11355 (N.Y. App. Div. 3d Dep't 1979)*, aff'd, *51 N.Y.2d 741, 432 N.Y.S.2d 363, 411 N.E.2d 782, 1980 N.Y. LEXIS 2602 (N.Y. 1980)*.

In an action seeking termination of parental rights on the ground of mental illness, an order terminating a mother's rights would be reversed, and a new trial ordered, where expert psychiatric testimony had been contradictory, confused, equivocal, and inconclusive. *In re M., 89 A.D.2d 781, 453 N.Y.S.2d 493, 1982 N.Y. App. Div. LEXIS 17894 (N.Y. App. Div. 4th Dep't 1982)*.

In a proceeding pursuant to Soc Serv Law § 384-b to terminate the parental rights of a mother of a child and award custody in guardianship to the County Commissioner of Social Services, the petition was improperly granted where the report and testimony of the psychiatrist who testified as to the mother's reactions and responses to his questions did not indicate, much less show by clear and convincing proof, that the mother was presently and for the foreseeable future unable by reason of mental illness to provide proper and adequate care for the child, nor did his testimony as to the effects of the mother's prior hospitalizations relating to her alleged schizophrenia constitute statutorily required clear and convincing proof of the mental illness in that the records of her hospitalizations were not introduced into evidence. *In re Kathleen B., 90 A.D.2d 550, 455 N.Y.S.2d 128, 1982 N.Y. App. Div. LEXIS 18606 (N.Y. App. Div. 2d Dep't 1982)*.

Termination of parental rights on ground of mental illness would be reversed where psychiatrist testified as to mother's mental condition without examining her, after she had been unavailable for 3 scheduled appointments because she was hospitalized, since CLS Soc Serv § 384-b(6)(e) was clear that psychiatrist could not testify without examination of mother unless she refused to submit to examination or rendered herself unavailable by departure from state or concealment, and there was nothing in record to establish that mother refused to submit to examination or made herself unavailable within meaning of statute. *In re James W., 155 A.D.2d 381, 548 N.Y.S.2d 11, 1989 N.Y. App. Div. LEXIS 15072 (N.Y. App. Div. 1st Dep't 1989)*.

In proceeding under CLS Soc Serv § 384-b to terminate parental rights of mother, agency failed to establish that mother was mentally ill where (1) expert testified that mother had mixed personality disorder based on his one-hour examination of her and her medical records, but one report on which he claimed to rely was dated after his own report, and it was shown that he did not review hospital records until morning of hearing, and (2) records of mother's psychiatrist showed that he opined that her condition might improve with intensive therapy. *In re Shantelle W., 185 A.D.2d 935, 587 N.Y.S.2d 393, 1992 N.Y. App. Div. LEXIS 10064 (N.Y. App. Div. 2d Dep't 1992)*.

Mother's parental rights to her three minor children were improperly terminated on the ground of mental illness because the family court failed to comply with *N.Y. Soc. Serv. Law § 384-b(6)(e)* as the psychology expert who testified at the relevant hearing did not actually examine the mother but only examined agency and hospital records.

Matter of Shonica Ahaila S., 41 A.D.3d 606, 840 N.Y.S.2d 78, 2007 N.Y. App. Div. LEXIS 7487 (N.Y. App. Div. 2d Dep't 2007).

Agency failed to establish by clear and convincing evidence that the father was unable to provide adequate care for the children due to mental illness under *N.Y. Soc. Serv. Law § 384-b(3)(g)*, (4)(c) as the psychological tests administered were inconclusive and the father displayed no symptoms during his interviews with the psychologist. *Matter of Kyle K. v Harry K., 49 A.D.3d 1333, 854 N.Y.S.2d 270, 2008 N.Y. App. Div. LEXIS 2624 (N.Y. App. Div. 4th Dep't)*, app. denied, *10 N.Y.3d 715, 862 N.Y.S.2d 335, 892 N.E.2d 401, 2008 N.Y. LEXIS 1862 (N.Y. 2008)*.

Family court's orders improperly terminated the mother's parental rights because, in the absence of the first psychologist's inadmissible testimony and report, and with the second psychologist's opinion that the mother did not have a mental condition which prevented her from providing her children with adequate care, the record did not include clear and convincing evidence that the mother suffered from a mental illness rendering her unable to care for her children. *Matter of Dakota F. (Angela F.), 110 A.D.3d 1151, 974 N.Y.S.2d 594, 2013 N.Y. App. Div. LEXIS 6699 (N.Y. App. Div. 3d Dep't)*, app. denied, *22 N.Y.3d 1015, 981 N.Y.S.2d 346, 4 N.E.3d 356, 2013 N.Y. LEXIS 3289 (N.Y. 2013)*.

Petitioner failed to sustain the burden of proof by clear and convincing evidence that respondent was mentally ill within the meaning of section 384-b (subd 4, par [c]) of the Social Services Law, since no history of mental illness or hospitalizations was shown for respondent, the court-appointed psychiatrist found no mental disorder, and the only diagnosis of mental illness was made by petitioner's psychiatrist; moreover, a showing was required not only that the parent was presently incapable of providing proper and adequate care for a child but also for the foreseeable future (*Social Services Law, § 384-b*, subd 4, par [c]), and there was testimony that with remedial and supportive services the respondent could function as a mother. *In re R., 98 Misc. 2d 910, 414 N.Y.S.2d 982, 1979 N.Y. Misc. LEXIS 2976 (N.Y. Fam. Ct. 1979)*.

In proceeding to terminate parental rights of mother on grounds of mental illness, court will grant motion for second mental examination, where first examination was inconclusive, results perhaps attributable to fact that certain mental illnesses are cyclical and contain periods of remission during which patient appears totally normal; although *Social Services Law § 384-b* fails to indicate any legal basis for ordering second mental examination, it is clear from statute that it is legislative mandate that court do all within its power to move proceedings forward to conclusion toward end of finalizing status of child in issue. *Catholic Child Care Soc. of Diocese v Evelyn F., 128 Misc. 2d 1023, 492 N.Y.S.2d 338, 1985 N.Y. Misc. LEXIS 3048 (N.Y. Fam. Ct. 1985)*.

60. —Evidence of mental retardation

Permanent severance of parental rights on part of mentally retarded parent does not require factual showing, on experimental basis, that parent is incapable of providing minimum everyday care for child. *In re Alfredo HH, 109 A.D.2d 980, 486 N.Y.S.2d 689, 1985 N.Y. App. Div. LEXIS 47482 (N.Y. App. Div. 3d Dep't 1985)*.

Mentally retarded parent failed to establish bias of court-appointed psychologist who gave expert testimony at hearing in child protection proceeding to terminate parent's guardianship and custody of her infant children, even though psychologist initially believed that he had been retained by County Department of Social Services, not court, and he received parent's background information from county, where he testified that he used standard psychological tests in examining parent, he followed standard procedures, and he arrived at his conclusions in objective manner. *In re Elizabeth Q., 126 A.D.2d 905, 511 N.Y.S.2d 181, 1987 N.Y. App. Div. LEXIS 42014 (N.Y. App. Div. 3d Dep't 1987)*.

In concluding that mildly retarded mother's mental capacity prevented her from being able to provide proper and adequate care for her troubled 15-year-old son, court properly relied on expert testimony delineating not only how mother's cognitive and emotional deficits made it difficult or impossible for her to make appropriate parenting decisions in general, but also how those factors affected her ability to address her son's specific needs as teenager

who previously had been sexually assaulted. *In re Dale T., 236 A.D.2d 744, 654 N.Y.S.2d 45, 1997 N.Y. App. Div. LEXIS 2019 (N.Y. App. Div. 3d Dep't 1997)*.

A father's rights were properly terminated on the ground of mental retardation when his rights to another child had previously been terminated on the same ground. The father had been allowed to cross-examine a court-appointed expert who had issued a new evaluation of him; it was not error to allow him to present only evidence from experts who could contradict the testimony of the court-appointed expert; and it was not error to deny the father's request for an adjournment to enable him to call his own expert to testify when the child had been in foster care for two and a half years, the only opposition the father had offered was that he should be allowed to cross-examine the court-appointed expert, and he was unable to show that expert testimony would be favorable to him. *In re Clarence S., 28 A.D.3d 1253, 813 N.Y.S.2d 604, 2006 N.Y. App. Div. LEXIS 5750 (N.Y. App. Div. 4th Dep't)*, app. denied, *7 N.Y.3d 706, 837 N.Y.S.2d 1, 868 N.E.2d 662, 2006 N.Y. LEXIS 2098 (N.Y. 2006)*.

61. — —Sufficient evidence

In proceeding pursuant to CLS *Soc Serv § 384-b* to adjudicate child as child of mentally ill or mentally retarded parents and to terminate parental rights, Department of Social Services showed by clear and convincing evidence that parents were mentally retarded where psychiatrist and 2 psychologists diagnosed parents as suffering from borderline subaverage intellectual functioning and concluded that child was in danger of becoming neglected if returned to parents. *In re Jammie CC., 149 A.D.2d 822, 540 N.Y.S.2d 27, 1989 N.Y. App. Div. LEXIS 4861 (N.Y. App. Div. 3d Dep't 1989)*.

Termination of respondent mother's parental rights due to mental incapacity would be sustained where (1) psychologists placed her IQ in range of 47 to 64, with mental age of 6 years, 9 months, (2) her retardation originated in developmental period, (3) Department of Social Services experts opined that her retardation was long-standing and would continue in future, (4) one psychologist testified that she would be incapable of appropriately responding to stress such as emergency, that her oldest child would assume role of parent, and that her children would be in danger of sexual abuse because of her limited judgment in relationships with men, and (5) record showed that provision of protracted homemaker services and training designed to improve her parenting skills had been unavailing. *In re Karen Y., 156 A.D.2d 823, 550 N.Y.S.2d 67, 1989 N.Y. App. Div. LEXIS 15867 (N.Y. App. Div. 3d Dep't 1989)*, app. denied, *75 N.Y.2d 710, 556 N.Y.S.2d 247, 555 N.E.2d 619, 1990 N.Y. LEXIS 918 (N.Y. 1990)*.

Termination of mother's parental rights was supported by evidence that she was unable by reason of mental retardation to provide proper and adequate care for child, who had been in foster care with same foster mother since her birth 7 years before, where clinical psychologist testified that mother lacked most basic of parental skills, was unable to maintain most skills necessary for independent living, was unable to budget, did not cook or shop, and had problems with basic child care functioning and no appreciation of child's emotional bonding needs. *In re Commitment of Jessica Latasha B., 234 A.D.2d 48, 650 N.Y.S.2d 673, 1996 N.Y. App. Div. LEXIS 12304 (N.Y. App. Div. 1st Dep't 1996)*.

Family Court properly terminated mother's parental rights where uncontroverted expert testimony demonstrated that her limited mental capabilities prevented her from benefiting significantly from sexual offender treatment program and parenting classes, that her lack of judgment and her emotional limitations made it improbable that she would be able to protect her teenage son from further abuse at hands of her husband (from whom she failed to separate despite professing desire to do so), and that there was little likelihood that situation would change in foreseeable future. *In re Dale T., 236 A.D.2d 744, 654 N.Y.S.2d 45, 1997 N.Y. App. Div. LEXIS 2019 (N.Y. App. Div. 3d Dep't 1997)*.

Mother's parental rights were properly terminated on ground of her mental retardation where 3 mental health professionals testified that mother was mildly retarded, did not fully comprehend her sexually offending behavior or its effects on her daughter, and was unable to provide safe environment for daughter, and evidence showed that daughter continued to suffer emotional problems from being sexually abused, did not want to reestablish

relationship with mother, and was terrified of both her parents. *In re Kathleen "OO", 260 A.D.2d 967, 689 N.Y.S.2d 286, 1999 N.Y. App. Div. LEXIS 4426 (N.Y. App. Div. 3d Dep't 1999)*.

Mother's parental rights were properly terminated on ground that she was presently, and for foreseeable future would be, unable to care for her children by reason of mental retardation where (1) court-appointed psychologist testified that, based on her examinations of mother and review of mother's medical records, mother was suffering from mental retardation, and (2) mother's condition was long-standing and included history of poor judgment. *In re Tysheeka J., 281 A.D.2d 626, 722 N.Y.S.2d 258, 2001 N.Y. App. Div. LEXIS 3125 (N.Y. App. Div. 2d Dep't 2001)*.

Department of social services established by clear and convincing evidence pursuant to *N.Y. Soc. Serv. Law § 384-b(3)(g)*, (4)(c), (6)(b) that the mother was unable to care for the mother's child as a result of the mother's mental retardation; a psychiatrist and psychologist concluded that the mother was unable to provide proper care for the child due to the mother's mental retardation. *Erie County Dep't of Soc. Servs. v Kimberly Ann R. (In re Christine Marie R.), 302 A.D.2d 992, 755 N.Y.S.2d 540, 2003 N.Y. App. Div. LEXIS 1030 (N.Y. App. Div. 4th Dep't)*, app. denied, *100 N.Y.2d 503, 762 N.Y.S.2d 873, 793 N.E.2d 410, 2003 N.Y. LEXIS 1269 (N.Y. 2003)*.

Where the psychologist's unrefuted testimony established that the mother was mentally retarded and that the condition, which prevented the mother from adequately caring for the children, would never substantially improve, the mother's parental rights were properly terminated pursuant to *N.Y. Soc. Serv. Law § 384-b(6)(b)*. *Dutchess County Dep't of Soc. Servs. v Billie Jo S. (In re Lisa Marie S.), 304 A.D.2d 762, 758 N.Y.S.2d 386, 2003 N.Y. App. Div. LEXIS 4269 (N.Y. App. Div. 2d Dep't)*, app. denied, *100 N.Y.2d 508, 764 N.Y.S.2d 385, 796 N.E.2d 477, 2003 N.Y. LEXIS 1759 (N.Y. 2003)*, app. dismissed, *100 N.Y.2d 575, 764 N.Y.S.2d 383, 796 N.E.2d 475, 2003 N.Y. LEXIS 1771 (N.Y. 2003)*.

Evidence clearly and convincingly established that the parents of two children were mentally retarded and would be unable to adequately care for them, *N.Y. Soc. Serv. Law § 384-b(4)(c)*, as a psychologist found that they were mentally retarded as defined in § 384-b(6)(b), the father with a full scale IQ of 70, and the mother with a full scale IQ of 54. Termination of parental rights was in the children's best interests. *Matter of Melissa LL. v Linda LL., 30 A.D.3d 705, 817 N.Y.S.2d 407, 2006 N.Y. App. Div. LEXIS 7504 (N.Y. App. Div. 3d Dep't)*, app. denied, *7 N.Y.3d 710, 822 N.Y.S.2d 758, 855 N.E.2d 1173, 2006 N.Y. LEXIS 2617 (N.Y. 2006)*, app. denied, *7 N.Y.3d 710, 822 N.Y.S.2d 758, 855 N.E.2d 1173, 2006 N.Y. LEXIS 2601 (N.Y. 2006)*.

62. — —Insufficient evidence

In a proceeding to terminate the parental rights of the respondent mother by reason of mental illness or mental retardation, the allegation of mental retardation is dismissed without prejudice since there was not strict compliance with section 384-b (subd 6, par [e]) of the Social Services Law, which requires the testimony of a court-appointed physician and a certified psychologist, in that there was no testimony by a physician offered on the issue of mental retardation, the court-appointed psychologist was uncertified, and the testimony of a certified psychologist on behalf of petitioner did not fall within the purview of the required independent, disinterested psychological appraisal. *In re R., 98 Misc. 2d 910, 414 N.Y.S.2d 982, 1979 N.Y. Misc. LEXIS 2976 (N.Y. Fam. Ct. 1979)*.

C. Neglect

63. Generally

In order to support the termination of a parental relationship for reason of neglect, it must be alleged that the child was in the care of an authorized agency and that the agency made diligent efforts to encourage and strengthen the parental relationship. *In re L., 80 A.D.2d 681, 436 N.Y.S.2d 427, 1981 N.Y. App. Div. LEXIS 10381 (N.Y. App. Div. 3d Dep't 1981)*.

In permanent neglect proceeding under CLS Soc Serv § 384-b, father was not entitled to reversal of Family Court's determination, terminating his parental rights as to his daughter, based on fact that he had been awarded joint custody of his twin sons in separate proceeding, since 2 proceedings were not so closely related as to require determination in one to dictate result in other. *In re Jennie EE, 187 A.D.2d 877, 590 N.Y.S.2d 549, 1992 N.Y. App. Div. LEXIS 13362 (N.Y. App. Div. 3d Dep't 1992)*, app. denied, *81 N.Y.2d 706, 597 N.Y.S.2d 936, 613 N.E.2d 968, 1993 N.Y. LEXIS 672 (N.Y. 1993)*.

In neglect proceeding, evidence was sufficient to establish that mother and children lived at apartment that was in general disrepair and unsanitary, despite absence of social services records pertaining to mother's address, where caseworker twice visited apartment and found children there in care of mother's sister or mother, and although mother asserted that she did not live at apartment, she was unable to give address of sister with whom she claimed to live. *Commissioner of Social Servs. ex rel. Pedro F. v Norma F., 212 A.D.2d 400, 622 N.Y.S.2d 518 (N.Y. App. Div. 1st Dep't 1995)*.

Department of Social Services was justified in requiring that father at least acknowledge that sexual abuse of his daughter had occurred while in his custody where there had been adjudication to that effect. *In re Jesus JJ, 232 A.D.2d 752, 649 N.Y.S.2d 61, 1996 N.Y. App. Div. LEXIS 10233 (N.Y. App. Div. 3d Dep't 1996)*, app. denied, *89 N.Y.2d 809, 655 N.Y.S.2d 889, 678 N.E.2d 502, 1997 N.Y. LEXIS 218 (N.Y. 1997)*.

After entry of fact-finding orders of permanent neglect of child by both parents under CLS Soc Serv § 384-b(4)(d), Family Court had 3 dispositional options: dismissal of social service agency's petition to terminate parental rights in accordance with CLS Family Ct Act §§ 631(a) and 632; suspension of judgment for up to one year in accordance with CLS Family Ct Act §§ 631(b) and 633; or termination of parental rights and commitment of custody and guardianship of child to agency so that child might be adopted in accordance with CLS Family Ct Act §§ 631(c) and 634. *In re Tiffany A., 242 A.D.2d 709, 662 N.Y.S.2d 796, 1997 N.Y. App. Div. LEXIS 9235 (N.Y. App. Div. 2d Dep't 1997)*.

Legislative policy expressed in CLS Soc Serv § 384-b(1)(a)(ii) favoring, in general, child's remaining in natural home does not contradict express statutory mandate in CLS Family Ct Act § 631 that no presumption favoring biological parent shall impact any particular disposition made after finding of permanent neglect. *In re Tiffany A., 242 A.D.2d 709, 662 N.Y.S.2d 796, 1997 N.Y. App. Div. LEXIS 9235 (N.Y. App. Div. 2d Dep't 1997)*.

No finding of past or present harm to child is necessary to support finding of neglect. *In re Karyn D., 282 A.D.2d 746, 724 N.Y.S.2d 335, 2001 N.Y. App. Div. LEXIS 4227 (N.Y. App. Div. 2d Dep't 2001)*.

Because nonfrivolous issues existed under N.Y. Soc. Serv. Law § 384-b(7)(a), including whether a mother failed to plan for her child's future for a period of more than one year following the date the child came into an agency's care, assigned counsel's motion to be relieved of the assignment to prosecute the mother's appeal was granted. *Matter of David Ontario C. v Gwendolyn C., 52 A.D.3d 707, 858 N.Y.S.2d 916, 2008 N.Y. App. Div. LEXIS 5636 (N.Y. App. Div. 2d Dep't 2008)*.

In habeas corpus proceeding by child care agency to return foster child to his or her natural parent, past finding of neglect by natural parent is not prima facie evidence of unfitness since, if courts were to apply such rule, no child placed in foster care after finding of neglect could be reunited with his or her parent; instead parent must be proven presently unfit to be denied custody of his or her natural child. *Little Flower Children's Services v Andrew C., 144 Misc. 2d 671, 545 N.Y.S.2d 444, 1989 N.Y. Misc. LEXIS 490 (N.Y. Fam. Ct. 1989)*.

Agency would not be permitted to re-place neglected child in specific certified foster home since such re-placement would not further likelihood of success of permanency plan and would not be in child's best interests where (1) mother was adverse to such re-placement on basis that child was bonded to both her and to prior foster parents and that prior foster parents attempted to subvert permanency plan, (2) testimony of caseworkers showed that child had bonded to both mother and prior foster parents and felt trapped between conflicting loyalties, (3) current foster mother, who was unavailable for re-placement, testified that child's behavior had improved and that she had good attitude toward visits with her mother, and (4) prior foster mother testified that her relationship with mother was

strained and admitted that she had not been in favor of permanency plan. *In re Adrienne M., 153 Misc. 2d 803, 583 N.Y.S.2d 756, 1992 N.Y. Misc. LEXIS 126 (N.Y. Fam. Ct. 1992)*, aff'd, *201 A.D.2d 938, 610 N.Y.S.2d 908, 1994 N.Y. App. Div. LEXIS 2122 (N.Y. App. Div. 4th Dep't 1994)*.

While it was not a conflict of interest for petitioner New York Administration for Children's Services (ACS) to prosecute neglect cases against respondent minor parents who were also in foster care under the jurisdiction of the agency, the court urged ACS to consider bringing such proceedings under the authority of *N.Y. Soc. Serv. Law § 398*, because although *N.Y. Soc. Serv. Law § 384-b* set forth a procedure which could be utilized for assuming care of a destitute child in certain circumstances, it in no way required utilization of that procedure if ACS merely wished to "assume charge" of a destitute child under *N.Y. Soc. Serv. Law § 398*. *Matter of Lawrence Children, 768 N.Y.S.2d 83, 1 Misc. 3d 156, 2003 N.Y. Misc. LEXIS 889 (N.Y. Fam. Ct. 2003)*.

64. Constitutionality

Due process is required to be observed in child neglect proceedings. Parental rights are fervently guarded and exacting procedural safeguards are a necessity when such rights are sought to be interfered with. *In re Roy Anthony A., 59 A.D.2d 662, 398 N.Y.S.2d 277, 1977 N.Y. App. Div. LEXIS 13577 (N.Y. App. Div. 1st Dep't 1977)*.

In a proceeding by a county social services department to permanently terminate a mother's rights to the guardianship and custody of her daughter, an order adjudging the daughter to be permanently neglected and directing that adoption proceed was proper, even though the "fair preponderance of the evidence" standard employed by the court was unconstitutional in that the correct standard was proof by "clear and convincing evidence," where the fact that the mother suffered from a mental illness did not obligate the county to base the termination proceeding on that ground and did not preclude the county from pursuing termination on the basis of permanent neglect, permanent neglect was based on a parent's physical and financial inability to care for the child, and did not equate mental and physical capacity, the mother's mental disability did not establish a physical disability exonerating her from the obligation to plan for her child or preclude the county from seeking to terminate her rights for failure to meet that responsibility, and where the mother failed to plan for the future of the child by evidence showing that she was unable to establish a stable residence, had failed to regularly attend a weekly group counseling session, to complete a personal adjustment training course, to secure employment, and allowed the county to act as representative payee of the mother's social security payments. *In re Candie Lee "W", 91 A.D.2d 1106, 458 N.Y.S.2d 347, 1983 N.Y. App. Div. LEXIS 16448 (N.Y. App. Div. 3d Dep't 1983)*.

Phrase "plan for the future of the child," as contained in CLS *Soc Serv § 384-b(7)(a)*, is not unconstitutionally vague, and did not deprive mother of due process in proceeding to terminate her parental rights under CLS *Family Ct Act § 614*. *In re Anthony "S", 282 A.D.2d 778, 723 N.Y.S.2d 251, 2001 N.Y. App. Div. LEXIS 3443 (N.Y. App. Div. 3d Dep't 2001)*.

In an appeal which a law guardian filed, claiming that *N.Y. Soc. Serv. Law § 384-b(3)(i)* deprived permanently neglected children of their rights to substantive and procedural due process under *U.S. Const. amend. V* and *XIV* because it did not require a trial court to consider the likelihood that a child would be adopted before the court issued orders terminating the child's parents' parental rights, the appellate court held that *N.Y. Soc. Serv. Law § 384-b(3)(i)* was narrowly tailored to serve the compelling interest of protecting children, and it was constitutional, and evidence which showed that parents did not complete a substance abuse rehabilitation program or a parenting class, as ordered, had barely any contact with their children, and failed to plan for their children's future supported a family court's finding that terminating the parents' parental rights, and freeing their children for adoption, was in the children's best interests. *In re Jessica Marie Q., 303 A.D.2d 512, 757 N.Y.S.2d 304, 2003 N.Y. App. Div. LEXIS 2311 (N.Y. App. Div. 2d Dep't)*, app. denied, *100 N.Y.2d 507, 764 N.Y.S.2d 235, 795 N.E.2d 1244, 2003 N.Y. LEXIS 1740 (N.Y. 2003)*.

In the termination of parental rights action pursuant to *N.Y. Soc. Serv. Law § 384-b*, the father's ineffective assistance of counsel claim pursuant to *N.Y. Const. art. I, § 6* failed, as the father did not suffer any actual prejudice as a result of counsel's claimed deficiencies; the father admitted that the father failed for a period of more than one

year following the date that the father's child was placed in foster care to plan for the child's future, although the father was physically and financially able to do so. *In re Amanda T., 4 A.D.3d 846, 771 N.Y.S.2d 763, 2004 N.Y. App. Div. LEXIS 1446 (N.Y. App. Div. 4th Dep't 2004)*.

Father's *42 U.S.C.S. § 1983* claims against department of social services (DSS) caseworkers, alleging they violated his fundamental liberty interest in having custody of his son, were properly dismissed, because the caseworkers were entitled to absolute immunity for their decisions to request continued placement of the child with DSS and to petition to terminate the father's parental rights. *Matter of Alex LL. v Department of Social Servs. of Albany County, 60 A.D.3d 199, 872 N.Y.S.2d 569, 2009 N.Y. App. Div. LEXIS 294 (N.Y. App. Div. 3d Dep't)*, app. denied, *12 N.Y.3d 710, 881 N.Y.S.2d 19, 908 N.E.2d 927, 2009 N.Y. LEXIS 926 (N.Y. 2009)*.

Even applying strict scrutiny test, statute permitting termination of parental rights on grounds of permanent neglect for parents' "failure to plan for the future of the child," does not violate equal protection clause by distinguishing between parents whose children are in the care of authorized agency and all other parents, in view of fact that evil addressed by such statute was the effect of protracted foster care upon children in custody of authorized agencies, and in view of fact that statute itself did not create any class of parents whatsoever. Statute does not violate parents' right of privacy, in view of fact that state's legitimate concern in preventing evils of protracted foster care, together with children's right to continuous care in a stable, permanent home environment, outweighs parents' right of privacy. *In re N., 91 Misc. 2d 738, 398 N.Y.S.2d 613, 1977 N.Y. Misc. LEXIS 2406 (N.Y. Fam. Ct. 1977)*.

Since the right to the integrity of the family is among the most fundamental rights under the Fourteenth Amendment and proceedings to terminate parental custody strike at the very core of this right, an adjudication of permanent neglect such as will terminate parental rights cannot be sanctioned in the absence of the full panoply of procedural protections guaranteed by the due process clause of the Fourteenth Amendment. *In re M., 99 Misc. 2d 390, 417 N.Y.S.2d 396, 1979 N.Y. Misc. LEXIS 2298 (N.Y. Fam. Ct. 1979)*, rev'd, *In re Roxann Joyce M., 75 A.D.2d 872, 428 N.Y.S.2d 264, 1980 N.Y. App. Div. LEXIS 11507 (N.Y. App. Div. 2d Dep't 1980)*.

A parent who places a child in foster care with an authorized child welfare agency should be read his or her visitation and planning obligations regarding the child and the consequences—termination of parental rights—should he fail to do so (*Family Ct Act, § 614*; *Social Services Law, § 384-b*, subd 7, par [a]), which recitation should be given in English and a second language where necessary by a competent representative of the agency, after which the parent should be carefully questioned to insure that he or she understands his or her duties and obligations. Accordingly, where a father signed a standardized release form which, although it notified him of his duty to visit the child, did not advise him of his duty to plan for her future and the consequences of failing to do so, this omission constituted an abridgment of his due process rights, and a petition to terminate his parental rights based on his failure to plan for her future might be dismissed. *In re M., 99 Misc. 2d 390, 417 N.Y.S.2d 396, 1979 N.Y. Misc. LEXIS 2298 (N.Y. Fam. Ct. 1979)*, rev'd, *In re Roxann Joyce M., 75 A.D.2d 872, 428 N.Y.S.2d 264, 1980 N.Y. App. Div. LEXIS 11507 (N.Y. App. Div. 2d Dep't 1980)*.

65. In care of agency

In private placement adoption proceeding, involvement of authorized agency was not prerequisite to dispensing with consent pursuant to CLS *Dom Rel § 111(2)(d)* on basis that natural parents were mentally retarded. *In re Caroline, 218 A.D.2d 388, 638 N.Y.S.2d 997, 1996 N.Y. App. Div. LEXIS 2879 (N.Y. App. Div. 4th Dep't)*, app. dismissed, *88 N.Y.2d 1016, 649 N.Y.S.2d 381, 672 N.E.2d 607, 1996 N.Y. LEXIS 2703 (N.Y. 1996)*.

Where the mother asserted that the child was not in the care of an authorized agency when the permanent neglect proceeding was commenced, the argument failed, as the child was in the care of an authorized agency when the permanent neglect proceeding was commenced, because the transfer of care to the child's father was on a trial basis pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)*. *In re Ashley E., 6 A.D.3d 1231, 775 N.Y.S.2d 732, 2004 N.Y. App. Div. LEXIS 6274 (N.Y. App. Div. 4th Dep't 2004)*.

66. Statutory period

A mother's parental rights to her child were properly terminated based upon a finding of neglect for a one-year period, notwithstanding that the statutory period had ended several months prior to the commencement of the proceeding, since *Soc Serv Law § 384-b(7)(a)* contemplates a continuous period of one year at any time after a child's placement, and since the delay had occurred due to the petitioning social services agency's effort to reunite the family after the end of the statutory period. *In re Guardianship of Star Leslie W., 63 N.Y.2d 136, 481 N.Y.S.2d 26, 470 N.E.2d 824, 1984 N.Y. LEXIS 4607 (N.Y. 1984)*.

Dismissal of a petition to terminate parental rights for permanent neglect of a child in foster care due to her mother's conduct during a certain period did not preclude use of that period in a subsequent petition on the same grounds, where the order dismissing the petition contemplated future litigation as it directed the county to bring a petition either for return of the child to the mother or alleging permanent neglect within a six month period. *In re Amber "W", 105 A.D.2d 888, 481 N.Y.S.2d 886, 1984 N.Y. App. Div. LEXIS 21013 (N.Y. App. Div. 3d Dep't 1984)*.

County Department of Social Services was not required by CLS *Soc Serv § 384-b* to make diligent efforts to encourage and strengthen parental relationship for continuous period of one year prior to filing permanent neglect petition, since focus of one-year time period is instead on neglectful conduct of parents; although agency could be found to lack requisite diligence if its efforts were made over only brief period of time, such efforts must be examined qualitatively rather than quantitatively. *In re Natalie T., 126 A.D.2d 908, 510 N.Y.S.2d 935, 1987 N.Y. App. Div. LEXIS 42016 (N.Y. App. Div. 3d Dep't 1987)*.

In proceeding to terminate mother's parental rights, court improperly refused to consider conduct of mother during period between one-year period alleged in petition and hearing, which conduct included participation in drug treatment program, lease of apartment, and purchase of car; mother's conduct amounted to substantial change from conduct during one-year period alleged in petition, and should have been considered. *In re Mychael S., 203 A.D.2d 890, 611 N.Y.S.2d 409, 1994 N.Y. App. Div. LEXIS 4864 (N.Y. App. Div. 4th Dep't 1994)*.

For purposes of requirement that permanent neglect petition be filed more than one year after admission of neglect, key date is date child came into custody of petitioning agency, not date of adjudication of neglect. *In re Robin PP, 222 A.D.2d 762, 635 N.Y.S.2d 707, 1995 N.Y. App. Div. LEXIS 12651 (N.Y. App. Div. 3d Dep't 1995)*.

Court had adjourned the neglect proceeding twice. However, the child had been with the agency for more than a year so the court appropriately considered the agency's termination of parental rights petition and terminated the mother's parental rights under *N.Y. Soc. Serv. Law § 384-b(7)(a)*. *In re Elijah NN., 20 A.D.3d 728, 798 N.Y.S.2d 252, 2005 N.Y. App. Div. LEXIS 7813 (N.Y. App. Div. 3d Dep't 2005)*.

County Department of Social Services could properly bring petition to terminate parental rights on ground of permanent neglect against putative father of child who had been placed with department for more than one year prior to filing of termination petition, even though father had filed paternity petition. *In re Ursula J., 169 Misc. 2d 148, 643 N.Y.S.2d 886, 1996 N.Y. Misc. LEXIS 175 (N.Y. Fam. Ct. 1996)*.

67. —Tolling

In permanent neglect proceeding, court properly included mother's residence at halfway house for recovering alcoholics within failure-to-plan period, since mother was not thereby prevented from visiting children as scheduled or from developing plan for children, and social services agency continued to provide various services designed to assist her in preparation of plan; where residence at facility does not interrupt parent's ability to perform her statutory obligations, parent is not "hospitalized" or "institutionalized" within meaning of CLS *Soc Serv § 384-b(7)(d)(ii)*. *In re Regina M. C., 139 A.D.2d 929, 528 N.Y.S.2d 953, 1988 N.Y. App. Div. LEXIS 4192 (N.Y. App. Div. 4th Dep't 1988)*.

To be deemed "hospitalized" or "institutionalized" for purposes of tolling the running of the statutory one-year period requisite to a finding of permanent neglect under Soc Serv Law § 384-b, the parent of the allegedly neglected child must have been admitted to an inpatient, 24-hour-per-day treatment facility that he or she was precluded from freely leaving, and only in such instance would the parental obligations to plan for and visit the child be temporarily suspended; furthermore, it is only necessary that the parental failures to visit and plan for the child occur for a continuous period of more than one year at any time during the child's placement in foster care, and such period is not restricted to the year immediately preceding the filing of a petition for termination of parental rights; accordingly, in a proceeding for termination of parental rights prior to which the authorized child care agency had made diligent efforts to assist the parent, but such efforts were blocked by the parent's failure to keep the agency informed as to her whereabouts, the subject child would be deemed to have been permanently neglected, notwithstanding the fact that the parent had been enrolled in an outpatient drug treatment program during a portion of the child's foster care placement, where the parent totally failed to complete the plan agreed upon by her and the agency, and only visited her child nine times in over two years. *In re Nicole M., 120 Misc. 2d 553, 466 N.Y.S.2d 235, 1983 N.Y. Misc. LEXIS 3759 (N.Y. Fam. Ct. 1983)*.

68. Burden of proof

In a permanent neglect proceeding, an order directing that the custody and guardianship of a child be awarded to petitioner for the purpose of adoption would be affirmed, where a review of the record indicated that petitioner had succeeded in proving, by clear and convincing evidence, that the father had permanently neglected the child. *In re Roxann M., 104 A.D.2d 816, 480 N.Y.S.2d 141, 1984 N.Y. App. Div. LEXIS 20302 (N.Y. App. Div. 2d Dep't 1984)*, app. dismissed, *64 N.Y.2d 871, 487 N.Y.S.2d 555, 476 N.E.2d 1000, 1985 N.Y. LEXIS 15912 (N.Y. 1985)*.

Determination that child is "permanently neglected" must rest on clear and convincing evidence thereof. *In re Nicole TT., 109 A.D.2d 919, 486 N.Y.S.2d 388, 1985 N.Y. App. Div. LEXIS 47446 (N.Y. App. Div. 3d Dep't)*, app. dismissed, *65 N.Y.2d 925, 1985 N.Y. LEXIS 15235 (N.Y. 1985)*, app. denied, *66 N.Y.2d 601, 496 N.Y.S.2d 1025, 490 N.E.2d 553, 1985 N.Y. LEXIS 17212 (N.Y. 1985)*.

Father waived his right to put agency to its proof when he withdrew his answer and consented to adjudication of permanent neglect. *In re Noele D., 209 A.D.2d 828, 619 N.Y.S.2d 188, 1994 N.Y. App. Div. LEXIS 11371 (N.Y. App. Div. 3d Dep't 1994)*.

Contrary to a mother's contention, in a termination of parental rights case, an agency met its burden of establishing by clear and convincing evidence, that despite its diligent efforts to encourage and strengthen the parental relationship, the mother permanently neglected the child by failing to plan for her future; further, a finding that it was in the child's best interests to terminate the mother's parental rights and free her for adoption was supported by a preponderance of the evidence. *In re Eileen Ana R., 1 A.D.3d 521, 767 N.Y.S.2d 236, 2003 N.Y. App. Div. LEXIS 12030 (N.Y. App. Div. 2d Dep't 2003)*, app. denied, *1 N.Y.3d 509, 777 N.Y.S.2d 18, 808 N.E.2d 1277, 2004 N.Y. LEXIS 253 (N.Y. 2004)*.

Social services corporation met its burden of establishing that, despite diligent efforts to encourage and strengthen the relationship, a mother permanently neglected her children; contrary to the mother's contention, the corporation was not collaterally estopped from offering proof of permanent neglect by a prior court order. *In re Justin Henry B., 21 A.D.3d 369, 799 N.Y.S.2d 274, 2005 N.Y. App. Div. LEXIS 8238 (N.Y. App. Div. 2d Dep't 2005)*.

In a termination of parental rights case where the mother failed to appear at the dispositional hearing, the agency met its burden, pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)*, of establishing by clear and convincing evidence that, despite the agency's diligent efforts to encourage and strengthen the parental relationship, the mother permanently neglected the mother's children by failing to plan for their future. *In re Christina Dominique B., 21 A.D.3d 412, 800 N.Y.S.2d 196, 2005 N.Y. App. Div. LEXIS 8379 (N.Y. App. Div. 2d Dep't 2005)*.

Because a father failed to rebut the evidence that he had permanently neglected his children by failing to plan for their future, as required by *N.Y. Soc. Serv. Law § 384-b(3)(g)*, (7)(a), the Family Court properly terminated the

father's parental rights in order to free them for adoption in accordance with *N.Y. Fam. Ct. Act § 631*. *Matter of Jamel B., 47 A.D.3d 626, 849 N.Y.S.2d 296, 2008 N.Y. App. Div. LEXIS 93 (N.Y. App. Div. 2d Dep't 2008)*.

Preponderance of evidence supported the finding that the father neglected the two younger children because the father failed to provide a suitable home environment for them. Also, he stopped taking his mental health medication and acted in an abusive manner to the children's mother while in the children's presence. *Matter of Derick L. (Michael L.), 166 A.D.3d 1325, 89 N.Y.S.3d 354, 2018 N.Y. App. Div. LEXIS 7917 (N.Y. App. Div. 3d Dep't 2018)*, app. denied, *32 N.Y.3d 915, 122 N.E.3d 566, 98 N.Y.S.3d 768, 2019 N.Y. LEXIS 186 (N.Y. 2019)*.

69. Admissions

Evidence was sufficient to support determination that child was permanently neglected where mother admitted in open court that child was abandoned and permanently neglected, notwithstanding contention that mother was misled into making admission by statements of court which created expectation that subsequent good actions would be taken into account on disposition, since court stressed that it made absolutely no guarantees and no commitment concerning disposition. *In re William PP., 185 A.D.2d 397, 585 N.Y.S.2d 631, 1992 N.Y. App. Div. LEXIS 8882 (N.Y. App. Div. 3d Dep't 1992)*.

Mother's admissions that during 13-month period she failed to plan for future of her children despite physical and financial ability to do so, and failed to utilize alcohol rehabilitative services made available by social services agency, were sufficient to support finding of permanent neglect, notwithstanding her subsequent sporadic visits with children. *In re Victoria B., 185 A.D.2d 811, 586 N.Y.S.2d 639, 1992 N.Y. App. Div. LEXIS 9826 (N.Y. App. Div. 2d Dep't 1992)*.

Mother's knowing and voluntary admission in open court that she had permanently neglected her children satisfied burden of proof necessary to support Family Court's finding of permanent neglect under CLS *Soc Serv § 384-b*. *In re Sharena C., 186 A.D.2d 249, 588 N.Y.S.2d 336, 1992 N.Y. App. Div. LEXIS 10832 (N.Y. App. Div. 2d Dep't 1992)*.

It was unnecessary for court to determine that agency made diligent efforts to strengthen parental relationship where mother admitted permanent neglect. *In re James Carton K., 235 A.D.2d 422, 652 N.Y.S.2d 92, 1997 N.Y. App. Div. LEXIS 144 (N.Y. App. Div. 2d Dep't 1997)*.

Father's parental rights were properly terminated where he failed to seek treatment for his ongoing problems of domestic violence and anger control, and his knowing and voluntary admissions provided sufficient basis for adjudication of permanent neglect. *In re Michael W., 266 A.D.2d 884, 697 N.Y.S.2d 898, 1999 N.Y. App. Div. LEXIS 11889 (N.Y. App. Div. 4th Dep't 1999)*.

Family Court did not err in determining that respondent permanently neglected child, even though court ascertained that child was not respondent's biological child, where court made clear to respondent that his admission concerned all 3 children named in petition, court asked respondent if he admitted failing to visit "the kids," failing to plan for future of "the children," and failing to cooperate with agency's plan to have "them" returned to respondent, and he responded "yes" to all those queries. *In re Matthew H., 274 A.D.2d 975, 710 N.Y.S.2d 493, 2000 N.Y. App. Div. LEXIS 7684 (N.Y. App. Div. 4th Dep't 2000)*.

Mother's admissions in an initial neglect proceeding supported the family court's findings of permanent neglect and the evidence at a later hearing supported the family court's findings that the mother had failed to satisfy the conditions of a suspended order of fact-finding and disposition and that the termination of her parental rights was in the child's best interests. *In re Saleem G. (Anonymous), 297 A.D.2d 677, 747 N.Y.S.2d 107, 2002 N.Y. App. Div. LEXIS 8430 (N.Y. App. Div. 2d Dep't 2002)*.

It was unnecessary for the family court, prior to terminating the mother's parental rights, to determine whether the social services agency had exercised diligent efforts to strengthen the parental relationship between the mother and

her son, as the mother admitted to permanent neglect. *In re Saleem G. (Anonymous), 297 A.D.2d 677, 747 N.Y.S.2d 107, 2002 N.Y. App. Div. LEXIS 8430 (N.Y. App. Div. 2d Dep't 2002)*.

Family court properly found a child permanently neglected and terminated the mother's parental rights as the mother admitted to the neglect, she never sought to vacate her admission, and the child was thriving with the foster mother and family. Because the mother admitted to permanent neglect of the child, there was no need for the county department of social services to put forth evidence establishing that it had exercised diligent efforts to strengthen the parental relationship. *Matter of Aidan D. v Melissa E., 58 A.D.3d 906, 870 N.Y.S.2d 609, 2009 N.Y. App. Div. LEXIS 56 (N.Y. App. Div. 3d Dep't 2009)*.

70. Diligent efforts of agency

A child care agency's properly acquired custody of a child, who later became the subject of a proceeding to terminate the mother's parental rights, was not terminated by a prior temporary transfer of the care of the child to respondent mother on a trial basis, since, though no specific authority exists for such trial transfers, such arrangements, if carefully and deliberately made and agreed to, are well within an agency's implied powers under *Soc Serv Law § 384(7)(f)* to make diligent efforts to encourage a meaningful relationship between the parent and child; additionally, the mother's rights were not violated by the agency's refusal of her oral request to return the child after she had left the child, following the temporary transfer, with her foster parents, since a parent's notice to an agency to return a child must be written. *In re Guardianship of Star Leslie W., 63 N.Y.2d 136, 481 N.Y.S.2d 26, 470 N.E.2d 824, 1984 N.Y. LEXIS 4607 (N.Y. 1984)*.

In private placement adoption proceeding, showing that authorized agency engaged in diligent efforts to strengthen and reunite child with her natural parents was not prerequisite to dispensing with consent pursuant to CLS *Dom Rel § 111(2)(d)* on basis that natural parents were mentally retarded,. *In re Caroline, 218 A.D.2d 388, 638 N.Y.S.2d 997, 1996 N.Y. App. Div. LEXIS 2879 (N.Y. App. Div. 4th Dep't)*, app. dismissed, *88 N.Y.2d 1016, 649 N.Y.S.2d 381, 672 N.E.2d 607, 1996 N.Y. LEXIS 2703 (N.Y. 1996)*.

In proceeding under CLS *Soc Serv § 384-b* to adjudicate child as permanently neglected and to terminate mother's parental rights, agency complied with CLS *Family Ct Act § 614(1)(c)*, even though its petition could have been drawn with greater clarity, where it produced voluminous documentary evidence showing that it undertook diligent efforts to reunite mother with her son. *In re Jeffrey LL., 251 A.D.2d 756, 674 N.Y.S.2d 453, 1998 N.Y. App. Div. LEXIS 6747 (N.Y. App. Div. 3d Dep't)*, app. denied, *92 N.Y.2d 809, 678 N.Y.S.2d 594, 700 N.E.2d 1230, 1998 N.Y. LEXIS 2869 (N.Y. 1998)*.

Father's argument that the amended petition to terminate his parental rights was jurisdictionally defective for not outlining with specificity the agency's diligent efforts under *N.Y. Fam. Ct. Act § 614(1)(c)* was unpreserved; in any event, the allegations were specific enough to provide the father with adequate notice. Further, a deficiency in the amended petition was not fatal because the evidence established the agency's diligent efforts to assist the father in formulating a plan for his child's return, and the record established that the father did not keep the agency apprised of his whereabouts for at least six months, and then did not cooperate with the agency once he did make contact; thus, the agency's obligation to demonstrate diligent efforts was excused under *N.Y. Soc. Serv. Law § 384-b(7)(e)*. *Matter of Kimberly Vanessa J. v Thomas J., 37 A.D.3d 185, 829 N.Y.S.2d 473, 2007 N.Y. App. Div. LEXIS 1378 (N.Y. App. Div. 1st Dep't 2007)*.

Finding of permanent neglect was proper because, inter alia, there was ample support for the trial court's determination that the department made diligent efforts to strengthen and encourage the parent-child relationship; although the father continued to reside in North Carolina until after the petition was filed, a caseworker had continuing contact with him by telephone and letters, kept the father informed about the child's progress in school and counseling, scheduled a weekly time for the father to call the child, offered assistance for traveling, scheduled visitations when the father was present, repeatedly advised the father as to the steps he should be taking to be able to have the child returned to his custody, recommended that the father engage in mental health and substance abuse evaluations, parenting classes and domestic violence services, provided him with information about available

services in North Carolina and encouraged him to move to Clinton County in order to develop a relationship with the child. She also followed through with family members that the father suggested could assist him in taking care of the child in order to determine their willingness to do so. *Matter of Jacelyn TT. (Carlton TT.), 91 A.D.3d 1059, 937 N.Y.S.2d 397, 2012 N.Y. App. Div. LEXIS 162 (N.Y. App. Div. 3d Dep't 2012)*.

Trial court did not err in determining that the agency established that it made diligent efforts to encourage and strengthen the father's relationship with the child because the agency provided housing assistance to the father by housing him in various hotels and helped the father secure temporary assistance, including cash benefits, food stamps and Medicaid. *Matter of Brielle UU. (Brandon UU.), 167 A.D.3d 1169, 91 N.Y.S.3d 517, 2018 N.Y. App. Div. LEXIS 8542 (N.Y. App. Div. 3d Dep't 2018)*.

Contrary to mother's contention, the uncle was a relative with care and custody of the child who was authorized to commence the permanent neglect proceeding as he demonstrated by clear evidence that, with his assistance, the authorized agency, made diligent efforts to encourage the mother's relationship with the child. Further, there was a substantial basis to support the court's determinations that the child was permanently neglected and to terminate the mother's parental rights. *Matter of Jahvani Z. (Thomas V.--Mariah Z.), 168 A.D.3d 1146, 90 N.Y.S.3d 681, 2019 N.Y. App. Div. LEXIS 34 (N.Y. App. Div. 3d Dep't 2019)*.

Trial court properly determined that the mother permanently neglected the child as the record established that after over a year of assistance, she was not capable of properly and safely caring for the child and had failed to plan for the return of the child, although she was able to do so. *Matter of Jahvani Z. (Thomas V.--Mariah Z.), 168 A.D.3d 1146, 90 N.Y.S.3d 681, 2019 N.Y. App. Div. LEXIS 34 (N.Y. App. Div. 3d Dep't 2019)*.

Petitioner Department of Social Services established by clear and convincing evidence that it made diligent efforts to ameliorate the concerns that led to the child's removal and to strengthen the parent-child relationship because petitioner's caseworker helped mother secure temporary housing; petitioner facilitated mother's supervised visits with the child several times a week, during those visits, mother was coached on various parenting skills. *Matter of Jason O. (Stephanie O.), 188 A.D.3d 1463, 135 N.Y.S.3d 530, 2020 N.Y. App. Div. LEXIS 7208 (N.Y. App. Div. 3d Dep't 2020)*, app. denied, *36 N.Y.3d 908, 166 N.E.3d 539, 142 N.Y.S.3d 465, 2021 N.Y. LEXIS 486 (N.Y. 2021)*.

In determining that both deaf parents had permanently neglected their children, the family court stated that the Americans With Disabilities Act (ADA) was likely inapplicable to termination of parental rights cases because termination of parental rights proceedings did not appear to be services, programs, or activities as defined by the ADA, but that the ADA guidelines concerning the hearing impaired could be helpful in supplementing the principles established pursuant to New York's *N.Y. Soc. Serv. Law § 384-b(7)(f)* diligent efforts standard. *In re Custody & Guardianship of La'Asia S., 191 Misc. 2d 28, 739 N.Y.S.2d 898, 2002 N.Y. Misc. LEXIS 153 (N.Y. Fam. Ct. 2002)*.

Finding of neglect and termination of a father's parental rights were proper because, among other things, the department demonstrated that it made diligent efforts to assist the father in overcoming the problems that separated him from his child for purposes of *N.Y. Soc. Serv. Law § 384-b(7)(f)* inasmuch as caseworkers arranged weekly visitation with the child and facilitated substance abuse treatment for the father; further, during the relevant time period, the father relapsed into drug use, enrolled in, but failed to complete, several substance abuse treatment programs, was convicted of possessing and selling a prescription drug, and refused to discontinue his relationship with a woman who had a drug addiction despite the repeated warnings of several caseworkers about the increased dangers of relapse while dating her and his acknowledgment that she was a bad influence. Finally, there was no error in the decision to terminate the father's parental rights rather than issue a suspended judgment. *Matter of Angelina BB. (Miguel BB.), 90 A.D.3d 1196, 934 N.Y.S.2d 580, 2011 N.Y. App. Div. LEXIS 8693 (N.Y. App. Div. 3d Dep't 2011)*.

71. —Plan for appropriate services

Agency's plan was not unrealistic or unsuited to mother's particular circumstances on ground that it required that she complete sex offender treatment where she was responsible for sexual abuse of her daughter by reason of

having failed to offer any explanation for injuries inflicted while child was in her care, and treatment programs to which she was referred did not mandate that she admit to having actively abused her daughter, but only that she recognize that she was in some way responsible for abuse child had endured while in her care, which was entirely consistent with findings made and conclusion reached by experts that she was passive sexual offender. *In re Jesus II., 249 A.D.2d 846, 672 N.Y.S.2d 485, 1998 N.Y. App. Div. LEXIS 4812 (N.Y. App. Div. 3d Dep't 1998)*.

Family Court, while noting parents' failures as to cooperating with agency's plans and efforts, erroneously concluded that agency failed to give appropriate consideration to parents' limitations and that parents did all they could based on their resources, where agency addressed respective limitations of each parent, and was repeatedly rebuffed. *In re Michael Anthony Vincent J., 253 A.D.2d 619, 677 N.Y.S.2d 347, 1998 N.Y. App. Div. LEXIS 9337 (N.Y. App. Div. 1st Dep't)*, app. dismissed, *92 N.Y.2d 1026, 684 N.Y.S.2d 490, 707 N.E.2d 445, 1998 N.Y. LEXIS 4285 (N.Y. 1998)*.

Agency could not be faulted for failing to tailor plan to specifically address issues presented by mother's prior sexual abuse conviction where it was parents' active concealment of both facts of that conviction, and surrounding circumstances, that prevented agency from doing so. *In re Keith "UU", 256 A.D.2d 673, 681 N.Y.S.2d 163, 1998 N.Y. App. Div. LEXIS 12976 (N.Y. App. Div. 3d Dep't 1998)*, app. denied, *93 N.Y.2d 801, 687 N.Y.S.2d 625, 710 N.E.2d 272, 1999 N.Y. LEXIS 142 (N.Y. 1999)*.

Because a mother did not comply with the agency's *N.Y. Soc. Serv. Law § 384-b(7)(f)* plan to encourage and strengthen the parental relationship, terminating the mother's parental rights so as to facilitate the child's adoption by the foster mother was in the child's best interests. *Matter of Olivia F., 34 A.D.3d 234, 823 N.Y.S.2d 393, 2006 N.Y. App. Div. LEXIS 13086 (N.Y. App. Div. 1st Dep't 2006)*.

Termination of the mother's parental rights was proper because the county provided the required services, but the mother did not obtain suitable housing and she failed to understand that her then-paramour posed a danger to her children. Thus, the finding that she neglected her children was appropriate. *Matter of Alister UU. (Angela VV.), 117 A.D.3d 1137, 984 N.Y.S.2d 649, 2014 N.Y. App. Div. LEXIS 2937 (N.Y. App. Div. 3d Dep't 2014)*.

Order granting petition that adjudicated the subject children to be permanently neglected was proper because petitioner presented clear and convincing evidence establishing that it provided appropriate services and made diligent efforts to reunite respondent with his children. *Matter of Paige J. (Jeffrey K.), 155 A.D.3d 1470, 65 N.Y.S.3d 357, 2017 N.Y. App. Div. LEXIS 8466 (N.Y. App. Div. 3d Dep't 2017)*.

There was clear and convincing evidence to support the Family Court's conclusions that the father permanently neglected the children because the agency demonstrated that although it repeatedly referred the father for services, he was resistant to services which would have helped him overcome the conditions which led to the children's removal, and when the father did participate in services, he failed to change his behavior, instead minimizing it or blaming it on others. *Matter of William S. L. (julio A. L.), 195 A.D.3d 839, 149 N.Y.S.3d 542, 2021 N.Y. App. Div. LEXIS 3948 (N.Y. App. Div. 2d Dep't 2021)*.

Authorized foster care agencies are required to use "diligent efforts", which are reasonable attempts, to assist, develop and encourage a meaningful relationship between a parent and the child in foster care, including, but not limited to, consultation and co-operation with the parents in developing a plan for appropriate services to the child and his family (*Social Services Law, § 384-b*, subd 7); implicit in this definition is the responsibility of the agency to afford parents careful, intelligent recitation of the law regarding the responsibilities of the parents and the agency as well as the consequences of the parents' failure to fulfill their responsibilities. *In re M., 99 Misc. 2d 390, 417 N.Y.S.2d 396, 1979 N.Y. Misc. LEXIS 2298 (N.Y. Fam. Ct. 1979)*, rev'd, *In re Roxann Joyce M., 75 A.D.2d 872, 428 N.Y.S.2d 264, 1980 N.Y. App. Div. LEXIS 11507 (N.Y. App. Div. 2d Dep't 1980)*.

A child welfare agency which has placed a child in foster care due to the parent's inability to care for the child has an obligation, pursuant to section 384-b (subd 7, pars [a], [f]) of the Social Services Law, to make diligent efforts to assist in the formulation of viable proposals to develop a reasonable plan for the child's future and to encourage and strengthen the parental relationship with the child unless it were to prove detrimental to the child's best

interests since the parent is severely disadvantaged, being burdened with economic, emotional, mental and physical problems and the agency has expertise experience, capital and manpower, and efforts correlative to its superiority are obligatory; therefore, the agency having failed to inform the parent of her responsibility to plan for the future of her child or to assist her in developing a plan for the child's future, the agency failed in its duty to the parent and child, the parent's rights to her child may not be terminated due to her failure to plan for the future of her child. *In re Y., 102 Misc. 2d 215, 423 N.Y.S.2d 394, 1979 N.Y. Misc. LEXIS 2847 (N.Y. Fam. Ct. 1979)*, rev'd, *77 A.D.2d 433, 433 N.Y.S.2d 580, 1980 N.Y. App. Div. LEXIS 13361 (N.Y. App. Div. 1st Dep't 1980)*.

72. —Arrangements for parent to visit child

In proceeding to terminate mother's parental rights based on permanent neglect, mother's testimony that her efforts to maintain contact with her children were thwarted because department of social services arranged for visitation at children's new foster home, 20 miles away, on Sunday when bus service was unavailable, coupled with undisputed fact that no steps were taken to inform her of transportation services available (bus passes and tokens), nor inquire into whether she could make use of these services, or whether shift in place or day of visitation would facilitate more regular attendance, provided ample support for Family Court's determination that department did not make suitable arrangements to assure that mother could carry out visitation provisions of her service plan, as required by CLS *Soc Serv § 384-b(7)(f)(2)*; it was department's obligation, given its superior position and ability, to assess mother's needs and take meaningful affirmative steps necessary to remove obstacles that stood in way of reunification with her family even if she failed to request assistance with transportation. *In re Robert F, 195 A.D.2d 715, 600 N.Y.S.2d 307, 1993 N.Y. App. Div. LEXIS 7083 (N.Y. App. Div. 3d Dep't 1993)*.

73. — —Incarcerated parent

Social service agencies fulfilled their obligation to nurture parent-child relationship between incarcerated fathers and their children where agencies arranged visitation, communicated with fathers, kept them apprised of children's progress in foster care, and assisted in formulating plan for children's futures. *In re Gregory B., 74 N.Y.2d 77, 544 N.Y.S.2d 535, 542 N.E.2d 1052, 1989 N.Y. LEXIS 876 (N.Y.)*, reh'g denied, *74 N.Y.2d 880, 547 N.Y.S.2d 841, 547 N.E.2d 96, 1989 N.Y. LEXIS 3101 (N.Y. 1989)*.

Father's testimony that he was unaware of neglect proceeding and did not know of his child's whereabouts until after abandonment period was properly rejected as incredible in proceeding to terminate parental rights where his sister, on whom he relied for information, testified that she had been told of foster placement shortly before abandonment period; there was no merit to father's argument that agency was obligated to contact him in prison and initiate efforts to encourage parental relationship. *In re Shakim Ravon B., 257 A.D.2d 547, 685 N.Y.S.2d 20, 1999 N.Y. App. Div. LEXIS 724 (N.Y. App. Div. 1st Dep't 1999)*.

In a proceeding to terminate the parental rights of an incarcerated father, an agency's inability to provide assistance to him due to his incarceration did not preclude a finding under *N.Y. Soc. Serv. Law §§ 384-b(7)* that it made diligent efforts to strengthen the parent-child relationship; the family court properly found permanent neglect based on the agency's evidence that it facilitated relationships between the father and the child's foster parents as well as the father and the child, and kept the father apprised of the child's progress, while the father presented no evidence that he had planned for the child's future other than his desire to retain his parental rights. *Matter of Jonathan R. v Michael R., 30 A.D.3d 426, 817 N.Y.S.2d 335, 2006 N.Y. App. Div. LEXIS 7350 (N.Y. App. Div. 2d Dep't)*, app. denied, *7 N.Y.3d 711, 823 N.Y.S.2d 770, 857 N.E.2d 65, 2006 N.Y. LEXIS 2665 (N.Y. 2006)*.

Termination of a father's parental rights was improper under circumstances in which, despite his incarceration, the father maintained contact with the child by visitation, phone contact with the child, cards and letters to the child, and providing the foster parents money for the child; although the department arranged for visitation and kept the father apprised of the child's progress and service plans, it was only through the father's pro se legal efforts which were stymied by the department's instructions to withdraw his initial petition for visitation and file it in an incorrect county that he was awarded visitation with the child. Thus, it was not established that the department used diligent efforts

to encourage and strengthen the father's relationship, and further, the father did not fail to cooperate in efforts to assist the parent in planning for the future of the child or in efforts to plan and arrange visits with the child such that diligent efforts were not required. *Matter of Shi'Ann FF., 47 A.D.3d 1133, 850 N.Y.S.2d 678, 2008 N.Y. App. Div. LEXIS 397 (N.Y. App. Div. 3d Dep't 2008)*.

Local department of social services satisfied its duty under N.Y. Second Class Cities Law § 384-b(7)(a), (f)(5) to exercise diligent efforts on an incarcerated father's behalf by, among other things, investigating the father's relatives for possible placement of his children, but they failed to develop a relationship with the children. Matter of *Matter of Charles K. (Charles L.), 100 A.D.3d 1308, 955 N.Y.S.2d 428, 2012 N.Y. App. Div. LEXIS 8152 (N.Y. App. Div. 3d Dep't 2012)*.

Following the determination of the Family Court that visitation of three neglected children with their mother, who was incarcerated in a correctional facility some five hours from the children's home, would be in the best interests of the children during the period of placement under *Soc Serv Law § 384-b(7)*, the appropriate county officials of the county of the children's residence would be directed to render assistance and accept custody of the mother at the county correctional facility for the purposes of visitation under *Fam Ct Act § 1055(c)*, where there was no showing that visitation at the county facility would not be reasonably feasible. The State Commissioner of Corrections is authorized to permit an inmate to be taken to any place for any purpose authorized by law and must provide for delivery when the inmate's presence is required pursuant to an order of a court, and he is required to cooperate with the Department of Social Services in making suitable arrangements for an inmate to visit with her child pursuant to the Social Services Law (Correc Law § 619). *In re Gadson, 124 Misc. 2d 1024, 478 N.Y.S.2d 498, 1984 N.Y. Misc. LEXIS 3296 (N.Y. Fam. Ct. 1984)*.

74. —Provision of services and other assistance

In proceeding to adjudicate child to be permanently neglected, Department of Social Services had no obligation to move child to North Carolina when mother moved there since there was no compelling justification for mother's move and home study initiated by department showed that residence in North Carolina, which was shared by mother and her siblings, was not suitable home for child. *In re Anna F., 171 A.D.2d 967, 567 N.Y.S.2d 561, 1991 N.Y. App. Div. LEXIS 3847 (N.Y. App. Div. 3d Dep't 1991)*.

In attempting to strengthen parental relationship, agency was not required to actively superintend comprehensive range of social and medical programs, including arranging for mother's learning to read and closely managing her emotional therapy. *In re Juanita Katerina M., 205 A.D.2d 474, 614 N.Y.S.2d 501, 1994 N.Y. App. Div. LEXIS 7041 (N.Y. App. Div. 1st Dep't 1994)*.

In permanent neglect proceeding in which primary obstacle preventing return of children was parents' repeated and consistent refusal to acknowledge that father had sexually abused certain of their children, agency was not obligated to offer father alternative form of counseling which would permit him to receive treatment without admitting that sexual abuse did in fact occur. *In re Michelle "F", 222 A.D.2d 747, 635 N.Y.S.2d 709, 1995 N.Y. App. Div. LEXIS 12677 (N.Y. App. Div. 3d Dep't 1995)*.

It was proper for agency to primarily focus its attentions on mother's drug abuse problem, which was main obstacle to her reunification with child. *In re Lameek L., 226 A.D.2d 464, 640 N.Y.S.2d 600, 1996 N.Y. App. Div. LEXIS 3590 (N.Y. App. Div. 2d Dep't 1996)*.

In proceeding under CLS *Soc Serv § 384-b* to terminate mother's parental rights to her 2 children on ground of permanent neglect, social service agency used diligent efforts to encourage and strengthen parental relationship where it properly focused its attention primarily on mother's drug abuse problem, which was main obstacle to her reunification with children. *In re Masa Qwawi D., 245 A.D.2d 370, 665 N.Y.S.2d 437, 1997 N.Y. App. Div. LEXIS 12749 (N.Y. App. Div. 2d Dep't 1997)*.

Respondent was not entitled to reversal of permanent neglect adjudication based on petitioner's alleged failure to provide special services where (1) he did not call any witnesses or offer any evidence to substantiate his claim of mental disability, (2) clinical psychologist who evaluated him indicated that he was not mentally ill, that his IQ was average to low average and that diagnosis of mental retardation would be unfounded, and (3) one of his counselors testified that his mental capacity did not prevent him from parenting. *In re Marybeth, 277 A.D.2d 743, 716 N.Y.S.2d 133, 2000 N.Y. App. Div. LEXIS 12201 (N.Y. App. Div. 3d Dep't 2000)*.

In proceeding to terminate mother's parental rights, Family Court properly permitted agency to introduce proof that it provided mother with counseling, suitable arrangements for visitation, and assistance in resolving problems that caused her separation form her children, and that it advised her as to progress and development of children. *In re Anthony "S", 282 A.D.2d 778, 723 N.Y.S.2d 251, 2001 N.Y. App. Div. LEXIS 3443 (N.Y. App. Div. 3d Dep't 2001)*.

Agency's sufficient diligent efforts to mother under *N.Y. Soc. Serv. Law § 384-b(7)(a)* included providing mental health counseling, homemaker services, regular visitation with the child, a parent aide, anger management classes, a housing subsidy and transportation to services, court, visitation, medical appointments and employment. *In re Elijah NN., 20 A.D.3d 728, 798 N.Y.S.2d 252, 2005 N.Y. App. Div. LEXIS 7813 (N.Y. App. Div. 3d Dep't 2005)*.

In a permanent neglect proceeding, a social services agency's conclusion that it was not in the best interests of a mother's two older children to move the children to a foster care setting nearer to where the mother was residing was supported by ample evidence as the children had been living with the same foster care family for almost two years, and the mother had persistently failed to maintain contact with the agency and had made numerous changes in her own living arrangements while the children were in foster care. *Matter of Vashaun P., 53 A.D.3d 712, 861 N.Y.S.2d 453, 2008 N.Y. App. Div. LEXIS 5892 (N.Y. App. Div. 3d Dep't 2008)*.

Family court properly terminated a father's and mother's parental rights and freed their child for adoption because the agency demonstrated that the mother permanently neglected the child and that it made diligent efforts to encourage and strengthen the parental relationship by providing the mother with numerous referrals to substance abuse and mental health treatment programs and facilitating regular supervised visitation between the mother and the child, and the father did not establish that his consent to the child's adoption was required, did not provide financial support consistent within his means, and did not visit the child monthly when able to do so or maintain regular communication with the agency when unable to visit the child. *Matter of Ramal M., 172 A.D.3d 1067, 101 N.Y.S.3d 83, 2019 N.Y. App. Div. LEXIS 3804 (N.Y. App. Div. 2d Dep't 2019)*.

Family court did not err in determining that a county department of social services satisfied its threshold burden of establishing that it exercised diligent efforts to encourage and strengthen the parental relationship because the department regularly conducted service plan reviews to evaluate progress toward permanency goals and provided the mother and father with mental health evaluations and services, parenting classes, and coached supervised visits with the children. *Matter of Makayla I. (Sheena K.), 201 A.D.3d 1145, 160 N.Y.S.3d 476, 2022 N.Y. App. Div. LEXIS 230 (N.Y. App. Div. 3d Dep't 2022)*.

75. —Efforts adequate

Children would be found to be permanently neglected within the meaning of *Soc Serv Law § 384-b* (subd 7) where, "in the context of the realities of the situation," the agency's efforts satisfied the statutory requirement of diligent efforts to encourage and strengthen the parental relationship. *In re Reginald B., 94 A.D.2d 628, 462 N.Y.S.2d 30, 1983 N.Y. App. Div. LEXIS 18031 (N.Y. App. Div. 1st Dep't 1983)*.

Agency met its obligation to exercise diligent efforts to strengthen parent and child relationship before seeking to terminate father's parental rights where agency arranged meetings with parents, set up scheduled visits with children, and attempted to contact several of father's relatives who might care for child. *Delores B. Cardinal McCloskey Children's & Family Services v Willie B., 141 A.D.2d 100, 533 N.Y.S.2d 706, 1988 N.Y. App. Div. LEXIS 10225 (N.Y. App. Div. 1st Dep't 1988)*, aff'd, *74 N.Y.2d 77, 544 N.Y.S.2d 535, 542 N.E.2d 1052, 1989 N.Y. LEXIS 876 (N.Y. 1989)*.

In proceeding under CLS Soc Serv § 384-b to terminate parental rights, there was clear and convincing evidence that agency made diligent efforts to strengthen parental relationship after child was placed in foster care where (1) all of agency's contacts with parent were documented in record, and (2) parent received counseling, psychological evaluation, and supervised visitation, which halted only when parent was found to have abused child again. In re Leigh II, 143 A.D.2d 445, 532 N.Y.S.2d 441, 1988 N.Y. App. Div. LEXIS 9147 (N.Y. App. Div. 3d Dep't 1988).

In proceeding under CLS Soc Serv § 384-b to terminate parental rights, fact that father notified petitioner, few days before fact-finding hearing, that he had set up suitable home for child and that petitioner failed to conduct home study did not establish that petitioner failed to diligently attempt to strengthen parental relationship, since father's effort occurred 3 ½ years after petitioner took custody of child. In re Jennie EE, 187 A.D.2d 877, 590 N.Y.S.2d 549, 1992 N.Y. App. Div. LEXIS 13362 (N.Y. App. Div. 3d Dep't 1992), app. denied, *81 N.Y.2d 706, 597 N.Y.S.2d 936, 613 N.E.2d 968, 1993 N.Y. LEXIS 672 (N.Y. 1993)*.

County social services agency fulfilled its statutory duty to make diligent efforts to strengthen and encourage parent-child relationship where it scheduled regular visits with children and provided mother with transportation to and from such visits, it consulted with mother in developing service plan for eventual return of children, it developed new service plan every 6 months, it kept mother apprised of children's progress, it assisted mother in her job search, and it referred mother for appropriate counseling. In re Gwen S., 204 A.D.2d 1048, 613 N.Y.S.2d 108, 1994 N.Y. App. Div. LEXIS 6891 (N.Y. App. Div. 4th Dep't), app. denied, *84 N.Y.2d 806, 618 N.Y.S.2d 7, 642 N.E.2d 326, 1994 N.Y. LEXIS 3322 (N.Y. 1994)*.

Family Court properly found that social services agency made diligent efforts required by CLS Soc Serv § 384-b(7)(f) where its endeavors included advising mother what she would have to do to secure return of her children, providing visitation with them, keeping mother informed of their progress, and arranging for supportive services to extent possible given mother's continual relocation. In re Tina JJ, 217 A.D.2d 747, 629 N.Y.S.2d 340, 1995 N.Y. App. Div. LEXIS 7758 (N.Y. App. Div. 3d Dep't 1995), app. denied, *87 N.Y.2d 808, 641 N.Y.S.2d 830, 664 N.E.2d 896, 1996 N.Y. LEXIS 230 (N.Y. 1996)*.

Department of social services made adequate diligent efforts to strengthen a mother's parental relationship with her child when it (1) helped the mother locate and maintain housing suitable for a child, prepare nutritious snacks and meals, maintain consistent employment, establish a household budget and allocate her resources in a financially responsible manner, (2) provided parenting services to improve the mother's interaction with the child and encourage the use of appropriate disciplinary measures, and (3) provided multiple psychological evaluations and counseling. In re Ariel PP., 9 A.D.3d 628, 779 N.Y.S.2d 660, 2004 N.Y. App. Div. LEXIS 9376 (N.Y. App. Div. 3d Dep't), app. denied, *3 N.Y.3d 608, 786 N.Y.S.2d 811, 820 N.E.2d 290, 2004 N.Y. LEXIS 2432 (N.Y. 2004)*.

Any error in taking judicial notice of prior proceedings in which a mother's first child was adjudicated a permanently neglected child was harmless as the child services agency's evidence was more than sufficient to discharge the agency's burden on a permanent neglect petition for a second child; further, the agency provided appropriate services that were tailored to meet the mother's particular needs and the mere fact that the mother demonstrated the same inattentiveness, lack of focus, and inconsistent application of parenting, homemaking, and budgeting skills and made the same marginal progress with the second child as she did with the first child did not show an inadequacy in the agency's efforts. In re Anjoulic J., 18 A.D.3d 984, 794 N.Y.S.2d 709, 2005 N.Y. App. Div. LEXIS 5160 (N.Y. App. Div. 3d Dep't 2005).

In proceedings seeking an adjudication that a child was permanently neglected and termination of a mother's parental rights, the record clearly and convincingly showed that an agency made diligent efforts to strengthen the parent-child relationship between the mother and her child by arranging supervised visits, making a parent educator available, assisting in transportation for the visits, informing the mother of counseling, parenting classes and mental health services available to address her problems, and evaluating obstacles to the mother's employment and parenting. In re Alijah XX., 19 A.D.3d 770, 796 N.Y.S.2d 455, 2005 N.Y. App. Div. LEXIS 6195 (N.Y. App. Div. 3d Dep't 2005).

In the termination of parental rights case, the evidence established that the agency made diligent efforts to assist the father in maintaining contact with the children and planning for their future, under N.Y. Soc. Serv. Law § 384-b(7)(a), by facilitating visitation, by keeping the father apprised of the children's welfare, and by repeatedly reminding the father of the need to find a resource for the care of the father's children. *Matter of "Female" V., 21 A.D.3d 1118, 803 N.Y.S.2d 636, 2005 N.Y. App. Div. LEXIS 9493 (N.Y. App. Div. 2d Dep't 2005)*, app. denied, *6 N.Y.3d 708, 813 N.Y.S.2d 44, 846 N.E.2d 475, 2006 N.Y. LEXIS 520 (N.Y. 2006)*.

In termination of parental rights proceedings based on neglect under N.Y. Soc. Serv. Law § 384-b, an agency exercised diligent efforts to strengthen the relationship between the mother and the child by scheduling numerous visits with the child, holding semi-annual service plan review meetings, referring the mother to drug treatment programs, and assisting in finding suitable housing. *Matter of Angel A. v Jasmine N., 48 A.D.3d 800, 853 N.Y.S.2d 147, 2008 N.Y. App. Div. LEXIS 1740 (N.Y. App. Div. 2d Dep't 2008)*.

County social service agency made diligent efforts to reunite a mother with her children, as required by N.Y. Soc. Serv. Law § 384-b(7)(a), in a permanent neglect and parental rights termination proceeding; the agency made affirmative, repeated, and meaningful efforts to restore the parent-child relationship by providing numerous types of services, which the mother failed to avail herself of. *Matter of Isaiah F. v Virginia. F., 55 A.D.3d 1004, 871 N.Y.S.2d 390, 2008 N.Y. App. Div. LEXIS 7768 (N.Y. App. Div. 3d Dep't 2008)*, app. denied, *11 N.Y.3d 716, 874 N.Y.S.2d 5, 2009 N.Y. LEXIS 156 (N.Y. 2009)*, app. denied, *11 N.Y.3d 716, 874 N.Y.S.2d 5, 2009 N.Y. LEXIS 550 (N.Y. 2009)*.

Order terminating a mother's parental rights in three N.Y. Soc. Serv. Law § 384-b proceedings was proper because, inter alia, the record supported the trial court's finding that the department diligently worked to help the mother comply with conditions imposed, provided services aimed at reuniting the family, coordinated regular visitation, and offered parenting education; her caseworker testified that she had maintained regular contact with the mother, providing preventive services and assisting in numerous referrals to programs for substance abuse, mental health counseling and domestic violence issues, and, while the department tried to assist, ultimately it was the mother's own actions which resulted in her inability to maintain stable housing and employment. The record amply supported the trial court's determination that the mother failed to plan for the children's future. *Matter of Kaytlin TT., 61 A.D.3d 1085, 876 N.Y.S.2d 232, 2009 N.Y. App. Div. LEXIS 2436 (N.Y. App. Div. 3d Dep't)*, app. denied, *13 N.Y.3d 709, 890 N.Y.S.2d 447, 918 N.E.2d 962, 2009 N.Y. LEXIS 3974 (N.Y. 2009)*.

Department's efforts to restore the parent-child relationship satisfied diligent efforts obligation in N.Y. Soc. Serv. Law § 384-b proceeding because the evidence showed that the department consistently and repeatedly offered the mother a variety of services aimed at addressing the problems that led to the child's removal, namely, her drug addiction; the department also proved by clear and convincing evidence that, despite its efforts, the mother failed to plan for the child's future. Although the mother successfully completed an inpatient substance abuse program immediately following her daughter's removal, within a month of her discharge she relapsed and resumed using heroin, crack cocaine and marihuana, as well as abusing prescription medication. *Matter of Havyn PP. (Morianna RR.), 94 A.D.3d 1359, 943 N.Y.S.2d 243, 2012 N.Y. App. Div. LEXIS 3249 (N.Y. App. Div. 3d Dep't 2012)*.

Judgment in an N.Y. Soc. Serv. Law § 384-b proceeding adjudicating children neglected and terminating the father's parental rights was proper because the department proved that it made diligent efforts to encourage parent-child relationship; among other things, the department held multiple service plan review meetings with father and repeatedly explained to him steps needed to take to obtain custody. The trial court properly determined that the father permanently neglected the children because he failed to maintain contact with them or plan for their future. *Matter of Damian L. (Frederick L.), 100 A.D.3d 1193, 954 N.Y.S.2d 654, 2012 N.Y. App. Div. LEXIS 7871 (N.Y. App. Div. 3d Dep't 2012)*.

Record supported a family court's threshold determination that a child services agency's made diligent efforts to encourage and strengthen a mother's parental relationship because the mother received regular counseling and guidance in order to strengthen her parenting skills and cope with her addiction and mental health issues, skills that likely applied during the period of trial discharge. *Matter of Marcus BB. (Donna AA.), 130 A.D.3d 1211, 13 N.Y.S.3d 626, 2015 N.Y. App. Div. LEXIS 5857 (N.Y. App. Div. 3d Dep't 2015)*.

Child services agency made the requisite diligent efforts to encourage and strengthen a mother's relationship with the child, both of whom had mental health issues, because, inter alia, the agency transported the mother to visitations, provided parenting classes, and obtained long-term mental health counseling and medication to address certain conditions that impeded the mother's ability to safely parent the child; the mother did not consistently attend parenting classes or treatment. *Matter of Everett H. (Nicole H.), 129 A.D.3d 1123, 10 N.Y.S.3d 676, 2015 N.Y. App. Div. LEXIS 4616 (N.Y. App. Div. 3d Dep't 2015)*.

Child services agency established, by clear and convincing evidence, that it made diligent efforts to encourage and strengthen the mother's relationship with the subject child because the agency facilitated regular visitation with the mother and child aimed towards the goal of reunification, and offered numerous services including, but not limited to, parenting support, domestic violence counseling, mental health counseling, anger management, drug and alcohol abuse and nutritional eating. *Matter of Landon U. (Amanda U.), 132 A.D.3d 1081, 19 N.Y.S.3d 341, 2015 N.Y. App. Div. LEXIS 7779 (N.Y. App. Div. 3d Dep't 2015)*.

Child services agency made diligent efforts to encourage and strengthen an incarcerated father's relationship with the child because the agency encouraged contact to resume by keeping the father informed as to the child's well-being and facilitating written communication between them, and investigated the child's paternal grandmother and aunt as placement resources. *Matter of Jazmyne II. (Frank MM.), 144 A.D.3d 1459, 41 N.Y.S.3d 179, 2016 N.Y. App. Div. LEXIS 7750 (N.Y. App. Div. 3d Dep't 2016)*, app. denied, *29 N.Y.3d 901, 80 N.E.3d 397, 57 N.Y.S.3d 704, 2017 N.Y. LEXIS 469 (N.Y. 2017)*.

Child services agency made diligent efforts to encourage and strengthen the parental relationship with respect to the father and his four children because the agency, inter alia, scheduled family team conferences to review the service plan with the father and formulated a feasible plan for reunification, facilitated visitation, and referred the father to individual therapy, parenting skills classes, and domestic violence counseling. *Matter of Elias P. (Ferman P.), 145 A.D.3d 1066, 44 N.Y.S.3d 516, 2016 N.Y. App. Div. LEXIS 8822 (N.Y. App. Div. 2d Dep't 2016)*, app. denied, *29 N.Y.3d 904, 80 N.E.3d 400, 57 N.Y.S.3d 707, 2017 N.Y. LEXIS 790 (N.Y. 2017)*.

Clear and convincing evidence supported the family court's finding that the child services agency it made diligent efforts to encourage and strengthen the parental relationship between the mother and her children because, inter alia, the children were placed in the custody of the maternal grandmother, and the mother was offered services that included parenting classes, domestic violence training and counseling, while the caseworker arranged for child counseling as needed. *Matter of Zoey O. (Veronica O.), 147 A.D.3d 1227, 47 N.Y.S.3d 509, 2017 N.Y. App. Div. LEXIS 1392 (N.Y. App. Div. 3d Dep't 2017)*.

Child services agency made diligent efforts to strengthen the mother's relationship with her children because the agency offered an “astounding” array of services dating back to 2011, including, inter alia, referrals for mental health and family counseling, parenting classes, domestic violence training, and assistance with housing, school enrollment, and obtaining medical care. *Matter of Jessica U. (Stephanie U.), 152 A.D.3d 1001, 59 N.Y.S.3d 195, 2017 N.Y. App. Div. LEXIS 5705 (N.Y. App. Div. 3d Dep't 2017)*.

Child services agency established by clear and convincing evidence that it made diligent efforts to encourage and strengthen the father's relationship with the children because the agency, inter alia, arranged for supervised visitation, provided free access to public transportation for visitation, medical appointments and job interviews, and assisted in obtaining permanent housing. *Matter of Alexander Z. (Jimmy Z.), 149 A.D.3d 1177, 51 N.Y.S.3d 231, 2017 N.Y. App. Div. LEXIS 2639 (N.Y. App. Div. 3d Dep't 2017)*.

Clear and convincing evidence supported the finding that the agency made diligent efforts to encourage and strengthen the incarcerated mother's relationship with the child because, inter alia, caseworkers sent regular letters to the mother, informed her of the child's well-being, provided correspondence from the child's foster mother, photographs of the child, medical information, and arranged for delivery of letters and gifts from the mother to the child's foster home. *Matter of Duane FF. (Harley GG.), 154 A.D.3d 1086, 62 N.Y.S.3d 566, 2017 N.Y. App. Div.*

LEXIS 7349 (N.Y. App. Div. 3d Dep't 2017), app. denied, *30 N.Y.3d 908, 94 N.E.3d 483, 71 N.Y.S.3d 1, 2018 N.Y. LEXIS 14 (N.Y. 2018)*.

In proceedings to terminate an incarcerated mother's parental rights based upon permanent neglect, clear and convincing evidence supported the finding that the child services agency engaged in diligent efforts to encourage and strengthen the mother's relationship with the children because, inter alia, the agency informed the mother of the children's well-being and progress, and investigated the maternal grandmother as a placement resources. *Matter of Kaylee JJ. (Jennifer KK.), 159 A.D.3d 1077, 71 N.Y.S.3d 220, 2018 N.Y. App. Div. LEXIS 1373 (N.Y. App. Div. 3d Dep't 2018)*.

Termination of the parental rights of both parents was proper as the Department of Social Services established that it fulfilled its duty to exercise diligent efforts to encourage and strengthen the parents' relationships with the children by providing appropriate services to the parents, including parenting education, mental health counseling, budgeting and communication training, and scheduling regular visitation with the children; however, despite those diligent efforts, the parents permanently neglected the children as they failed to successfully complete the programs and services that were made available to them. *Matter of Nathan N. (Christopher R.N.), 2022 N.Y. App. Div. LEXIS 1823 (N.Y. App. Div. 4th Dep't 2022)*.

76. — —Plan for appropriate services

Agency established prima facie case that it had made diligent efforts to encourage and strengthen parental relationship between mother and child where, contrary to Family Court's finding that agency had failed to assist mother in securing crib, agency had arranged for funds for crib and urged mother to pick up check and purchase crib, but mother had refused, where agency had proved that mother was in need of family planning or parental skills program because mother did not know identity of child's father, had previously relinquished 2 other children for adoption, and was irresponsible in attending scheduled visits with child, and where agency had adequately defined and presented consistent plan to mother for returning child to her if she improved parental skills, showed more interest in child, and obtained crib for him, contrary to Family Court's finding that agency had not presented such plan; Family Court's dismissal of petition seeking to terminate mother's parental rights under CLS *Soc Serv § 384-b* would be reversed and remanded for new fact-finding hearing. *In re Guardianship of Jones, 121 A.D.2d 318, 503 N.Y.S.2d 390, 1986 N.Y. App. Div. LEXIS 58281 (N.Y. App. Div. 1st Dep't 1986)*.

In proceeding pursuant to CLS *Soc Serv § 384-b* to adjudicate respondent's children to be permanently neglected and to terminate respondent's parental rights, county department of social services proved by clear and convincing evidence that agency exercised diligent efforts to strengthen parental relationship where record established (1) that department set up initial visitation plan for respondent, who had not lived with her daughters for number of years, to establish parent-child bond, (2) that respondent's name was placed on waiting list for family therapy program, and (3) that respondent was counseled on necessity of establishing permanent residence; department's plan did not concern services regarding unemployment and financial instability as those concerns were not part of respondent's problems that kept her from regaining custody. *In re Dixie Lu EE, 142 A.D.2d 747, 530 N.Y.S.2d 655, 1988 N.Y. App. Div. LEXIS 7792 (N.Y. App. Div. 3d Dep't 1988)*.

Social service agency proved by clear and convincing evidence that it made diligent efforts to encourage and strengthen parental relationship where (1) agency developed service plan to which mother agreed, including arrangements for weekly visitation, home maker and home management aides in mother's home, arrangements for counseling, enrollment of mother in parenting skills class and drug abuse program, and counseling in regard to need for her to obtain prenatal care, and (2) despite these efforts, mother was uncooperative with home maker and home management aides, failed to visit her children as scheduled, failed to attend parenting skills classes and drug abuse program, failed to maintain suitable contact with or plan for future of children, and was generally indifferent

and uncooperative. *In re Casondra W., 184 A.D.2d 1070, 585 N.Y.S.2d 270, 1992 N.Y. App. Div. LEXIS 8331 (N.Y. App. Div. 4th Dep't 1992)*.

Evidence established that agency exercised diligent efforts to strengthen mother's relationship with child where (1) caseworkers formulated plan of various agency services for mother, which included arranging visitation, and kept her informed of child's progress, (2) mother was unable to cope with child's misbehaviors and failed to diligently attend instructional classes to improve her parenting skills or to maintain stable home for child, (3) mother admitted her participation in abusive relationships with father of child and 3 other men, but failed to attend domestic violence program, and (4) mother offered no evidence of her physical or financial inability to utilize programs arranged for her. *In re Charles "K", 202 A.D.2d 798, 609 N.Y.S.2d 116, 1994 N.Y. App. Div. LEXIS 2530 (N.Y. App. Div. 3d Dep't 1994)*.

In proceeding under CLS *Soc Serv § 384-b* to terminate parental rights of mother and father for permanent neglect of child, agency made diligent efforts to strengthen parental relationship where it established reunification goals for both parents, which included plans to address their individual needs, conducted regular plan reviews, repeatedly referred parents to services designed to address their needs, provided parents with counseling, and established regular visitation schedule with child. *In re Harlem Dowling - Westside Ctr. for Children & Family Servs. ex rel. Kimberly Jean R., 245 A.D.2d 449, 666 N.Y.S.2d 651, 1997 N.Y. App. Div. LEXIS 13111 (N.Y. App. Div. 2d Dep't 1997)*.

In proceeding under CLS *Soc Serv § 384-b* to terminate mother's parental rights to her 2 infant daughters on ground of permanent neglect, agency made diligent efforts to reunite family where its plan for mother identified 3 obstacles to reunification—her lack of suitable housing, poor parenting skills, and substance abuse problem—set goals for overcoming those obstacles, and made tremendous effort to connect her with necessary services, including setting up appointments for drug and alcohol evaluations, enrolling her in parenting classes, assigning parent aide, and providing transportation for both mother and children for scheduled visits. *In re Josephine O., 245 A.D.2d 900, 666 N.Y.S.2d 812, 1997 N.Y. App. Div. LEXIS 13610 (N.Y. App. Div. 3d Dep't 1997)*, app. denied, *91 N.Y.2d 814, 676 N.Y.S.2d 127, 698 N.E.2d 956, 1998 N.Y. LEXIS 1373 (N.Y. 1998)*.

In proceeding under CLS *Soc Serv § 384-b* to adjudicate child as permanently neglected and to terminate father's parental rights, agency made diligent efforts to strengthen relationship between father and child where it devised realistic plan that was well suited to father's individual needs, and it arranged for visitation and counseling, set up appointments for father, enrolled him in parenting classes, and provided him with public health nurse to help him learn to care for baby; agency was not required to revise plan to accommodate father's insouciant approach to meeting his obligations. *In re Jeremy KK., 251 A.D.2d 904, 674 N.Y.S.2d 842, 1998 N.Y. App. Div. LEXIS 7742 (N.Y. App. Div. 3d Dep't 1998)*.

Agency made diligent effort to strengthen mother's ties with her children, and thus her parental rights were properly terminated on finding of permanent neglect, where (1) agency designed realistic plan tailored to accommodate mother's individual situation, (2) plan included regular supervised and unsupervised visitation with children and mandated that mother undergo psychological evaluation and counseling and attend parenting classes, and (3) agency assisted mother in complying with plan by scheduling visitation, including monthly visits while mother was incarcerated, and recommending and arranging for mental health services and other programs. *In re Damien "JJ", 266 A.D.2d 757, 698 N.Y.S.2d 792, 1999 N.Y. App. Div. LEXIS 12137 (N.Y. App. Div. 3d Dep't 1999)*.

In proceeding to terminate mother's parental rights for permanent neglect, agency made diligent efforts to encourage and strengthen parental relationship where (1) it developed plan tailored to help mother overcome her parental shortcomings, (2) plan included counseling to help mother deal with one child's death and mother's codependency, depression, and low self-esteem, (3) agency enrolled mother in classes to improve her parenting skills and educate her about health issues surrounding sexual promiscuity, and (4) agency set up supervised visits to encourage mother to interact with her children. *In re Edward "I", 281 A.D.2d 667, 721 N.Y.S.2d 412, 2001 N.Y. App. Div. LEXIS 2038 (N.Y. App. Div. 3d Dep't 2001)*.

77. — —Communication with parent

Evidence established that agency diligently sought to strengthen and nurture relationship between parents and their children where (1) over 1 ½ -year period, caseworkers had about 31 meetings and 17 telephone conversations with parents, urging them to seek mental health counseling and to attend parenting classes, (2) parents were provided with homemaking services, and (3) parents failed to learn appropriate parenting skills due to their uncooperative attitude, and they refused mental health counseling. *In re St. Christopher O., 204 A.D.2d 765, 611 N.Y.S.2d 930, 1994 N.Y. App. Div. LEXIS 4689 (N.Y. App. Div. 3d Dep't)*, app. denied, *84 N.Y.2d 805, 618 N.Y.S.2d 6, 642 N.E.2d 325, 1994 N.Y. LEXIS 3123 (N.Y. 1994)*.

In a termination of parental rights proceeding based on permanent neglect, an agency established by clear and convincing evidence under *N.Y. Soc. Serv. Law § 384-b(3)(g)* that it used diligent efforts to strengthen the parent-child bond as written reports were routinely sent to the mother charting the children's progress and counseling and drug and alcohol programs were made available but were not utilized. *Matter of Gerald BB. v Sheila CC., 51 A.D.3d 1081, 857 N.Y.S.2d 314, 2008 N.Y. App. Div. LEXIS 3775 (N.Y. App. Div. 3d Dep't)*, app. denied, *11 N.Y.3d 703, 864 N.Y.S.2d 807, 894 N.E.2d 1198, 2008 N.Y. LEXIS 2522 (N.Y. 2008)*, app. denied, *11 N.Y.3d 703, 864 N.Y.S.2d 807, 894 N.E.2d 1198, 2008 N.Y. LEXIS 2537 (N.Y. 2008)*.

Department of human services made diligent efforts to reunite a father with his child, as a caseworker invited him to attend meetings; the department arranged for the father's visitation; offered him counseling, parenting classes, and daycare; explained the child's medical and dietary requirements before he was returned to the parents' care; and provided a Spanish-speaking interpreter for the father. *Matter of Abraham C. v Rosa C., 55 A.D.3d 1442, 865 N.Y.S.2d 820, 2008 N.Y. App. Div. LEXIS 7569 (N.Y. App. Div. 4th Dep't 2008)*, app. denied, *12 N.Y.3d 701, 876 N.Y.S.2d 348, 904 N.E.2d 503, 2009 N.Y. LEXIS 110 (N.Y. 2009)*.

78. — —Arranging visitation

In proceeding to terminate mother's parental rights on ground of permanent neglect, evidence demonstrated that county social services department exercised diligent efforts to strengthen mother's parental relationship with children where it was shown that even after mother moved to Florida with boyfriend, department developed flexible visitation program, offered mother travel assistance, arranged for psychological counseling and family assessments, advised mother repeatedly of objectives to be reached to enable her to secure return of children, contacted Florida social services equivalent to schedule home visit and enroll mother in parenting classes, arranged for children to contact mother by telephone, and sent mother letters requesting that she develop and divulge plan for regaining children, and that mother repeatedly relocated and failed to inform department of her whereabouts and refused to enroll in parenting skills training. *In re Terry S., 156 A.D.2d 763, 549 N.Y.S.2d 184, 1989 N.Y. App. Div. LEXIS 15590 (N.Y. App. Div. 3d Dep't 1989)*.

In proceeding to terminate mother's parental rights on ground of permanent neglect, evidence did not demonstrate that county department of social services exercised less than diligent efforts to encourage and strengthen mother's relationship with children by furnishing her with travel allowance of only $50 per month and commencing 6 child support violation proceedings against her, since mother exacerbated her travel difficulties by choosing to live near boyfriend in another county, far from children's foster home, and mother made only 10 payments in more than 2 years under Family Court order requiring her to pay $45 per week in child support. *In re Christina Q., 156 A.D.2d 770, 549 N.Y.S.2d 195, 1989 N.Y. App. Div. LEXIS 15595 (N.Y. App. Div. 3d Dep't 1989)*, app. denied, *75 N.Y.2d 708, 554 N.Y.S.2d 833, 553 N.E.2d 1343, 1990 N.Y. LEXIS 2016 (N.Y. 1990)*.

In proceeding to terminate parental relationship on basis of permanent neglect, agency established that it made diligent efforts to unite mother and child by arranging visitation and attempting to assist mother in obtaining housing, but that mother kept only 4 of 36 scheduled visits and refused assistance in obtaining housing. *In re Brooke Louise H., 158 A.D.2d 425, 552 N.Y.S.2d 3, 1990 N.Y. App. Div. LEXIS 2105 (N.Y. App. Div. 1st Dep't 1990)*.

Termination of parental rights was appropriate where (1) agency diligently endeavored to reunite family by attempting to assist mother in regularly visiting her children, obtaining adequate housing, stabilizing her welfare status, attending parental training groups, and continuing therapy sessions, (2) mother repeatedly received carfare from agency and then canceled her scheduled visits, (3) for 3-year period, mother saw children 15 times out of 37 scheduled visits (last 10 months of which she did not visit children at all), and (4) mother did not attend parental training classes, she never appeared at mental health center to receive counseling or therapy, and she failed to follow through on plan for return of children by finding housing or stabilizing her welfare status. *In re Guardianship of Tasha Renette E., 161 A.D.2d 226, 554 N.Y.S.2d 612, 1990 N.Y. App. Div. LEXIS 4931 (N.Y. App. Div. 1st Dep't 1990)*.

Evidence established that agency made diligent efforts to strengthen parent-child relationship where (1) agency provided father with opportunity to visit child on Wednesdays from 3:00 p.m. to 4:00 p.m., (2) agency also permitted friend of father to supervise Sunday visitations, but these visits stopped after one month when child became uncontrollable, (3) father drove cab from 6:00 a.m. until 6:00 p.m., but admitted that he could take lunch break at any time, and therefore he could have visited on Wednesdays, (4) father was unemployed for 6 months and made only sporadic visits, and (5) agency ensured that child called her parents on weekly basis, reminded father to visit child and reminded him that he had to attend at least 80 percent of his therapy sessions. *In re Tammy B., 185 A.D.2d 881, 587 N.Y.S.2d 377, 1992 N.Y. App. Div. LEXIS 9970 (N.Y. App. Div. 2d Dep't)*, app. denied, *81 N.Y.2d 702, 594 N.Y.S.2d 716, 610 N.E.2d 389, 1992 N.Y. LEXIS 4418 (N.Y. 1992)*.

In a case involving the termination of parental rights based on permanent neglect, an agency exercised diligent efforts to strengthen the parent-child relationship and reunite the parents with their three children as required by *N.Y. Soc. Serv. Law § 384-b(7)(f)* by, inter alia, scheduling regular visits with the children and referring the parents to programs providing domestic violence counseling. *Matter of Tynell S., 43 A.D.3d 1171, 842 N.Y.S.2d 90, 2007 N.Y. App. Div. LEXIS 10045 (N.Y. App. Div. 2d Dep't 2007)*.

79. — —Incarcerated person

Agency engaged in diligent efforts to encourage and strengthen parental relationship by maintaining close and consistent communication with incarcerated father by way of letters and telephone, continually consulting with him as to planning for child's future, repeatedly informing him of requirement to name viable discharge resource, investigating and reporting on 3 potential relatives as resources, and keeping him apprised of child's progress in foster care. *In re Joseph Jerome H., 224 A.D.2d 224, 637 N.Y.S.2d 401, 1996 N.Y. App. Div. LEXIS 970 (N.Y. App. Div. 1st Dep't 1996)*.

In proceeding to terminate father's parental rights to his 2 biological children, based on permanent neglect while he was incarcerated for first degree sexual abuse of his stepdaughter, agency made diligent efforts to strengthen parental relationship where (1) it developed proper service plans for father to complete incest offender program, attend anger management classes, and obtain drug and alcohol evaluation and met with him at local correctional facility to review those plans, (2) whether such services were available to father while he was incarcerated at local correctional facility was immaterial to issue of agency's diligent efforts, because agency was not required to provide such services during incarceration, and (3) agency provided father with children's report cards, discussed them with him, and brought children to facility on several occasions for visitation. *In re Amanda "C", 281 A.D.2d 714, 722 N.Y.S.2d 267, 2001 N.Y. App. Div. LEXIS 2307 (N.Y. App. Div. 3d Dep't)*, app. denied, *96 N.Y.2d 714, 729 N.Y.S.2d 441, 754 N.E.2d 201, 2001 N.Y. LEXIS 1439 (N.Y. 2001)*.

Termination of a father's parental rights over his two minor children was supported by the evidence where the agency had made diligent efforts to assist the father in maintaining contact with the children and in planning for their future pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)*, in that the agency made monthly telephone calls to apprise the incarcerated father of the children's welfare, facilitated referrals for his enrollment in necessary programs, and repeatedly reminded him of the need to find a resource to care for his children; there was clear and convincing evidence that the father had permanently neglected them by failing to plan for their future, in that he did not provide a "realistic and feasible" alternative to foster care during his incarceration, and the finding that adoption by the foster

parents was in the children's best interests was supported by a preponderance of the evidence. *In re Baby Girl C., 1 A.D.3d 593, 767 N.Y.S.2d 462, 2003 N.Y. App. Div. LEXIS 12530 (N.Y. App. Div. 2d Dep't 2003)*.

County department of social services made diligent efforts to reunite a father with the children where, although there was no contact with the father during his incarceration, during the six months the father was not incarcerated. it arranged for the father to have visitation, encouraged him to obtain a job and a larger apartment so he could have overnight visitation, and attempted to assist him in complying with his parole conditions; the father was aware of the children's placement in foster care during his incarceration, and failed to seek visitation. *Matter of James J. (James K.), 97 A.D.3d 936, 948 N.Y.S.2d 203, 2012 N.Y. App. Div. LEXIS 5497 (N.Y. App. Div. 3d Dep't 2012)*.

80. — —Provision of services

Termination of mother's parental rights on ground of permanent neglect was proper, notwithstanding contention that agency did not make diligent efforts to strengthen parent-child relationships, where agency attempted to consult and cooperate with mother in developing plan for eventual return of children, made arrangements for her to visit children and provided funds for her transportation to such visits, and offered her parenting instruction and counseling in effort to help her remedy problems which resulted in removal of children from her home. *In re Michael W., 149 A.D.2d 943, 540 N.Y.S.2d 75, 1989 N.Y. App. Div. LEXIS 5957 (N.Y. App. Div. 4th Dep't)*, app. denied, *74 N.Y.2d 608, 545 N.Y.S.2d 104, 543 N.E.2d 747, 1989 N.Y. LEXIS 2371 (N.Y. 1989)*.

In permanent neglect proceeding under CLS *Soc Serv § 384-b*, clear and convincing evidence established that agency satisfied its duty under CLS *Soc Serv § 384-b(7)* to exercise diligent efforts to encourage and strengthen parental relationship where (1) caseworkers assisted mother in locating suitable housing, (2) services were provided to assist mother to learn developmental stages, appropriate activities, and discipline and supervision techniques for child, (3) homemaker was assigned to mother to provide guidance in personal hygiene, child care, budgeting, nutrition, grocery shopping, and housekeeping, (4) regular visits between mother and child were arranged, and (5) mother was notified of and invited to monthly meetings and service plan reviews. *In re Albert T., 188 A.D.2d 934, 592 N.Y.S.2d 87, 1992 N.Y. App. Div. LEXIS 14690 (N.Y. App. Div. 3d Dep't 1992)*, overruled in part, *Matter of Alyssa L. (Deborah K.), 93 A.D.3d 1083, 941 N.Y.S.2d 740, 2012 N.Y. App. Div. LEXIS 2347 (N.Y. App. Div. 3d Dep't 2012)*.

Agency exercised diligent efforts to encourage and strengthen parental relationship where (1) agency's caseworkers maintained regular contact with mother by phone, letters, home visits, and personal meetings at agency's offices, (2) caseworkers set up service plans twice each year for 4 years, at which times various goals and tasks were set to assist mother in gaining custody of her children, and (3) caseworkers arranged for and supervised visitations between mother and her children, arranged for counseling for mother as well as parenting classes, and supplied her with parent aide and homemaker. *In re Shannon U., 210 A.D.2d 752, 620 N.Y.S.2d 851, 1994 N.Y. App. Div. LEXIS 13077 (N.Y. App. Div. 3d Dep't 1994)*.

Agency used diligent efforts to strengthen parental relationship where (1) it worked with parents in effort to eliminate cause for their daughters' placement in foster care, (2) plan was established to achieve goal of protecting daughters from sexual abuse and domestic violence, (3) agency repeatedly and assertively reached out with supportive services, counseling, financial assistance, housing assistance, transportation and help with visitation, and services for son who sexually abused daughters, and (4) agency's efforts were met with indifference and general lack of cooperation. *In re Rhonda KK., 210 A.D.2d 763, 620 N.Y.S.2d 541, 1994 N.Y. App. Div. LEXIS 13083 (N.Y. App. Div. 3d Dep't 1994)*.

Child care agency made diligent efforts to encourage and strengthen parental relationship where, inter alia, agency formulated plan for child's return, arranged visitation and parenting classes, and contacted parent at least once per week; agency could not be faulted for not arranging counseling before parent was willing to admit he had problem. *In re Emily A., 216 A.D.2d 124, 629 N.Y.S.2d 206, 1995 N.Y. App. Div. LEXIS 6565 (N.Y. App. Div. 1st Dep't 1995)*.

Social service agency discharged its statutory duty under CLS Soc Serv § 384-b(7)(a) where it (1) maintained regular contact with mother through telephone calls and home visits, (2) offered day treatment programs, counseling, parenting skills classes, codependency counseling, and programs designed to help victims of violence in effort to facilitate eventual return of children, (3) provided safe shelter and food, and (4) organized supervised visitation with children. *In re Matthew "C", 216 A.D.2d 637, 627 N.Y.S.2d 822, 1995 N.Y. App. Div. LEXIS 6087 (N.Y. App. Div. 3d Dep't 1995)*.

Agency engaged in meaningful efforts to assist mother in planning for return of child by making arrangements for weekly visitation and counseling and mental health evaluations for mother and child, and by meeting monthly with mother to assess her progress in meeting goals that were set to permit child's return. *In re Tanya P., 219 A.D.2d 849, 631 N.Y.S.2d 950, 1995 N.Y. App. Div. LEXIS 10939 (N.Y. App. Div. 4th Dep't 1995)*.

Agency made diligent efforts to strengthen and encourage parental relationship where it extended services to mother involving case work counseling, mental health counseling, and parent-aide services, and set visitation schedule for mother with children. *In re John F., 221 A.D.2d 858, 634 N.Y.S.2d 256, 1995 N.Y. App. Div. LEXIS 12344 (N.Y. App. Div. 3d Dep't 1995)*, app. denied, *88 N.Y.2d 811, 649 N.Y.S.2d 378, 672 N.E.2d 604, 1996 N.Y. LEXIS 3009 (N.Y. 1996)*.

Agency used diligent efforts to encourage and strengthen parental relationship where service plan established for father included parenting courses, mental health evaluation, domestic violence program, attending group for sex offenders, meetings with caseworker, and supervised visitation, service plan was implemented, and several referrals to service providers were completed with arrangements made to reimburse father for mileage incurred in traveling to and from scheduled visitations. *In re Dina UU., 224 A.D.2d 877, 638 N.Y.S.2d 247, 1996 N.Y. App. Div. LEXIS 1532 (N.Y. App. Div. 3d Dep't 1996)*.

Agency made sufficient attempt to reunite mother with her children where it provided sexual abuse counseling and alcohol counseling, it recommended that she attend outpatient drug and alcohol centers and YWCA transition program as well as to obtain female sponsor through Alcoholics Anonymous, and agency attempted to facilitate mother's visitation with children and to have her undergo psychiatric evaluation. *In re Cheyenne Q., 239 A.D.2d 620, 657 N.Y.S.2d 224, 1997 N.Y. App. Div. LEXIS 4497 (N.Y. App. Div. 3d Dep't 1997)*.

Termination of mother's services by county mental health unit following mother's refusal to admit unproven allegations of sexual abuse did not show lack of diligence by failing to arrange other services since mother had not been directed to sex offender program, primary focus of mother's plan was not to address issue of sexual abuse, and before sexual abuse charges were even made mother consistently failed to meet goals and objectives set out in her treatment plan until, ultimately, all possible programs or plans had been tried or exhausted. *In re Jennie KK., 239 A.D.2d 666, 657 N.Y.S.2d 231, 1997 N.Y. App. Div. LEXIS 4959 (N.Y. App. Div. 3d Dep't)*, app. denied, *90 N.Y.2d 807, 664 N.Y.S.2d 268, 686 N.E.2d 1363, 1997 N.Y. LEXIS 3020 (N.Y. 1997)*.

Agency made diligent efforts to encourage and strengthen parental relationship where its caseworkers encouraged mother to attend her mental health counseling sessions, when she failed to attend, her case was referred to intensive case manager with hope that more frequent, one-on-one treatment plan would foster positive counseling relationship, mother was also prescribed various medications to treat her schizophrenia, and caseworkers also attempted to facilitate visitation with child by either personally transporting mother or providing her with appropriate fare. *In re Veronica T., 244 A.D.2d 654, 664 N.Y.S.2d 171, 1997 N.Y. App. Div. LEXIS 11491 (N.Y. App. Div. 3d Dep't 1997)*.

In proceeding for termination of parental rights, agency made sufficient efforts to encourage father's participation in drug rehabilitation program by providing numerous referrals to treatment programs, including programs with Spanish-speaking counselors; agency was not required to contact father's parole officer regarding his need for drug treatment where father never informed caseworker that he was undergoing drug screening as condition of his parole. *In re Barbara Luisa A., 266 A.D.2d 156, 699 N.Y.S.2d 38, 1999 N.Y. App. Div. LEXIS 12339 (N.Y. App. Div. 1st Dep't 1999)*.

In a case involving a finding of permanent neglect based on allegations of sexual abuse, a county agency made diligent efforts to establish a meaningful relationship between parents and their children as required by *N.Y. Soc. Serv. Law § 384-b(7)(f)* by providing counseling with respect to sexual abuse allegations, providing supervising visitation, and maintaining contact with the family's treatment providers. *Matter of Amy B. v Lee B., 37 A.D.3d 600, 830 N.Y.S.2d 294, 2007 N.Y. App. Div. LEXIS 1698 (N.Y. App. Div. 2d Dep't)*, app. denied, *9 N.Y.3d 808, 844 N.Y.S.2d 174, 875 N.E.2d 893, 2007 N.Y. LEXIS 2699 (N.Y. 2007)*.

Family Court properly adjudicated a mother's children to be permanently neglected and terminated her parental rights because repeated and meaningful efforts were made to restore the parent-child relationships, the mother failed to plan for the children's future by taking such steps as might be necessary to provide an adequate, stable home and parental care for the children, and it was not in their best interests to give her a second chance to demonstrate her ability to be a fit parent. *Matter of Cory N. (Jessica O.), 111 A.D.3d 1079, 976 N.Y.S.2d 248, 2013 N.Y. App. Div. LEXIS 7739 (N.Y. App. Div. 3d Dep't 2013)*.

81. — —Multiple efforts

In proceeding to terminate parental rights, Department of Social Services did not fail in its statutory duty to make diligent efforts to encourage and strengthen parental relationship, where department arranged for a regularly scheduled individual in family counseling, along with weekly visits with children, all with purpose of effecting eventual return of children to parent, and where agency provided parent with transportation to and from all meetings. *In re Loretta OO., 114 A.D.2d 648, 494 N.Y.S.2d 232, 1985 N.Y. App. Div. LEXIS 53332 (N.Y. App. Div. 3d Dep't 1985)*.

Foster care agency made diligent efforts to strengthen parental relationship where caseworker (1) arranged for 52 office visits with mother and 35 visits between mother and child, and made 238 collateral contacts on mother's behalf, and (2) counseled mother on personal hygiene, budgeting, parenting skills, and alcohol abuse, and arranged for professional counseling, vocational training, and public benefits. *In re Mary Ann FF., 129 A.D.2d 899, 514 N.Y.S.2d 536, 1987 N.Y. App. Div. LEXIS 45577 (N.Y. App. Div. 3d Dep't)*, app. denied, *70 N.Y.2d 605, 519 N.Y.S.2d 1028, 513 N.E.2d 1308, 1987 N.Y. LEXIS 18228 (N.Y. 1987)*.

In proceeding to terminate mother's parental rights on ground of permanent neglect, evidence showed that county department of social services exercised diligent efforts to strengthen parental relationship where it was demonstrated that it assisted mother in her employment and housing searches, developed flexible visitation schedules, gave mother adequate travel allowance, provided transportation on occasion for visitation, counseled mother about disciplining children and budgeting her income, arranged for mother to attend mental health counseling and parenting skills classes, and advised mother frequently of objectives she would need to accomplish to have children returned to her. *In re Christina Q., 156 A.D.2d 770, 549 N.Y.S.2d 195, 1989 N.Y. App. Div. LEXIS 15595 (N.Y. App. Div. 3d Dep't 1989)*, app. denied, *75 N.Y.2d 708, 554 N.Y.S.2d 833, 553 N.E.2d 1343, 1990 N.Y. LEXIS 2016 (N.Y. 1990)*.

Father's parental rights were properly terminated, despite contention that agency failed to prove that it exercised diligent efforts to strengthen his relationship with his 3-year-old child, where (1) agency diligently attempted to reunite father with child, but father failed to plan for her return and only visited her 5 times in 10-month period, despite numerous scheduled visits, (2) agency repeatedly attempted to help father overcome his drug problem but he refused aid, and (3) agency also explored possibility of placing child with father's sister, but she never formally decided to take child into her home. *In re Guardianship of Christina Jeanette C., 168 A.D.2d 351, 562 N.Y.S.2d 675, 1990 N.Y. App. Div. LEXIS 15494 (N.Y. App. Div. 1st Dep't 1990)*.

County department of social services demonstrated by clear and convincing evidence that it exercised diligent efforts to strengthen parental relationship and to reunite family where (1) caseworkers arranged alcohol counseling, psychological testing to evaluate counseling needs, parenting classes, and various attempts at home visits, (2) mother failed to participate entirely, or started programs that were never successfully completed, and (3) visitation was extremely sporadic even though department provided bus tokens and free transportation, and foster parents

were very flexible about arranging visitation. *In re Henry YY., 171 A.D.2d 969, 567 N.Y.S.2d 912, 1991 N.Y. App. Div. LEXIS 3916 (N.Y. App. Div. 3d Dep't 1991)*.

In proceedings under CLS *Soc Serv § 384-b* to terminate parental rights of mother of 2 children, record supported finding that agency fulfilled its obligation under § 384-b(7) to employ diligent efforts to strengthen parent-child relationships where agency developed regular visitation program, provided hearing-impaired mother with sign language interpreter at meeting with social workers, informed mother of necessary steps for return of children and arranged for mother to attend counseling, psychotherapy and parent training sessions. *In re Shaquanna C. Forestdale, Inc., 184 A.D.2d 509, 584 N.Y.S.2d 197, 1992 N.Y. App. Div. LEXIS 7614 (N.Y. App. Div. 2d Dep't 1992)*.

In proceeding to terminate parental rights, clear and convincing evidence established that child care agency fulfilled its duty to exercise diligent efforts to encourage and strengthen parent-child relationship where record established (1) that every 6 months, agency set up service plans and goals that parents had to meet in order to have child return home, (2) that plans provided that parents were to attend marital counseling to establish stable relationship and also to attend parenting skills classes, (3) agency also provided supervised visitation with child on regular basis and assisted parents in formulating plan for child's future, including his need for medical care for asthma, and (4) agency also made referrals to assist parents in obtaining stable and satisfactory housing. *In re Michael Allen S., 187 A.D.2d 978, 590 N.Y.S.2d 337, 1992 N.Y. App. Div. LEXIS 13994 (N.Y. App. Div. 4th Dep't 1992)*.

County social services department fulfilled its statutory duty to exercise diligent efforts to strengthen parent-child relationship where it assisted mother with programs addressing her admitted alcoholism and programs to improve her parenting skills, it arranged for transportation to those programs, it scheduled supervised visitation with child and arranged for transportation for visitation, and it assisted mother in obtaining apartment. *In re Amy Lynn T., 217 A.D.2d 974, 629 N.Y.S.2d 910, 1995 N.Y. App. Div. LEXIS 8409 (N.Y. App. Div. 4th Dep't 1995)*.

In proceeding under CLS *Soc Serv § 384-b* to terminate father's parental rights for permanent neglect, agency used diligent efforts to strengthen parental relationship where it set goals for father with plans to address his needs, including obtaining permanent and adequate housing and attending parenting skills training sessions and domestic violence counseling, and it conducted regular plan reviews, referred father to services addressed to his needs, and established regular child visitation schedule. *In re Alicia Shante H., 245 A.D.2d 509, 666 N.Y.S.2d 682, 1997 N.Y. App. Div. LEXIS 13229 (N.Y. App. Div. 2d Dep't 1997)*.

In proceeding to terminate both parents' parental rights, agency made sufficient efforts to strengthen parental relationship where those efforts included parenting classes, extensive program to teach parents about child's asthma and how to treat it, transportation to enable parents to visit child and attend other programs, and semiannual risk assessments to identify obstacles to family reunification and develop methods to overcome them. *In re Charlene "E", 281 A.D.2d 659, 721 N.Y.S.2d 164, 2001 N.Y. App. Div. LEXIS 2033 (N.Y. App. Div. 3d Dep't 2001)*.

Evidence was sufficient to show that the county social services department diligently tried to provide appropriate services to the mother and father, which included providing them with a list of psychotherapy agency referrals and arranging for them to have mental health evaluations, in order to encourage and strengthen the parental relationship with their six children where the mother and father were accused of neglecting them, and that the mother and father failed to take advantage of such assistance; accordingly, termination of their parental rights was proper. *Matter of Darlene L., 38 A.D.3d 552, 831 N.Y.S.2d 500, 2007 N.Y. App. Div. LEXIS 2584 (N.Y. App. Div. 2d Dep't 2007)*.

Termination of parental rights was affirmed, as clear and convincing evidence showed that a county agency made diligent efforts to encourage and strengthen the parental relationship, *N.Y. Soc. Serv. Law § 384-b(7)(a)*, by providing, among other things, referrals for mental health evaluations and counseling, parenting classes, and transportation. The parents failed to cooperate with those efforts and realistically plan for the children's future for

more than one year. *Matter of Andrew Z., 41 A.D.3d 912, 837 N.Y.S.2d 422, 2007 N.Y. App. Div. LEXIS 6850 (N.Y. App. Div. 3d Dep't 2007)*.

County department of social services made diligent efforts to facilitate the father's relationship with the children because, after the children's removal and before the father was incarcerated, the caseworker arranged for visits with his children and provided him with updates as to their placement and their progress; and because, during his incarceration, the caseworker met with him to discuss the permanency of the children and their progress, and brought the children for visits at the correctional facilities. *Matter of Joannis P. (Joseph Q.), 110 A.D.3d 1188, 974 N.Y.S.2d 139, 2013 N.Y. App. Div. LEXIS 6735 (N.Y. App. Div. 3d Dep't)*, app. denied, *22 N.Y.3d 857, 980 N.Y.S.2d 68, 3 N.E.3d 134, 2013 N.Y. LEXIS 3278 (N.Y. 2013)*.

Because the county department of social services created a service plan to address the mother's issues, referred her for numerous services, and facilitated supervised visitations with the child, the department established that it made diligent efforts to assist the mother in overcoming the problems that led to the child's removal. *Matter of Arianna BB. (Tracy DD.), 110 A.D.3d 1194, 974 N.Y.S.2d 586, 2013 N.Y. App. Div. LEXIS 6741 (N.Y. App. Div. 3d Dep't 2013)*, app. denied, *22 N.Y.3d 858, 981 N.Y.S.2d 368, 4 N.E.3d 380, 2014 N.Y. LEXIS 11 (N.Y. 2014)*, app. denied, *22 N.Y.3d 858, 981 N.Y.S.2d 369, 4 N.E.3d 381, 2014 N.Y. LEXIS 14 (N.Y. 2014)*.

82. — —Parent's lack of compliance

Agency had made the required effort to encourage parental relationship, and Family Court properly terminated parental rights of natural parents on basis of permanent neglect, where caseworker made diligent efforts to strengthen parental relationship by arranging meetings with children and counseling sessions, but failure of such efforts was caused by parents' mistrust of agency and caseworker, and by adversarial relationship parents maintained with agency. *In re Yvonne II., 121 A.D.2d 766, 503 N.Y.S.2d 177, 1986 N.Y. App. Div. LEXIS 58742 (N.Y. App. Div. 3d Dep't 1986)*.

County Department of Social Services exercised due diligence in attempting to foster parental relationship before seeking termination of parental rights for permanent neglect under CLS *Soc Serv § 384-b* where parents had stipulated that child had been neglected and that they would cooperate with county, parents nonetheless adamantly refused to comply with recommendation that psychological or psychiatric evaluation be performed by "professing a disbelief in that field of science," and such refusal frustrated any efforts by county to reunite family. *In re Natalie T., 126 A.D.2d 908, 510 N.Y.S.2d 935, 1987 N.Y. App. Div. LEXIS 42016 (N.Y. App. Div. 3d Dep't 1987)*.

Social services agency met its burden of proving that it made diligent efforts to strengthen father's relationship with his child, and evidence showed that father failed to cooperate in meaningful way in providing for child's needs, including special emotional and physical needs resulting from physical abuse by her mother such as fragile leg that needed corrective surgery, where (1) father had been absent for many years and his visits were sporadic, (2) agency made determined effort for 8 months before petition was filed to reunite child with father, and (3) father had minimal awareness child's needs in that he tended to be passive in his relations with her and he failed to exercise control necessary to protect her from further injury to her leg. *In re Leigh J, 145 A.D.2d 895, 536 N.Y.S.2d 230, 1988 N.Y. App. Div. LEXIS 13783 (N.Y. App. Div. 3d Dep't 1988)*, app. denied, *74 N.Y.2d 605, 543 N.Y.S.2d 398, 541 N.E.2d 427, 1989 N.Y. LEXIS 774 (N.Y. 1989)*.

Family Court erred in finding that agency failed to exercise diligent efforts to encourage and strengthen mother's relationship with her children where (1) agency considered mother's mental limitations in setting goals, (2) agency worked with her for 2-year period, during which time she was referred to and encouraged to obtain mental health counseling and sexual abuse counseling, treatments that she declined, (3) agency provided financial assistance to help her arrange visits with children, (4) agency supervised approximately 55 visits to help her improve her relationship with her children, (5) agency's effort to teach her parenting skills was met with obstinate refusal to change her ways, (6) she failed to attend all but one service planning session to evaluate her progress and map further plans to reunite family, and (7) psychologist indicated that she was at high risk for not comprehending or

understanding complex needs of young children. *In re Sarah B., 203 A.D.2d 747, 610 N.Y.S.2d 403, 1994 N.Y. App. Div. LEXIS 4080 (N.Y. App. Div. 3d Dep't 1994)*.

County department of social services fulfilled its statutory obligation to attempt to strengthen father's parental relationship with his children and to assist him in obtaining counseling, and was entitled to order terminating his parental rights, where caseworker made weekly visitations during which she attempted to review service plan with father, he refused to cooperate with caseworker for more than one year, he refused to attend parenting classes or be evaluated by alcohol/drug rehabilitation center for more than 4 years, and he refused to undergo psychological evaluation and to participate in group counseling for sexual abuse in violation of prior dispositional order. *In re Chianti FF, 205 A.D.2d 849, 613 N.Y.S.2d 290, 1994 N.Y. App. Div. LEXIS 6075 (N.Y. App. Div. 3d Dep't 1994)*.

Agency exercised diligent efforts to strengthen parental relationship where (1) agency's initial plan was to place both mother (age 14) and child in foster care so that foster parents could serve as role model for mother, (2) when agency's plan was thwarted by mother's action in leaving foster care to return to her parent's home, agency enrolled her in parenting courses and counseling, and (3) mother failed to substantially attend any programs offered. *In re Rita VV., 209 A.D.2d 866, 619 N.Y.S.2d 218, 1994 N.Y. App. Div. LEXIS 11619 (N.Y. App. Div. 3d Dep't 1994)*, app. denied, *85 N.Y.2d 811, 631 N.Y.S.2d 287, 655 N.E.2d 400, 1995 N.Y. LEXIS 2125 (N.Y. 1995)*.

County social service agency discharged its statutory duty under CLS *Soc Serv § 384-b(7)(a)* where its caseworkers repeatedly scheduled meetings with mother, arranged for counseling, and offered financial, budgeting and transportation assistance to facilitate her visitation with children, but she failed to meaningfully participate, and would reject telephone calls from children without excuse. *In re Elizabeth "Q", 216 A.D.2d 628, 627 N.Y.S.2d 827, 1995 N.Y. App. Div. LEXIS 6169 (N.Y. App. Div. 3d Dep't)*, app. denied, *86 N.Y.2d 706, 632 N.Y.S.2d 500, 656 N.E.2d 599 (N.Y. 1995)*, app. denied, *86 N.Y.2d 706, 632 N.Y.S.2d 500, 656 N.E.2d 599, 1995 N.Y. LEXIS 3476 (N.Y. 1995)*.

In proceeding for termination of parental rights, Family Court erroneously found that county department of social services failed to make diligent efforts to encourage and strengthen parental relationship where department established that it consulted and cooperated with parents in developing service plan, provided services to parents to help them resolve their parenting problems, made visitation arrangements for parents and their child, and kept parents informed of their child's progress, development and health, but such efforts were thwarted by lack of parents' cooperation, and at times their hostility. *In re Kimberly J., 216 A.D.2d 940, 629 N.Y.S.2d 142, 1995 N.Y. App. Div. LEXIS 7278 (N.Y. App. Div. 4th Dep't)*, app. denied, *87 N.Y.2d 801, 637 N.Y.S.2d 688, 661 N.E.2d 160, 1995 N.Y. LEXIS 4937 (N.Y. 1995)*.

Court's finding that father was uncooperative and failed to complete provisions of agreed-on disposition, despite agency's diligent efforts, was supported by evidence that agency arranged for him to participate in parenting class, domestic violence program, program to treat alcoholism, group program for sex offenders, and to have supervised visitation with child, and that he completed parenting class but not other programs and only took advantage of 10 of 63 scheduled visits with child. *In re Robin PP, 222 A.D.2d 762, 635 N.Y.S.2d 707, 1995 N.Y. App. Div. LEXIS 12651 (N.Y. App. Div. 3d Dep't 1995)*.

Agency made diligent efforts to strengthen and reunite mother with her child where mother received parenting classes, mental health counseling, alcoholism services, and classes designed to help parents of children with Attention Deficit Hyperactivity Disorder; although mother was cooperative in attending classes and arranging for others to care for her child, she consistently failed to apply what she had been taught to her actual interaction with her child. *In re Jennie KK., 239 A.D.2d 666, 657 N.Y.S.2d 231, 1997 N.Y. App. Div. LEXIS 4959 (N.Y. App. Div. 3d Dep't)*, app. denied, *90 N.Y.2d 807, 664 N.Y.S.2d 268, 686 N.E.2d 1363, 1997 N.Y. LEXIS 3020 (N.Y. 1997)*.

Social services department made diligent efforts to encourage and strengthen parental relationship where it set up appropriate service plan, which was regularly updated, and arranged for visitation in attempt to reintegrate children into home, but parents were resistant to change or denied existence of their inappropriate behavior, did not

participate in domestic violence counseling, and lied to and misled caseworkers. *In re Daniel AA., 241 A.D.2d 703, 659 N.Y.S.2d 960, 1997 N.Y. App. Div. LEXIS 7436 (N.Y. App. Div. 3d Dep't 1997)*.

In proceeding to terminate mother's parental rights for permanent neglect, agency made diligent efforts, to extent possible under circumstances, to strengthen parental relationship where it tried to maintain contact with mother, arranged for her receipt of public assistance, and encouraged her to maintain contact with her child, but its efforts were largely thwarted by mother's refusal to provide address at which she could be contacted. *In re Committment of Denaysia Shantel C., 266 A.D.2d 109, 698 N.Y.S.2d 664, 1999 N.Y. App. Div. LEXIS 12066 (N.Y. App. Div. 1st Dep't 1999)*.

County department of social services (DSS) discharged its statutory duty to exercise diligent efforts, although father was precluded by court order from visiting children until visitation was recommended by therapist and DSS did not have children assessed by therapist for at least 10 months, where DSS was diligent in every other aspect of service plan it devised to encourage his relationship with children, it conducted 3 service plan reviews, father attended on one review where he advised caseworker that obligations he was required to meet were "all crap," and he failed to attend and complete abusive parent program (which was condition of visitation with his children) although DSS consistently urged him to do so. *In re Jamal "B.", 287 A.D.2d 898, 731 N.Y.S.2d 567, 2001 N.Y. App. Div. LEXIS 9975 (N.Y. App. Div. 3d Dep't 2001)*, app. denied, *97 N.Y.2d 609, 739 N.Y.S.2d 98, 765 N.E.2d 301, 2002 N.Y. LEXIS 77 (N.Y. 2002)*.

Clear and convincing evidence existed that county department of social services diligently, directly, and consistently tried to address the issues that caused the children's removal from the home, which was the danger posed by the daily presence of an untreated sex offender in the home, who the mother had married; the mother refused to acknowledge her need for counseling, did not cooperate in the services arranged by the department, and moved out of the county twice, thereby interrupting reunification for significant periods of time. The department's diligent reunification efforts were frustrated by the mother's behavior and, by suspending the judgment of termination of parental rights for 12 months, she was given yet one more chance at reunification; termination of parental rights due to neglect was proper. *Matter of Alycia P., 24 A.D.3d 1119, 807 N.Y.S.2d 172, 2005 N.Y. App. Div. LEXIS 14797 (N.Y. App. Div. 3d Dep't 2005)*.

Father's parental rights were properly terminated pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)* because he was uncooperative or indifferent to a county department of social services' reasonable attempts to assist, develop, and encourage a meaningful relationship between the father and his child. *Matter of Noah V.P. (Gino P.), 96 A.D.3d 1472, 945 N.Y.S.2d 836, 2012 N.Y. App. Div. LEXIS 4564 (N.Y. App. Div. 4th Dep't 2012)*.

83. —Lack of success

Even assuming that agency had to meet higher standards in demonstrating its diligent efforts to encourage and strengthen parent-child relationship because mother was 16-year-old minor, agency met those standards and court erred in dismissing petition to terminate parental rights where agency (1) recommended group home placement to provide mother with housing, therapy, counseling, and educational and emotional assistance, (2) encouraged mother to remain in contact with her brother and father and even considered her new boyfriend's mother as resource, (3) referred mother for placement in mother-child foster care, and (4) was extremely patient with mother, making extensive referrals, reviewing its plans with her and exploring various other resources; although mother remained uncooperative and indifferent to these persistent efforts, agency is not charged with guarantee that parent succeed in overcoming predicaments. *In re Guardianship of Alexander, 127 A.D.2d 517, 512 N.Y.S.2d 32, 1987 N.Y. App. Div. LEXIS 42998 (N.Y. App. Div. 1st Dep't 1987)*.

Social services agency made diligent effort to encourage and strengthen parental relationship as required by CLS *Soc Serv § 384-b*, although its efforts were sometimes unsuccessful, where it provided services directed towards mother's alcoholism, as well as in areas of housing, homemaking, and parental guidance; agency is not required to guarantee success. *In re Regina M. C., 139 A.D.2d 929, 528 N.Y.S.2d 953, 1988 N.Y. App. Div. LEXIS 4192 (N.Y. App. Div. 4th Dep't 1988)*.

Social services agency which has embarked on diligent course but faces utterly uncooperative or indifferent parent is deemed to have fulfilled its duty under CLS Soc Serv § 384-b(7)(a) to make diligent efforts to encourage and strengthen relationship between parent and child, and is not charged with guaranteeing that parent succeed in overcoming his or her predicaments. *In re Ann Margaret B., 185 A.D.2d 710, 586 N.Y.S.2d 71, 1992 N.Y. App. Div. LEXIS 9298 (N.Y. App. Div. 4th Dep't)*, app. denied, *80 N.Y.2d 761, 592 N.Y.S.2d 670, 607 N.E.2d 817, 1992 N.Y. LEXIS 3911 (N.Y. 1992)*.

Despite its lack of success, county social services department made diligent efforts to aid mother to forestall child neglect proceeding where its efforts to assist her in obtaining parental training, visitation of child, and counseling for her mental health problems were frustrated by her uncooperative and noncompliant conduct. *In re April B., 242 A.D.2d 926, 663 N.Y.S.2d 458, 1997 N.Y. App. Div. LEXIS 10507 (N.Y. App. Div. 4th Dep't 1997)*.

Family court, inter alia, properly terminated a mother's parental rights to her children because the mother's failure to maintain contact with the children despite the petitioner's diligent efforts was sufficient to support a finding of permanent neglect, the mother failed to provide a credible explanation for her absences at the vast majority of those missed visits, and it was in the children's best interests to terminate the mother's parental rights and free them for adoption by their foster parents, who expressed a desire to adopt them. *Matter of Karina J.M. (Carmen Enid G.), 145 A.D.3d 893, 44 N.Y.S.3d 103, 2016 N.Y. App. Div. LEXIS 8377 (N.Y. App. Div. 2d Dep't 2016)*.

84. —Efforts inadequate

In the statutory scheme, the onus is on the agency seeking termination of parental rights to make some prior attempt to assist parents to overcome the problems that separate them from their children. Moreover, a consideration of the best interests of the child is not even reached unless it would be actually detrimental to encourage the parental relationship. Accordingly, a petition to terminate parental rights for failure, over the period of more than one year, to plan for the future of the child would be dismissed, since the record did not reflect diligent efforts on the part of the agency to aid the parents in regaining their child from foster parents. *In re Jamie M., 63 N.Y.2d 388, 482 N.Y.S.2d 461, 472 N.E.2d 311, 1984 N.Y. LEXIS 4667 (N.Y. 1984)*.

Agency failed to exercise diligent efforts to encourage and strengthen parental relationship, even though mother missed certain planning relationship, even though mother missed certain planning conferences, and some of her scheduled visits with her son were cancelled due to her own failure to confirm her attendance, where mother was hospitalized during period when some of those visits and conferences were scheduled, agency scheduled visits only when mother took initiative to see child, and there was period of more than month when no casework activity occurred because caseworker was in hospital. *Westchester County Dep't of Social Servs. ex rel. Brian M. v Linda G., 221 A.D.2d 456, 633 N.Y.S.2d 581, 1995 N.Y. App. Div. LEXIS 11910 (N.Y. App. Div. 2d Dep't 1995)*.

Family court property refused to adjudicate a child to be permanently neglected under *N.Y. Soc. Serv. Law § 384-b*, as (1) the parents visited the child whenever possible and used the services provided by the department of social services, and (2) the department had not made the requisite diligent efforts to strengthen the parental relationship, as it did not give them a chance to parent the child outside the presence of other family members, despite obvious tension between the mother and those family members. *Matter of Nicole H., 24 A.D.3d 1054, 806 N.Y.S.2d 303, 2005 N.Y. App. Div. LEXIS 14414 (N.Y. App. Div. 3d Dep't 2005)*.

Family court erred in adjudicating the children permanently neglected by the father and terminating his parental rights, as the Department of Social Services did little more than determine the particular problems facing the father with respect to the return of his children, and did not make affirmative, repeated, and meaningful efforts to assist him in overcoming those handicaps before seeking the termination of his parental rights. *136 A.D.3d 618, 25 N.Y.S.3d 250, 2016 N.Y. App. Div. LEXIS 646*.

In seeking to terminate a father's parental rights on grounds of permanent neglect, the child services agency failed to establish by clear and convincing evidence that it exercised diligent efforts to strengthen the parental relationship between the father and the children because the agency, inter alia, did not assist the father in securing stable and

suitable housing or reinstate visitation between the father and the children as soon as practicable after a suspension of visitation. *Matter of Elijah W.L. (Omisa S.C.), 146 A.D.3d 782, 44 N.Y.S.3d 206, 2017 N.Y. App. Div. LEXIS 163 (N.Y. App. Div. 2d Dep't)*, app. denied, *29 N.Y.3d 907, 80 N.E.3d 404, 57 N.Y.S.3d 711, 2017 N.Y. LEXIS 1322 (N.Y. 2017)*.

Family Court granted father's motion to dismiss petition to terminate his parental rights where agency failed to make diligent efforts to encourage and strengthen his relationship with child during relevant period because its attention was focused primarily on child's mother. *Genesee County Dep't of Social Servs. v Kurt L., 178 Misc. 2d 1045, 682 N.Y.S.2d 336, 1998 N.Y. Misc. LEXIS 582 (N.Y. Fam. Ct. 1998)*.

85. — —Inadequate plan

In a proceeding against a father to terminate his parental rights for neglect of his children, the agency did not sustain its burden of proving that it made diligent efforts to strengthen and encourage the parental relationship where the agency made no concrete proposals in fulfillment of its statutory duty of developing a plan for appropriate services to the children and the father and never assisted the father in an affirmative fashion. *In re "PP", 65 A.D.2d 18, 410 N.Y.S.2d 916, 1978 N.Y. App. Div. LEXIS 12882 (N.Y. App. Div. 3d Dep't 1978)*.

In permanent neglect proceeding arising from previous finding that one of respondent's children had been sexually abused, record failed to establish that agency's plan was realistic and tailored to fit respondent's individual situation where, despite agency's belief that child was abused by respondent's husband and respondent was "passive sexual offender," agency's plan and services provided did not treat respondent individually and apart from her husband; respondent did not receive realistic second change to acknowledge responsibility for abuse, especially as she had expressed her confusion as to how she could be responsible for abuse that she did not commit, and there was no evidence that agency attempted to deal with her confusion. *In re Jesus JJ., 223 A.D.2d 955, 636 N.Y.S.2d 507, 1996 N.Y. App. Div. LEXIS 574 (N.Y. App. Div. 3d Dep't 1996)*.

Agency violated its statutory duty to use "diligent efforts" to encourage and strengthen parental relationship where it filed permanent neglect petition against incarcerated mother when she had only 16 months left to serve before her earliest possible release date, agency had acquiesced in mother's plan for foster care pending her release, mother made diligent efforts while in prison to better herself and prepare for return of child on her release, mother obeyed every directive by caseworkers, and if mother's plan for child's future was inadequate, it was because agency failed to so advise her and to assist her in formulating acceptable plan. *In re Latasha F., 251 A.D.2d 1005, 674 N.Y.S.2d 237, 1998 N.Y. App. Div. LEXIS 7023 (N.Y. App. Div. 4th Dep't 1998)*.

In permanent neglect proceeding, department of social services (DSS) failed to exercise diligent efforts to strengthen respondent father's relationship with child where there was no plan to return child to father and service plan was developed only for child's mother, DSS never followed up on its request that father submit to drug screening, only home visit was conducted at father's request, DSS never advised father that his living arrangements were unacceptable, and DSS failed to establish that any statutory exceptions applied. *In re Ericka M., 285 A.D.2d 986, 727 N.Y.S.2d 234, 2001 N.Y. App. Div. LEXIS 6975 (N.Y. App. Div. 4th Dep't 2001)*.

In a proceeding pursuant to *N.Y. Soc. Serv. Law § 384-b*, a family court properly determined a mother failed to plan for the future of her three children because the mother did not provide any "realistic and feasible" alternative to having the children remain in foster care until the mother was released from prison and such failure supported a finding of permanent neglect, § 384-b(7)(c). *Matter of Gena S. (Karen M.), 101 A.D.3d 1593, 958 N.Y.S.2d 546, 2012 N.Y. App. Div. LEXIS 8928 (N.Y. App. Div. 4th Dep't 2012)*, app. dismissed, *101 A.D.3d 1596, 955 N.Y.S.2d 781, 2012 N.Y. App. Div. LEXIS 8922 (N.Y. App. Div. 4th Dep't 2012)*, app. dismissed, *101 A.D.3d 1596, 955 N.Y.S.2d 781, 2012 N.Y. App. Div. LEXIS 8927 (N.Y. App. Div. 4th Dep't 2012)*, app. dismissed, *101 A.D.3d 1597, 955 N.Y.S.2d 782, 2012 N.Y. App. Div. LEXIS 8930 (N.Y. App. Div. 4th Dep't 2012)*, app. denied, *104 A.D.3d 1263, 961 N.Y.S.2d 355, 2013 N.Y. App. Div. LEXIS 1655 (N.Y. App. Div. 4th Dep't 2013)*.

86. — —Inadequate communication

Agency proceeded with utter indifference to father's rights and failed to satisfy its statutory duty where all contact between agency and father was due to father's efforts to apprise agency of the progress he was making to establish paternity and, in an 18-month period, agency made no attempt to assist father who presented two separate plans to gain custody of his daughter; therefore, case would be remanded for agency to formulate plan to transfer custody to father. *In re Sheila G., 61 N.Y.2d 368, 474 N.Y.S.2d 421, 462 N.E.2d 1139, 1984 N.Y. LEXIS 4118 (N.Y. 1984)*.

In proceeding pursuant to CLS *Soc Serv § 384-b* to terminate parental rights, agency failed to demonstrate diligent efforts to assist mother in planning for return of children where (1) after mother allegedly refused to cooperate with plan for her to engage in parental skills therapy program, agency arranged for mother to attend second therapy program after doctor in first program terminated her case, (2) after mother stopped participating in program, caseworker neither made further arrangements nor any attempt to discover why mother ended her participation, and (3) there was evidence that mother was raped and left completely traumatized at about time she ended participation. *In re Charmaine T., 173 A.D.2d 625, 570 N.Y.S.2d 209, 1991 N.Y. App. Div. LEXIS 7668 (N.Y. App. Div. 2d Dep't 1991)*.

87. — —Inadequate provision of services

Agency fails to prove that it has exercised meaningful and diligent efforts required to assist parent in overcoming problems and to reunite parent with child where there is willful lack of planning as to nature and substance of parent's interaction with child during visits arranged by agency, agency does little to help parent find employment or housing, homemaker assistance is not arranged until after permanent neglect petition has been filed, and agency fails to instruct parent as to appropriate procedure for complying with application requirements for public assistance. *In re Kip D., 115 A.D.2d 864, 496 N.Y.S.2d 563, 1985 N.Y. App. Div. LEXIS 55239 (N.Y. App. Div. 3d Dep't 1985)*.

In proceeding to terminate parental rights, agency did not establish by clear and convincing evidence that mother had permanently neglected her children where she had maintained regular course of visitation and contact since children had been placed in foster care, she participated in services to which agency referred her, she desired to establish family relationship with children, and agency failed in its duty to make affirmative, repeated and meaningful efforts to assist her in ameliorating identified problem of father's alcohol abuse, which was foundational cause preventing children from being reunited with their parents. *In re Michael Louis S., 127 A.D.2d 1005, 512 N.Y.S.2d 944, 1987 N.Y. App. Div. LEXIS 43509 (N.Y. App. Div. 4th Dep't 1987)*.

Agency did not make diligent efforts to strengthen parental relationship, even though agency offered father referral to parenting skills program and encouraged him to visit child on regular basis at foster home, where (1) primary obstacle that prevented father from assuming full custody of child was his involvement in demanding medical residency program, and (2) agency should have made meaningful efforts to assist father in planning feasible alternative to foster care, such as referring him to appropriate day care or after school programs, or exploring suggestion that child be placed with paternal grandmother until father completed residency. *In re Sykia Monique G., 208 A.D.2d 534, 616 N.Y.S.2d 806, 1994 N.Y. App. Div. LEXIS 9238 (N.Y. App. Div. 2d Dep't 1994)*.

Agency failed to exercise diligent efforts to encourage and strengthen parental relationship where, inter alia, none of offered counseling services focused on educating father about autism or child's specific needs, and although it was recognized by caseworker that reason for father's unemployment was his illiteracy, there was no evidence that agency offered any services which would help father in that regard. *In re Austin A., 243 A.D.2d 895, 663 N.Y.S.2d 336, 1997 N.Y. App. Div. LEXIS 10141 (N.Y. App. Div. 3d Dep't 1997)*.

Social services department failed to sufficiently encourage and strengthen parental relationship where it provided interpreter for only portions of supervised visitations between immigrant Polish mother and son who had been placed in English-speaking foster home, failed to assure that mother attended English classes, and failed to provide her with Polish-speaking therapist. *In re Richard "W", 265 A.D.2d 685, 696 N.Y.S.2d 298, 1999 N.Y. App. Div. LEXIS 10683 (N.Y. App. Div. 3d Dep't 1999)*.

Trial court erred in terminating a father's parental rights to his children on the basis of neglect, because an agency failed to make diligent efforts to encourage and strengthen the parental relationship as required by *N.Y. Soc. Serv. Law § 384-b(7)(f)*, as the agency failed to refer the father to services designed to address his respective needs regarding housing, employment, and parenting skills. *In re Joseph Albert R., 2 A.D.3d 528, 768 N.Y.S.2d 491, 2003 N.Y. App. Div. LEXIS 13033 (N.Y. App. Div. 2d Dep't 2003)*.

Failure of authorized child care agency to provide mildly mentally retarded mother of 4 with needed psychiatric or psychological services to help her cope with emotional distress and provide any services designed specifically to address mother's disability of mental retardation in face of her demonstrable need for such services, prevented finding that mother had permanently neglected children, as agency did not make "diligent efforts" required of it under CLS *Soc Serv § 384-b(7)(a)*, to encourage and strengthen parental relationship. *In re Children, 131 Misc. 2d 81, 499 N.Y.S.2d 587, 1986 N.Y. Misc. LEXIS 2479 (N.Y. Fam. Ct. 1986)*.

88. —Efforts excused

Agency, pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)* and *N.Y. Fam. Ct. Act § 614(c)*, was not required to strengthen the parent-child relationship and reunite the family, where protection orders directed the father to stay away from one child, and he had derivatively abused the other child. *In re Guardianship of Joseluise Juan M., 302 A.D.2d 219, 755 N.Y.S.2d 41, 2003 N.Y. App. Div. LEXIS 886 (N.Y. App. Div. 1st Dep't)*, app. denied, *100 N.Y.2d 508, 764 N.Y.S.2d 385, 796 N.E.2d 477, 2003 N.Y. LEXIS 1757 (N.Y. 2003)*.

There was no explicit mandate by *N.Y. Fam. Ct. Act § 1039-b(b)(6)* that there be an evidentiary hearing prior to granting a motion relieving the agency from having to make reasonable efforts at reunification prior to a permanent neglect finding; the mother's answering papers raised no genuine issues of fact with respect to the relevant allegations made by agency in support of the motion. Despite the fact that the mother was in a long-term substance rehabilitation program, her consistent past history of substance abuse and failed attempts at rehabilitation, as well as other failings along the way, provided the family court with a sound basis for its decision. *Matter of Carlos R., 63 A.D.3d 1243, 879 N.Y.S.2d 829, 2009 N.Y. App. Div. LEXIS 4157 (N.Y. App. Div. 3d Dep't)*, app. denied, *13 N.Y.3d 704, 887 N.Y.S.2d 1, 915 N.E.2d 1179, 2009 N.Y. LEXIS 3469 (N.Y. 2009)*.

Although the parents' permanency goal for their children was properly modified to termination under *N.Y. Soc. Serv. Law § 384-b(4)(d)*, the county department of social services' application to be relieved of its obligation to make reasonable efforts to return the children to the parents' home did not comply with *N.Y. Fam. Ct. Act § 1039-b(a)*, (b)(1) and the warnings and admissions required by *N.Y. Fam. Ct. Act § 1012(j)* did not occur; therefore, a finding of aggravated circumstances was inappropriate. *Matter of Lindsey BB. v Ruth BB., 72 A.D.3d 1162, 898 N.Y.S.2d 308, 2010 N.Y. App. Div. LEXIS 2632 (N.Y. App. Div. 3d Dep't 2010)*.

The statutory scheme relating to permanent termination of parental rights relieves an agency from the requirement of proving lack of contact or lack of planning (*Family Ct Act, § 614*, subd 1, par [d]) where it is excused, as being contrary to the best interests of the child, from making diligent efforts to encourage and strengthen the parental relationship (*Social Services Law, § 384-b*, subd 7, par [a]) by reason of the prolonged residence of the child with foster parents. *In re Andress, 93 Misc. 2d 399, 402 N.Y.S.2d 743, 1978 N.Y. Misc. LEXIS 2068 (N.Y. Fam. Ct. 1978)*, aff'd, *In re "G", 70 A.D.2d 188, 420 N.Y.S.2d 576, 1979 N.Y. App. Div. LEXIS 12318 (N.Y. App. Div. 3d Dep't 1979)*.

The prolonged four-year residence for a five-year-old child with her foster parents is an extraordinary circumstance excusing the agency from making the diligent efforts to encourage and strengthen the parental relationship it would otherwise be required to make before parental rights could be terminated (*Social Services Law, § 384-b*, subd 7, par [a]). *In re Andress, 93 Misc. 2d 399, 402 N.Y.S.2d 743, 1978 N.Y. Misc. LEXIS 2068 (N.Y. Fam. Ct. 1978)*, aff'd, *In re "G", 70 A.D.2d 188, 420 N.Y.S.2d 576, 1979 N.Y. App. Div. LEXIS 12318 (N.Y. App. Div. 3d Dep't 1979)*.

Agency's motion under CLS *Family Ct Act § 1039-b* to be excused from using reasonable efforts to reunite father with child was untimely where 2 years had passed since permanency plan for child was determined to be adoption,

agency filed termination of parental rights proceeding only 3 weeks later, agency was not asking court to revisit goal of adoption or any other aspect of permanency plan, father was regular participant in CLS Family Ct Act Art 10 proceeding, agency thus had substantial opportunity to consider whether he would be proper caretaker for child, and long-passed permanency planning process had included duty for agency to make diligent efforts to unite father and child. *In re Jordy O., 182 Misc. 2d 42, 696 N.Y.S.2d 654, 1999 N.Y. Misc. LEXIS 434 (N.Y. Fam. Ct. 1999)*.

Motion under CLS *Family Ct Act § 1039-b* for order dispensing with petitioner's obligation to make "reasonable efforts" to reunite respondent mother with child alleged to be permanently neglected, based on prior termination of mother's parental rights to child's sibling, was held in abeyance pending completion of permanent neglect proceeding; inasmuch as § 1039-b(a) contemplates prospective ruling, while CLS *Soc Serv § 384-b(7)(a)* is silent as to point when petitioner's obligation to show diligent efforts ceases, only sensible interpretation is that petitioner must establish diligent efforts up until court terminates its obligation. *In re June S., 183 Misc. 2d 679, 704 N.Y.S.2d 450, 2000 N.Y. Misc. LEXIS 71 (N.Y. Fam. Ct. 2000)*.

89. — —Parent's lack of cooperation

Agency was excused from its responsibility of exerting diligent efforts to foster father's relationship with children since (1) he failed to keep agency apprised of his whereabouts for continuous 6 month period from time children entered foster care, (2) he failed to maintain contact with and to plan for future of children, and (3) in his only conversation with caseworker before filing of petitions, father expressed approved of plan for adoption of children and refused to disclose any information about his reasons for failing to assume custody of children, as well as anything about his personal life, living situation, or financial situation. *In re Zagary George Bayne G., 185 A.D.2d 320, 586 N.Y.S.2d 615, 1992 N.Y. App. Div. LEXIS 9043 (N.Y. App. Div. 2d Dep't)*, app. denied, *80 N.Y.2d 760, 591 N.Y.S.2d 139, 605 N.E.2d 875, 1992 N.Y. LEXIS 3851 (N.Y. 1992)*.

Family Court properly determined that mother's initial refusal to make and maintain contact with department of social services, coupled with her eventual decision to leave area before any services could be implemented, thwarted agency's efforts to comply with CLS *Soc Serv § 384-b(7)(f)*. *In re Tina JJ, 217 A.D.2d 747, 629 N.Y.S.2d 340, 1995 N.Y. App. Div. LEXIS 7758 (N.Y. App. Div. 3d Dep't 1995)*, app. denied, *87 N.Y.2d 808, 641 N.Y.S.2d 830, 664 N.E.2d 896, 1996 N.Y. LEXIS 230 (N.Y. 1996)*.

Agency petitioning for termination of parental rights is not required to accommodate offending parent's refusal to participate in programs necessary to address condition that caused removal of children in first instance. *In re Heather E., 238 A.D.2d 678, 656 N.Y.S.2d 410, 1997 N.Y. App. Div. LEXIS 3745 (N.Y. App. Div. 3d Dep't 1997)*.

Finding of a parent's permanent neglect of the parent's children was supported by clear and convincing evidence (*N.Y. Soc. Serv. Law § 384-b(7)(a)*). The parent's failure, for almost three years after the children were placed in foster care, to have contact with them or an agency, although capable of doing so, relieved the agency of the obligation to undertake diligent efforts to strengthen the parental relationship. *Matter of Elvis Emil J. C., 43 A.D.3d 710, 841 N.Y.S.2d 557, 2007 N.Y. App. Div. LEXIS 9685 (N.Y. App. Div. 1st Dep't)*, app. denied, *9 N.Y.3d 814, 848 N.Y.S.2d 25, 878 N.E.2d 609, 2007 N.Y. LEXIS 3319 (N.Y. 2007)*.

90. — —Parent's incarceration

Court properly terminated mother's parental rights in regard to 4 children, notwithstanding contention that agency failed to prove either that it exercised diligent efforts to strengthen parent-child bonds or that it was excused from doing so, where record demonstrated (1) that agency diligently promoted parent-child bonds until mother was convicted for murder of her 8-year-old daughter and sentenced to lengthy prison term, and (2) that agency then justifiably determined that any further efforts would be contrary to best interests of children. *In re B. Children, 168 A.D.2d 312, 562 N.Y.S.2d 643, 1990 N.Y. App. Div. LEXIS 15229 (N.Y. App. Div. 1st Dep't 1990)*.

In permanent neglect proceeding under CLS Soc Serv § 384-b(4)(d), agency was excused from demonstrating that it exercised diligent efforts to strengthen and encourage parental relationship where father told agency that he was incarcerated but did not give name of institution or his true name, he failed to telephone or write for 6 months, and he failed to cooperate with agency more than once during his incarceration. *In re Custody & Guardianship of Sasha R., 246 A.D.2d 1, 675 N.Y.S.2d 605, 1998 N.Y. App. Div. LEXIS 8425 (N.Y. App. Div. 1st Dep't 1998)*.

Termination of incarcerated father's parental rights in N.Y. Soc. Serv. Law § 384-b proceeding was proper because, inter alia, the department established that the father did not meaningfully participate in recommended substance abuse and mental health counseling or parenting classes and the department had no duty to modify the plan when it became apparent that the father did not make reasonable efforts to avail himself of the services offered; the department was thus relieved of its obligation to exercise diligent efforts to encourage and strengthen the parent-child relationship based on the father's failure to cooperate during the period of his incarceration. *Matter of Eric L. II. v Eric L. Sr., 51 A.D.3d 1400, 857 N.Y.S.2d 851, 2008 N.Y. App. Div. LEXIS 3930 (N.Y. App. Div. 4th Dep't)*, app. denied, *10 N.Y.3d 716, 862 N.Y.S.2d 468, 892 N.E.2d 862, 2008 N.Y. LEXIS 2175 (N.Y. 2008)*.

91. — —Parent's failure to apprise agency of location

While normally social services department is required to show that "reasonable attempts" have been made to foster parent-child relationship, no proof is required where parent has failed for period of 6 months to keep agency appraised of his or her location, such that during childrens 10 years under foster care, inability of department to locate father for 8 month and 2 month period excuses any "diligent efforts" required on department's part, and in any case, department's attempts to locate father and arrange for visitation satisfied statutory duty of department to encourage and strengthen parental relationship. *In re Katina Valencia H., 119 A.D.2d 821, 501 N.Y.S.2d 887, 1986 N.Y. App. Div. LEXIS 55763 (N.Y. App. Div. 2d Dep't 1986)*.

Social services agency will be excused from its statutory obligation to undertake diligent efforts to reunite parent and child when parent has failed for period of 6 months to keep agency apprised of his or her whereabouts. *In re Desire Star H., 202 A.D.2d 582, 609 N.Y.S.2d 268, 1994 N.Y. App. Div. LEXIS 2607 (N.Y. App. Div. 2d Dep't 1994)*, app. dismissed, *85 N.Y.2d 905, 627 N.Y.S.2d 326, 650 N.E.2d 1328, 1995 N.Y. LEXIS 5654 (N.Y. 1995)*.

Where father failed to keep child care agency apprised of his whereabouts for at least 6 months, agency was not required to make diligent efforts to encourage and strengthen parental relationship. *In re Crystal K., 204 A.D.2d 105, 611 N.Y.S.2d 528, 1994 N.Y. App. Div. LEXIS 4706 (N.Y. App. Div. 1st Dep't 1994)*.

Agency's obligation to exercise diligent efforts was excused where respondent failed to apprise agency of her whereabouts for period well in excess of 6 months. *In re Trudya J., 223 A.D.2d 470, 637 N.Y.S.2d 43, 1996 N.Y. App. Div. LEXIS 498 (N.Y. App. Div. 1st Dep't)*, app. denied, *87 N.Y.2d 812, 644 N.Y.S.2d 145, 666 N.E.2d 1059, 1996 N.Y. LEXIS 1033 (N.Y. 1996)*.

Under CLS Soc Serv § 384-b(7)(e)(i), agency petitioning for termination of mother's parental rights was not required to show diligent efforts to strengthen parental relationship where mother had failed to apprise agency of her location for 6 months. *In re Evelyn Rebecca W., 242 A.D.2d 477, 662 N.Y.S.2d 477, 1997 N.Y. App. Div. LEXIS 9009 (N.Y. App. Div. 1st Dep't 1997)*.

Finding of permanent neglect was supported by evidence that mother did not apprise agency of her whereabouts for more than 6 months after she became aware of child's placement with agency, excusing agency of its due diligence obligations; moreover, mother visited child infrequently, took no steps to provide home for child, and continued to use drugs. *In re Guardianship of Christina Janian E., 260 A.D.2d 300, 689 N.Y.S.2d 58, 1999 N.Y. App. Div. LEXIS 4395 (N.Y. App. Div. 1st Dep't 1999)*.

In proceeding to terminate mother's parental rights for permanent neglect, agency did not have to show diligent efforts to strengthen parental relationship where (1) it repeatedly requested mother's address throughout 18-month period at issue, (2) mother refused to provide it, explaining that she stayed with various friends, and (3) to extent

that agency had contact with mother, it was largely by chance, such as on few occasions when caseworker visited foster home and found mother there. *In re Committment of Denaysia Shantel C., 266 A.D.2d 109, 698 N.Y.S.2d 664, 1999 N.Y. App. Div. LEXIS 12066 (N.Y. App. Div. 1st Dep't 1999)*.

Agency satisfied its diligence requirement under CLS *Soc Serv § 384-b(7)* where it repeatedly tried to contact neglected child's mother in person and by mail at her last known address during 8-month period when her location was unknown. *In re Tanya Alexis G., 273 A.D.2d 19, 708 N.Y.S.2d 394, 2000 N.Y. App. Div. LEXIS 6109 (N.Y. App. Div. 1st Dep't 2000)*.

Agency is excused from meeting "diligent efforts" requirement of CLS *Soc Serv § 384-b(7)* if parent fails to keep agency informed of his or her location and thus thwarts its efforts to locate parent. *In re Tanya Alexis G., 273 A.D.2d 19, 708 N.Y.S.2d 394, 2000 N.Y. App. Div. LEXIS 6109 (N.Y. App. Div. 1st Dep't 2000)*.

Father's argument that the amended petition to terminate his parental rights was jurisdictionally defective for not outlining with specificity the agency's diligent efforts under *N.Y. Fam. Ct. Act § 614(1)(c)* was unpreserved; in any event, the allegations were specific enough to provide the father with adequate notice. Further, a deficiency in the amended petition was not fatal because the evidence established the agency's diligent efforts to assist the father in formulating a plan for his child's return, and the record established that the father did not keep the agency apprised of his whereabouts for at least six months, and then did not cooperate with the agency once he did make contact; thus, the agency's obligation to demonstrate diligent efforts was excused under *N.Y. Soc. Serv. Law § 384-b(7)(e)*. *Matter of Kimberly Vanessa J. v Thomas J., 37 A.D.3d 185, 829 N.Y.S.2d 473, 2007 N.Y. App. Div. LEXIS 1378 (N.Y. App. Div. 1st Dep't 2007)*.

92. — —Detrimental to best interests of child

There was clear and convincing evidence that agency had made sufficiently diligent efforts to strengthen parental relationship with permanently neglected child where social workers arranged regular visitation schedule between child and his natural parents, kept parents informed of child's progress in foster care, met frequently with parents to encourage them to plan realistically for child's future, and also met with both sets of grandparents; moreover, given conceded addiction of both parents to hard drugs, poor prognosis for their recovery, and their manifest failure to take necessary steps to fulfill planning requirement, further efforts to strengthen parental relations would only have been detrimental to child's best interests. *In re Guardianship of LeBron, 140 A.D.2d 276, 528 N.Y.S.2d 572, 1988 N.Y. App. Div. LEXIS 5873 (N.Y. App. Div. 1st Dep't 1988)*.

Social service agency appropriately determined that it would not be in best interests of children to encourage and strengthen parental relationship where record demonstrated that one child was sexually abused in her mother's presence by men known to her mother. *In re Tyhessa Elatisha W., 186 A.D.2d 433, 589 N.Y.S.2d 317, 1992 N.Y. App. Div. LEXIS 11437 (N.Y. App. Div. 1st Dep't 1992)*.

Best interests of children excused any diligent efforts on part of county department of social services (DSS) during 10-month period from time of father's incarceration for second degree assault until date of Family Court hearing where (1) despite his plea of guilty to assault, he refused to accept responsibility for serious injuries he inflicted on his 2 older children, and record indicated that children feared him, (2) he completed 10-week parenting class, but did not complete substance abuse program or enter anger management program, and (3) children had been in foster care for 3 years before he began to address his underlying problem. *In re Jamal "B.", 287 A.D.2d 898, 731 N.Y.S.2d 567, 2001 N.Y. App. Div. LEXIS 9975 (N.Y. App. Div. 3d Dep't 2001)*, app. denied, *97 N.Y.2d 609, 739 N.Y.S.2d 98, 765 N.E.2d 301, 2002 N.Y. LEXIS 77 (N.Y. 2002)*.

Based on allegations of sexual abuse by a mother against her minor children and the mother's conviction of endangering the welfare of a child, an agency was excused from its usual obligation under *N.Y. Soc. Serv. Law § 384-b(7)(a)* to encourage the parental relationship as reuniting the family would not be in the children's best interests. *Matter of Milan N. v Lucia N., 45 A.D.3d 358, 846 N.Y.S.2d 18, 2007 N.Y. App. Div. LEXIS 11600 (N.Y.*

App. Div. 1st Dep't 2007), app. denied, *10 N.Y.3d 703, 854 N.Y.S.2d 104, 883 N.E.2d 1011, 2008 N.Y. LEXIS 296 (N.Y. 2008)*.

Any efforts to encourage and strengthen the parental relationship during the period of time in which the father failed to utilize the rehabilitative services and resources available to him to control his alcoholism would have been detrimental to the best interests of the child because of the father's extreme alcohol addiction. *In re S., 98 Misc. 2d 650, 414 N.Y.S.2d 477, 1979 N.Y. Misc. LEXIS 2126 (N.Y. Fam. Ct. 1979)*.

93. —Efforts not excused

In proceeding to terminate parental rights of respondent natural father on ground of permanent neglect, order of disposition which dismissed petition affirmed–Family Court properly determined petitioning agency failed to establish by clear and convincing evidence that respondent had failed to keep agency apprised of his location for six months; accordingly, agency was not relieved of its obligations under *Social Services Law § 384-b (7) (a)*; since agency has apparently taken no further action to discharge its statutory responsibilities with regard to infant, determination is without prejudice to agency expeditiously commencing further appropriate proceedings. *In re Vincent Gerald C., 168 A.D.2d 679, 563 N.Y.S.2d 506, 1990 N.Y. App. Div. LEXIS 15987 (N.Y. App. Div. 2d Dep't 1990)*.

In proceeding to terminate father's parental rights to his 2 biological children, based on permanent neglect while he was incarcerated for first degree sexual abuse of his stepdaughter, agency was not entitled to be relieved of its duty to make diligent efforts to strengthen parental relationship where father did not commit felony sex offense enumerated in CLS *Soc Serv § 384-b(8)(a)(ii)* against either child who was subject to present proceeding, and thus he could not have "severely abused" those children under § 384-b(8)(a)(ii) or subjected them to "aggravated circumstances" under CLS *Soc Serv § 384-a(12)*. *In re Amanda "C", 281 A.D.2d 714, 722 N.Y.S.2d 267, 2001 N.Y. App. Div. LEXIS 2307 (N.Y. App. Div. 3d Dep't)*, app. denied, *96 N.Y.2d 714, 729 N.Y.S.2d 441, 754 N.E.2d 201, 2001 N.Y. LEXIS 1439 (N.Y. 2001)*.

Agency is not excused under CLS *Soc Serv § 384-b(7)(e)* from making diligent efforts to further and encourage familial relationship where agency has not been in contact with parent and fails to present proof that parent knew that his or her child was in foster care with agency; thus, in proceeding to terminate father's parental rights, agency's failure to make diligent efforts to further and encourage familial relationship could not be excused where agency never made diligent effort to locate him, and he was unaware that his children were in foster care until 4 months before filing of petition, at which time he immediately contacted agency. *In re Brown, 139 Misc. 2d 550, 527 N.Y.S.2d 693, 1988 N.Y. Misc. LEXIS 215 (N.Y. Fam. Ct. 1988)*.

94. Failure to maintain contact with or plan for future of child, generally

In proceeding pursuant to CLS *Soc Serv § 384-b* to adjudicate children to be permanently neglected, proof of parent's failure to plan for child's future or maintain substantial contacts are alternative elements in statutory definition of permanent neglect and both need not be proven. *In re Dixie Lu EE, 142 A.D.2d 747, 530 N.Y.S.2d 655, 1988 N.Y. App. Div. LEXIS 7792 (N.Y. App. Div. 3d Dep't 1988)*.

Regarding adequacy of proof, in parental neglect proceeding, of respondent's failure to maintain substantial contacts with child and plan for child's future as required by CLS *Soc Serv § 384-b*, contact and planning are alternative elements, and proof of failure to perform one is sufficient to sustain finding of permanent neglect. *In re Scotty C., 154 A.D.2d 784, 546 N.Y.S.2d 461, 1989 N.Y. App. Div. LEXIS 12695 (N.Y. App. Div. 3d Dep't 1989)*, app. denied, *75 N.Y.2d 707, 554 N.Y.S.2d 476, 553 N.E.2d 1024, 1990 N.Y. LEXIS 592 (N.Y. 1990)*.

Although failure to visit or communicate with child is evidence of intent to forego parental rights and responsibilities, and ability to communicate or visit is presumed unless there is evidence to contrary, such failure is not sufficient in and of itself to establish abandonment and may be refuted by proof that asserted hardship permeated parent's life

to such extent that contact was not feasible. *In re Jasmine T., 162 A.D.2d 756, 557 N.Y.S.2d 669, 1990 N.Y. App. Div. LEXIS 7245 (N.Y. App. Div. 3d Dep't)*, app. denied, *76 N.Y.2d 714, 564 N.Y.S.2d 717, 565 N.E.2d 1268, 1990 N.Y. LEXIS 4409 (N.Y. 1990)*.

Evidence of parent's regular contact with children was insufficient to defeat permanent neglect proceeding, where parent failed to plan for children's future. *In re Christopher II, 222 A.D.2d 900, 635 N.Y.S.2d 747, 1995 N.Y. App. Div. LEXIS 13318 (N.Y. App. Div. 3d Dep't 1995)*, app. denied, *87 N.Y.2d 812, 644 N.Y.S.2d 145, 666 N.E.2d 1059, 1996 N.Y. LEXIS 1124 (N.Y. 1996)*.

"Contact" and "planning" elements in CLS *Soc Serv § 384-b(7)(a)* are alternative, and failure to perform one of those elements is sufficient to sustain finding of permanent neglect of child. *In re Jeffrey LL., 251 A.D.2d 756, 674 N.Y.S.2d 453, 1998 N.Y. App. Div. LEXIS 6747 (N.Y. App. Div. 3d Dep't)*, app. denied, *92 N.Y.2d 809, 678 N.Y.S.2d 594, 700 N.E.2d 1230, 1998 N.Y. LEXIS 2869 (N.Y. 1998)*.

95. —Physical ability

In proceeding pursuant to CLS *Soc Serv § 384-b* to adjudicate respondent's children to be permanently neglected and to terminate respondent's parental rights, county department of social services had no affirmative duty to determine whether defendant's inabilities stemmed from psychological problems. *In re Dixie Lu EE, 142 A.D.2d 747, 530 N.Y.S.2d 655, 1988 N.Y. App. Div. LEXIS 7792 (N.Y. App. Div. 3d Dep't 1988)*.

In proceeding pursuant to CLS *Soc Serv § 384-b* to adjudicate respondent's children to be permanently neglected and to terminate respondent's parental rights, emotional illness on respondent's part did not present any bar to court's finding of permanent neglect since mental disability is not illness of type that exempts those physically unable to care for their children from losing them on permanent neglect adjudication. *In re Dixie Lu EE, 142 A.D.2d 747, 530 N.Y.S.2d 655, 1988 N.Y. App. Div. LEXIS 7792 (N.Y. App. Div. 3d Dep't 1988)*.

Mother's mental or emotional disability was not equivalent of physical inability for purposes of CLS *Soc Serv § 384-b(7)*. *In re Tanya P., 219 A.D.2d 849, 631 N.Y.S.2d 950, 1995 N.Y. App. Div. LEXIS 10939 (N.Y. App. Div. 4th Dep't 1995)*.

Respondent's mental illness, rendering her unable to plan for the future of her child, precludes a finding of permanent neglect (*Social Services Law, § 384-b*, subd 7, par [a]) since, in order for a child to be declared a permanently neglected child, the parent must have been physically and financially able to maintain contact with or plan for the future of the child and the term "physically" includes mental incapacity or any other mental state which would preclude attainment of these goals. *In re S., 98 Misc. 2d 650, 414 N.Y.S.2d 477, 1979 N.Y. Misc. LEXIS 2126 (N.Y. Fam. Ct. 1979)*.

96. —Financial ability

Fact that parent is on welfare does not excuse parent from need to plan for future of child as required by CLS *Soc Serv § 384-b(7)(a)* in absence of unequivocal evidence that amount of public assistance received is inadequate. *In re Christina Q., 156 A.D.2d 770, 549 N.Y.S.2d 195, 1989 N.Y. App. Div. LEXIS 15595 (N.Y. App. Div. 3d Dep't 1989)*, app. denied, *75 N.Y.2d 708, 554 N.Y.S.2d 833, 553 N.E.2d 1343, 1990 N.Y. LEXIS 2016 (N.Y. 1990)*.

In proceeding to terminate mother's parental rights on ground of permanent neglect, mother failed to demonstrate that her inability to develop realistic and workable plans for children's future was due to inadequacy of amount she received from public assistance ($415 per month) which represented her only source of personal income, since mother testified that with her boyfriend's assistance she could afford housing costing $500 per month, and record evinced that her financial difficulties were due in considerable part to her unwillingness to find and maintain employment. *In re Christina Q., 156 A.D.2d 770, 549 N.Y.S.2d 195, 1989 N.Y. App. Div. LEXIS 15595 (N.Y. App.*

Div. 3d Dep't 1989), app. denied, *75 N.Y.2d 708, 554 N.Y.S.2d 833, 553 N.E.2d 1343, 1990 N.Y. LEXIS 2016 (N.Y. 1990)*.

Finding that a child was neglected pursuant to *Social Services Law § 384-b* was proper because the evidence showed that the mother inter alia, despite services provided to her, repeatedly missed counseling appointments and failed to complete the recommended counseling, was often late, left early, or entirely missed her supervised visitation appointments with her son, exhibited improper parenting skills, changed residences 12 times in the 11 months preceding the fact-finding hearing, and lived in motel rooms, campers, trailers, and apartments that were not suitable for a child; the mother continued to stay in an abusive relationship with her husband without regard to the impact this would have had on her reunification with her son, and did not exhibit an awareness of the issues leading to her son's removal or a commitment to making the changes needed to insure a stable living situation justifying his return. The mother's limited financial resources were not an excuse for her failure to comply with the conditions set forth in the trial court's orders, many of which had no monetary implications, and, under the circumstances presented, the trial court did not err in refusing to impose a suspended judgment instead of terminating the mother's parental rights. *Matter of George M. v Charlotte M., 48 A.D.3d 926, 851 N.Y.S.2d 698, 2008 N.Y. App. Div. LEXIS 1412 (N.Y. App. Div. 3d Dep't 2008)*.

97. —Effect of parent's default

The trial court properly terminated a mother's parental rights to three children pursuant to *N.Y. Soc. Serv. Law § 384-b*, as the trial court's determination that the mother had permanently neglected the children was supported by clear and convincing evidence, because not obtaining the drug treatment recommended by an agency within the statutorily relevant time frame and by failing to maintain regular and continuous contact with the children, the mother defaulted in meeting her obligation to plan for the children's future. *In re Marquis M., 304 A.D.2d 399, 756 N.Y.S.2d 851, 2003 N.Y. App. Div. LEXIS 4111 (N.Y. App. Div. 1st Dep't 2003)*.

Family court properly terminated a mother's parental rights pursuant to *N.Y. Soc. Serv. Law § 384-b* upon the mother's default; there was clear and convincing evidence that the mother had permanently neglected the child by failing to maintain continuous contact with her on a regular basis and by failing to plan for her future, and that termination was in the best interest of the child. *In re Alexis Latoya Revell W., 9 A.D.3d 368, 778 N.Y.S.2d 923, 2004 N.Y. App. Div. LEXIS 9371 (N.Y. App. Div. 2d Dep't 2004)*.

Because the parents failed to engage in the services and programs necessary to overcome the substance abuse and behavioral problems that led to the removal of their children in the first place, pursuant to *N.Y. Soc. Serv. Law § 384-b*, termination of their parental rights, and freeing the children for adoption, were in the children's best interests. *Matter of Summer G. (Amy F.), 93 A.D.3d 959, 939 N.Y.S.2d 663, 2012 N.Y. App. Div. LEXIS 1716 (N.Y. App. Div. 3d Dep't 2012)*.

98. —Incarcerated parent

Incarcerated parent may not satisfy planning requirement of CLS *Soc Serv § 384-b* where only plan offered is long-term foster care lasting potentially for child's entire majority; such plan is patently inconsistent with purpose of foster care and, more importantly, it deprives child of that quality of "permanency" found by legislature to be so essential to proper growth and development. *In re Gregory B., 74 N.Y.2d 77, 544 N.Y.S.2d 535, 542 N.E.2d 1052, 1989 N.Y. LEXIS 876 (N.Y.)*, reh'g denied, *74 N.Y.2d 880, 547 N.Y.S.2d 841, 547 N.E.2d 96, 1989 N.Y. LEXIS 3101 (N.Y. 1989)*.

Parent's incarceration does not in itself render him or her physically or financially unable to maintain contact with or plan for future of his or her children. *Delores B. Cardinal McCloskey Children's & Family Services v Willie B., 141 A.D.2d 100, 533 N.Y.S.2d 706, 1988 N.Y. App. Div. LEXIS 10225 (N.Y. App. Div. 1st Dep't 1988)*, aff'd, *74 N.Y.2d 77, 544 N.Y.S.2d 535, 542 N.E.2d 1052, 1989 N.Y. LEXIS 876 (N.Y. 1989)*.

Incarcerated parents may not satisfy the planning requirement of N.Y. Soc. Serv. Law § 384-b where the only plan offered is long-term foster care lasting potentially for the child's entire minority; accordingly, where an incarcerated father failed to provide a "realistic and feasible" alternative to foster care for his children for the remainder of his prison term, which was at least 16 months more, and where his children were thriving and happy in their foster care placement, there was support for a finding of permanent neglect. *In re Baby Girl C., 1 A.D.3d 593, 767 N.Y.S.2d 462, 2003 N.Y. App. Div. LEXIS 12530 (N.Y. App. Div. 2d Dep't 2003)*.

An incarcerated father who had no means of providing care for his children, and could not provide alternative resources for their care, was unable to plan for their care before they reached majority; his parental rights were properly terminated and the children were properly placed for adoption. The father's sisters were not viable resources and leaving the children in foster care until he was released was not a viable alternative. *In re Love Russell J., 7 A.D.3d 799, 776 N.Y.S.2d 859, 2004 N.Y. App. Div. LEXIS 7279 (N.Y. App. Div. 2d Dep't 2004)*.

Incarcerated father did not adequately plan for the child's future because the father's plan of awarding custody to the paternal grandmother was unrealistic as it contemplated relocating the child to South Carolina to be cared for by a relative who had never met the child and had not sought placement or custody in a timely manner; thus, the record supported the finding of permanent neglect. *Matter of Jazmyne II. (Frank MM.), 144 A.D.3d 1459, 41 N.Y.S.3d 179, 2016 N.Y. App. Div. LEXIS 7750 (N.Y. App. Div. 3d Dep't 2016)*, app. denied, *29 N.Y.3d 901, 80 N.E.3d 397, 57 N.Y.S.3d 704, 2017 N.Y. LEXIS 469 (N.Y. 2017)*.

Trial court did not err in adjudicating a father's children to be permanently neglected and terminating his parental rights because 1) petitioner established by clear and convincing evidence that it engaged in diligent efforts to encourage and strengthen his relationship with the children; 2) his plan to have them remain in foster care until he was released from prison was not a viable plan for their future; and 3) terminating his parental rights so the children could be adopted by their foster parents was in their best interests. *Matter of Walter DD. (Walter TT.), 152 A.D.3d 896, 58 N.Y.S.3d 721, 2017 N.Y. App. Div. LEXIS 5583 (N.Y. App. Div. 3d Dep't)*, app. denied, *30 N.Y.3d 905, 89 N.E.3d 1259, 67 N.Y.S.3d 579, 2017 N.Y. LEXIS 3212 (N.Y. 2017)*.

In proceedings to terminate an incarcerated mother's parental rights based upon permanent neglect, the mother failed to substantially plan for the children's future because the mother was unable to recall anything substantive about the type of services that she received and the content of the courses, never sought to amend the order of protection to allow her to have some contact with the children and made no attempt to offer an alternative plan for a placement resource. *Matter of Kaylee JJ. (Jennifer KK.), 159 A.D.3d 1077, 71 N.Y.S.3d 220, 2018 N.Y. App. Div. LEXIS 1373 (N.Y. App. Div. 3d Dep't 2018)*.

Clear and convincing evidence supported the family court's finding that the father permanently neglected the child because the father did not identify a placement resource for the child during the pendency of his incarceration, nor did he have an alternative proposal if he was not released from prison as planned. *Matter of Jarrett P. (Jeremy P.), 173 A.D.3d 1692, 105 N.Y.S.3d 230, 2019 N.Y. App. Div. LEXIS 4567 (N.Y. App. Div. 4th Dep't)*, app. denied, *34 N.Y.3d 902, 136 N.E.3d 428, 112 N.Y.S.3d 693, 2019 N.Y. LEXIS 3014 (N.Y. 2019)*.

Clear and convincing evidence supported the family court's finding that the father permanently neglected the child because the father did not identify a placement resource for the child during the pendency of his incarceration, nor did he have an alternative proposal if he was not released from prison as planned. *Matter of Jarrett P. (Jeremy P.), 173 A.D.3d 1692, 105 N.Y.S.3d 230, 2019 N.Y. App. Div. LEXIS 4567 (N.Y. App. Div. 4th Dep't)*, app. denied, *34 N.Y.3d 902, 136 N.E.3d 428, 112 N.Y.S.3d 693, 2019 N.Y. LEXIS 3014 (N.Y. 2019)*.

99. —Use of drugs or alcohol

In proceeding under CLS Soc Serv § 384-b to terminate parental rights of father whose critical problem was alcoholism, court properly permitted introduction of father's misdemeanor conviction of driving while intoxicated since conviction was relevant and his incarceration on such charge was relevant to his ability to maintain contact with child and to plan for her future. *In re Jennie EE, 187 A.D.2d 877, 590 N.Y.S.2d 549, 1992 N.Y. App. Div. LEXIS*

13362 (N.Y. App. Div. 3d Dep't 1992), app. denied, *81 N.Y.2d 706, 597 N.Y.S.2d 936, 613 N.E.2d 968, 1993 N.Y. LEXIS 672 (N.Y. 1993)*.

Mother's failure to overcome her drug abuse problem was sufficient to support finding that she failed to plan for her daughter's future. *In re Maldrina R., 219 A.D.2d 723, 631 N.Y.S.2d 742, 1995 N.Y. App. Div. LEXIS 9544 (N.Y. App. Div. 2d Dep't 1995)*.

Finding of permanent neglect was supported by evidence that respondent failed to plan for child's future by availing herself of drug rehabilitation program that agency continually sought and encouraged her to enter. *In re Reggie B., 223 A.D.2d 471, 636 N.Y.S.2d 790, 1996 N.Y. App. Div. LEXIS 573 (N.Y. App. Div. 1st Dep't 1996)*.

In proceeding under CLS *Soc Serv § 384-b* to terminate mother's parental rights to her 2 children on ground of permanent neglect, mother's repeated failure to complete drug program over course of 2 years showed her failure to plan for children's return. *In re Masa Qwawi D., 245 A.D.2d 370, 665 N.Y.S.2d 437, 1997 N.Y. App. Div. LEXIS 12749 (N.Y. App. Div. 2d Dep't 1997)*.

Mother's plan to achieve all of her goals within year was not feasible or realistic in light of her 10-year sporadic, truncated, and unsuccessful efforts to deal with drug addiction. *In re Custody & Guardianship of Arron Brandend C., 267 A.D.2d 107, 701 N.Y.S.2d 6, 1999 N.Y. App. Div. LEXIS 12987 (N.Y. App. Div. 1st Dep't 1999)*.

Incarcerated father's parental rights were properly terminated where, during 6-month period following time he was informed that children had been removed from their mother and placed in foster care, he failed to follow social services department's instructions for seeking custody, did not arrange for visitation, and responded only by requesting blood test to determine if he was father. *In re Nahja "I", 279 A.D.2d 666, 717 N.Y.S.2d 807, 2001 N.Y. App. Div. LEXIS 48 (N.Y. App. Div. 3d Dep't 2001)*.

Mother's parental rights were properly terminated based on a finding of permanent neglect and failure to plan for her child's future under *N.Y. Soc. Serv. Law § 384-b(7)(a)* because, despite diligent efforts by a county department of social services to strengthen the parental relationship, the mother refused to deal successfully with her substance abuse problem and failed to maintain stable housing. *Matter of Andre M., 26 A.D.3d 713, 809 N.Y.S.2d 669, 2006 N.Y. App. Div. LEXIS 2193 (N.Y. App. Div. 3d Dep't 2006)*.

Adjudication of a child as neglected and termination of a mother's parental rights were proper because, inter alia, the mother failed to respond to efforts to strengthen the parent-child relationship by effectively addressing her drug addiction and failed to participate in the preparation of a plan that, if implemented, would have provided for the child's future; numerous witnesses, including drug treatment professionals, testified that the mother continued to have a chaotic lifestyle that was marked by drug addiction, and, by not taking advantage of the opportunity to address those conditions that led to the child's removal from her care, the mother had effectively failed to plan for the child's future. Further, the child had developed a close bond with her foster parents and was thriving in their care. *Matter of Sierra C. v Deborah D., 74 A.D.3d 1445, 902 N.Y.S.2d 216, 2010 N.Y. App. Div. LEXIS 4594 (N.Y. App. Div. 3d Dep't 2010)*.

100. —Shown

Evidence supported finding of permanent neglect by natural father's failure to maintain contact with child or plan for future of child as required by CLS *Soc Serv § 384-b* where father repeatedly failed to adhere to visiting schedules, attend planning sessions, and fulfill agreed-upon goals with respect to providing permanent adequate housing and stabilized finances, and since sporadic visits made by parents indicated lack of meaningful contact with child, and failure to establish necessary home environment within reasonable period of time displayed lack of plan for child's future. *In re Michael Dennis C., 121 A.D.2d 535, 504 N.Y.S.2d 28, 1986 N.Y. App. Div. LEXIS 58512 (N.Y. App. Div. 2d Dep't 1986)*.

Record in neglect proceeding did not support finding that mother failed to maintain contact and plan for future of children where (1) mother regularly visited children after they were removed to foster care, although frequency of visitation decreased somewhat over time, (2) there was no evidence concerning either availability or cost of housing adequate for mother and children, or as to monthly rental she could afford, (3) mother obtained full-time employment and made some effort to find housing, (4) homemaker from social services department conceded that there was no money left for security deposit after mother paid for food, clothing and shelter for herself, children and husband, and (5) mother was provided with no services to help her cope with husband's alcohol abuse. *In re Sean F., 155 A.D.2d 775, 547 N.Y.S.2d 938, 1989 N.Y. App. Div. LEXIS 14193 (N.Y. App. Div. 3d Dep't 1989)*.

Father's parental rights were properly terminated for permanent neglect where, during pertinent period, he failed to maintain substantial contact with his daughter or to plan for her future, despite agency's diligent efforts to assist him in meeting his parental duties, and sole plan offered by father for his daughter was for her to live with his mother, who refused to take child and never contacted her. *In re Custody & Guardianship of Ziana Patricia D., 281 A.D.2d 241, 721 N.Y.S.2d 657, 2001 N.Y. App. Div. LEXIS 2436 (N.Y. App. Div. 1st Dep't 2001)*.

Because a presentment agency made diligent efforts to assist a father in maintaining contact with his child and planning for his future in accordance with *N.Y. Soc. Serv. Law § 384-b(7)(a)* by facilitating visitation and referring the father to various resources and services to help plan for the future and because the father failed to visit the child or plan for his future, the family court properly terminated the father's parental rights. *Matter of Liam Francis P., 26 A.D.3d 385, 809 N.Y.S.2d 180, 2006 N.Y. App. Div. LEXIS 1933 (N.Y. App. Div. 2d Dep't 2006)*.

In a permanent neglect proceeding, the finding that a mother's older children were permanently neglected was supported by the evidence as the social services agency proved that the mother failed to maintain contact with or plan for the children for 15 out of the most recent 22 months that they were in foster care. The mother's failure to obtain suitable housing for the children, her failure to participate in mental health services, and her failure to maintain contact with the children reinforced the conclusion that the mother was not prepared to accept responsibility for her children's future and that she had not participated in a meaningful way in planning for the children's future. *Matter of Vashaun P., 53 A.D.3d 712, 861 N.Y.S.2d 453, 2008 N.Y. App. Div. LEXIS 5892 (N.Y. App. Div. 3d Dep't 2008)*.

Court's finding that a mother's four-your-old son was a permanently neglected child was supported by evidence that the mother did not maintain contact with him or plan substantially for his future; that, when she made one of her infrequent visits, her interactions with him were often inappropriate; and that he experienced nightmares and other stress-related symptoms that worsened when visits occurred and improved when they did not. *Matter of Jonathan NN. (Michelle OO.), 90 A.D.3d 1161, 934 N.Y.S.2d 568, 2011 N.Y. App. Div. LEXIS 8705 (N.Y. App. Div. 3d Dep't 2011)*, app. denied, *18 N.Y.3d 808, 944 N.Y.S.2d 479, 967 N.E.2d 704, 2012 N.Y. LEXIS 492 (N.Y. 2012)*.

Clear and convincing evidence supported the family court's finding that terminating the mother's parental rights on the basis of permanent neglect was in a child's best interest because, despite the child services agency's diligent efforts, the mother failed, for a period of more than one year after the child came into the agency's care, to substantially and continuously maintain contact with the child or plan for her future, although physically and financially able to do so. *Matter of Tanay R.S. (Tanya M.), 147 A.D.3d 858, 47 N.Y.S.3d 360, 2017 N.Y. App. Div. LEXIS 996 (N.Y. App. Div. 2d Dep't 2017)*.

Clear and convincing evidence supported terminating the father's parental rights on grounds of permanent neglect based upon his failure to plan for the children's future because, despite the extensive support provided, the father, inter alia, was unable to progress past supervised visitation, lacked stable housing, failed to attend the children's medical appointments, and failed to engage in required mental health counseling on a regular basis. *Matter of Alexander Z. (Jimmy Z.), 149 A.D.3d 1177, 51 N.Y.S.3d 231, 2017 N.Y. App. Div. LEXIS 2639 (N.Y. App. Div. 3d Dep't 2017)*.

101. —Not shown

Although the evidence in proceedings to declare a child a permanently neglected child and award custody to the Department of Social Services disclosed a continuing pattern of instability of the child's natural mother in her contacts with foster parents, school teachers, and the Department of Social Services, that she had failed to plan for her child's future and, because of a dull normal intellect, might be mentally incapable of such planning, the evidence also showed that she had maintained contact with her son and that her failure to plan for his future had been of short duration. Since her rights were of constitutional dimension and had to be zealously guarded, the petition would be dismissed without prejudice with further opportunity to be given to the mother to show some initiative in planning for her son's future. *In re Borst, 107 Misc. 2d 847, 436 N.Y.S.2d 150, 1981 N.Y. Misc. LEXIS 2102 (N.Y. Fam. Ct. 1981)*.

102. Failure to plan for future of child

Parents must assume measure of initiative and responsibility and have duty to plan for future of child and failure to utilize medical, psychiatric, psychological and other social and rehabilitative services is taken into account in determining whether parents have in fact met statutory responsibility; although parent has been irresponsible in attempting to deal with her predicament, court will not terminate parental rights where record is silent as to reason weekend visitation was terminated and where there is no evidence that parent was ever told that she would regain custody of her children if she complied with certain steps. *In re William Dwayne B., 112 A.D.2d 703, 491 N.Y.S.2d 876, 1985 N.Y. App. Div. LEXIS 56211 (N.Y. App. Div. 4th Dep't 1985)*.

In proceeding under CLS *Soc Serv § 384-b* to terminate parental rights, it was not incumbent on county department of social services to establish that no mental disability prevented mother from adequately planning for children since (1) department's inability to establish mother's mental condition was caused solely by her refusal to attend court-ordered psychiatric evaluation, and (2) mental inadequacy is not acceptable excuse for failing to plan for future of children. *In re John ZZ., 192 A.D.2d 761, 596 N.Y.S.2d 181, 1993 N.Y. App. Div. LEXIS 3522 (N.Y. App. Div. 3d Dep't 1993)*.

Clear and convincing evidence supported a finding of permanent neglect since, for more than a year, a father did made no efforts to plan for his child's future. As such, termination of his parental rights was proper and in the child's best interests. *Matter of Kimberly Vanessa J. v Thomas J., 37 A.D.3d 185, 829 N.Y.S.2d 473, 2007 N.Y. App. Div. LEXIS 1378 (N.Y. App. Div. 1st Dep't 2007)*.

Agency established that the mother failed to plan for the child's future because her plan to have the child remain in foster care until her release from prison was neither realistic nor feasible. *Matter of Jace N. (Jessica N.), 168 A.D.3d 1236, 92 N.Y.S.3d 425, 2019 N.Y. App. Div. LEXIS 353 (N.Y. App. Div. 3d Dep't)*, app. denied, *32 N.Y.3d 918, 123 N.E.3d 874, 100 N.Y.S.3d 215, 2019 N.Y. LEXIS 559 (N.Y. 2019)*.

Within meaning of statute permitting termination of parental rights on grounds of permanent neglect for parents' "failure to plan for the future of the child," requirement of parents to substantially plan means not only to formulate, but also to accomplish, a feasible and realistic plan to restore the child to a permanent, stable home with its parents; as so construed, the statutory phrase in question more than adequately satisfies the constitutional requirement for definiteness under the due process clause. *In re N., 91 Misc. 2d 738, 398 N.Y.S.2d 613, 1977 N.Y. Misc. LEXIS 2406 (N.Y. Fam. Ct. 1977)*.

103. —Shown

Proposed adoption of child by mother's brother and his wife did not constitute plan for child's future within meaning of CLS *Soc Serv § 384-b(7)(a)*. *In re Anna F., 171 A.D.2d 967, 567 N.Y.S.2d 561, 1991 N.Y. App. Div. LEXIS 3847 (N.Y. App. Div. 3d Dep't 1991)*.

Where domestic violence was primary obstacle preventing family reunification, father's denial of abusive behavior and failure to utilize rehabilitative services evidenced his failure to plan for children's future. *In re William J., 228 A.D.2d 315, 644 N.Y.S.2d 226, 1996 N.Y. App. Div. LEXIS 7304 (N.Y. App. Div. 1st Dep't 1996)*.

Father failed to plan for his children's future, thus warranting permanent termination of his parental rights, where there had been adjudication that his daughter was sexually abused while in his custody, inter alia, and he continued to deny that daughter had been sexually abused while in his custody, claiming instead that whole matter was conspiracy among agency, police, doctors, and Family Court Judge. *In re Jesus JJ, 232 A.D.2d 752, 649 N.Y.S.2d 61, 1996 N.Y. App. Div. LEXIS 10233 (N.Y. App. Div. 3d Dep't 1996)*, app. denied, *89 N.Y.2d 809, 655 N.Y.S.2d 889, 678 N.E.2d 502, 1997 N.Y. LEXIS 218 (N.Y. 1997)*.

Father failed to cooperate with agency in planning for his son's future while he was incarcerated where he knew that one of penalties for committing infractions while incarcerated was that he would become ineligible to participate in rehabilitation programs which agency recommended as part of his plan to be reunited with his child, but he nevertheless repeatedly committed infractions, over period of more than one year, for which penalties were imposed. *In re Anthony R., 239 A.D.2d 586, 657 N.Y.S.2d 209, 1997 N.Y. App. Div. LEXIS 5696 (N.Y. App. Div. 2d Dep't)*, app. denied, *90 N.Y.2d 808, 664 N.Y.S.2d 270, 686 N.E.2d 1365, 1997 N.Y. LEXIS 3143 (N.Y. 1997)*.

Mother failed to plan for her child's future where she was unable to discipline child effectively and deal with child's Attention Deficit Hyperactivity Disorder (ADHD), mother consistently blamed child and child's ADHD for family's problems, mother refused to appropriately admit her responsibility in hurting child, and she could not acknowledge, and thereby validate, pain and fear suffered by child as result of, inter alia, physical abuse inflicted on child. *In re Jennie KK., 239 A.D.2d 666, 657 N.Y.S.2d 231, 1997 N.Y. App. Div. LEXIS 4959 (N.Y. App. Div. 3d Dep't)*, app. denied, *90 N.Y.2d 807, 664 N.Y.S.2d 268, 686 N.E.2d 1363, 1997 N.Y. LEXIS 3020 (N.Y. 1997)*.

Mother failed to plan for her children's future where she consistently failed to acknowledge her role in original placement of children or her need for any of proffered services, she attributed children's problems to their placement in foster care and maintained that their problems would disappear once they were returned to her, and she refused to acknowledge existence or severity of children's problems and was consequently unreceptive to treatment recommendations. *In re Jerry XX., 249 A.D.2d 597, 671 N.Y.S.2d 160, 1998 N.Y. App. Div. LEXIS 3596 (N.Y. App. Div. 3d Dep't 1998)*.

Although the trial court erred by considering evidence of father's behavior towards his son during the period between the date on which a county department of social services filed its petition seeking termination of parental rights and the time the court entered its order, and although the department failed to establish its case regarding its claim that the father had not maintained contact with his son, evidence presented during the fact-finding hearing supported the trial court's finding that the father had not planned for his son's future or developed an appreciation of his son's special needs, and that failure was enough to allow termination of the father's parental rights. *In re Anthony "S", 291 A.D.2d 747, 738 N.Y.S.2d 140, 2002 N.Y. App. Div. LEXIS 2109 (N.Y. App. Div. 3d Dep't 2002)*.

Where the trial court found that the child was permanently neglected, the record supported the trial court's findings that the Cayuga County Department of Health and Human Services exercised diligent efforts to encourage and strengthen the parental relationship between the mother and the child and that the mother failed to plan for the future of the child despite being physically and financially able to do so pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)*. *In re Ashley E., 6 A.D.3d 1231, 775 N.Y.S.2d 732, 2004 N.Y. App. Div. LEXIS 6274 (N.Y. App. Div. 4th Dep't 2004)*.

In proceedings seeking an adjudication that a child was permanently neglected and termination of a mother's parental rights, the record clearly and convincingly showed the mother did not plan for the child's future, as (1) she first took responsibility for the child's severe physical abuse and then denied it, blaming it on her boyfriend with whom she maintained a relationship, (2) she made it difficult for caseworkers to contact her and was not always truthful, (3) she did not consistently attend programs, and (4) she had inadequate parenting skills with no meaningful progress, showing that she had not addressed the shortcomings which led to the child's removal. *In re Alijah XX., 19 A.D.3d 770, 796 N.Y.S.2d 455, 2005 N.Y. App. Div. LEXIS 6195 (N.Y. App. Div. 3d Dep't 2005)*.

Trial court properly terminated a mother's parental rights pursuant to N.Y. Soc. Serv. Law § 384-b, as the finding that the mother permanently neglected the child was supported by substantial evidence, because the mother failed to plan for the child's future after an agency made diligent efforts to assist her. Matter of Justina Rose D., 28 A.D.3d 659, 813 N.Y.S.2d 229, 2006 N.Y. App. Div. LEXIS 4569 (N.Y. App. Div. 2d Dep't 2006).

Because a father did not plan for the future of his children, continued to deny his history of sexual abuse, had no stable housing, failed to comply with the terms of the required sexual abuse and parenting counseling, and failed to visit with the children on a regular basis, any progress was not sufficient to warrant any further prolongation of the children's unsettled familial status and the children could not be returned to the father's care. Matter of Dakota S., 43 A.D.3d 1414, 842 N.Y.S.2d 665, 2007 N.Y. App. Div. LEXIS 10192 (N.Y. App. Div. 4th Dep't 2007).

Finding of permanent neglect was proper because, inter alia, there was clear and convincing evidence supporting the conclusion that, despite the diligent efforts of the department, the father failed to develop a realistic plan for the child's future; the department established that the father routinely failed to participate in the weekly phone call with the child, missed meetings with the caseworker, did not take advantage of any of the services offered or recommended by the department, and only visited the child when he was in Clinton County for court appearances, that those visitations were brief, with the father failing to acknowledge or interact with the child and often leaving for no apparent reason. The evidence reflected that the father, who had not been employed full time since 1989, had little or no understanding of the child's development or needs, that none of the father's relatives suggested were willing to take on the responsibility of custody of the child, and counsel's speculation that the father may have been illiterate was not supported by the record. Matter of Jacelyn TT. (Carlton TT.), 91 A.D.3d 1059, 937 N.Y.S.2d 397, 2012 N.Y. App. Div. LEXIS 162 (N.Y. App. Div. 3d Dep't 2012).

Child services agency established, by clear and convincing evidence, that the mother failed to substantially plan for the child's future and, thus, permanently neglected him because the mother refused to take responsibility for the injuries caused to an older child that she had violently shaken, failed to benefit from the offered services, and had continued involvement with men who were not safe for her and her children to be around. Matter of Landon U. (Amanda U.), 132 A.D.3d 1081, 19 N.Y.S.3d 341, 2015 N.Y. App. Div. LEXIS 7779 (N.Y. App. Div. 3d Dep't 2015).

Father failed to realistically plan for the future of his four children because the father, despite being physically and financially able to comply with the service plan the child services agency had established, failed to complete individual therapy nor a parenting skills course, and there was a three-month period of time during which the agency lost all contact with the father and was unable to reach him; thus, the family court properly found that the children were permanently neglected. Matter of Elias P. (Ferman P.), 145 A.D.3d 1066, 44 N.Y.S.3d 516, 2016 N.Y. App. Div. LEXIS 8822 (N.Y. App. Div. 2d Dep't 2016), app. denied, *29 N.Y.3d 904, 80 N.E.3d 400, 57 N.Y.S.3d 707, 2017 N.Y. LEXIS 790 (N.Y. 2017)*.

Clear and convincing evidence supported adjudicating the mother's five younger children to be permanently neglected and finding that the mother failed to plan for the children's future because the mother, inter alia, had an unsafe and chaotic home environment, lacked insight into appropriate behavior around the children, was sometimes violent or made threats during visitations, and failed to place the children's needs above her own anger. Matter of Jessica U. (Stephanie U.), 152 A.D.3d 1001, 59 N.Y.S.3d 195, 2017 N.Y. App. Div. LEXIS 5705 (N.Y. App. Div. 3d Dep't 2017).

Mother permanently neglected children because she did not (1) plan for the children's future, although able to, despite an agency's efforts, under Social Services Law § 384-b(7)(a), or (2) provide an adequate home within a reasonable time. *Matter of James M. B. (Claudia H.), 155 A.D.3d 1027, 65 N.Y.S.3d 212, 2017 N.Y. App. Div. LEXIS 8410 (N.Y. App. Div. 2d Dep't 2017)*.

Family court properly terminated the father's parental rights and freed the daughter for adoption because the county court was fully authorized to issue an order of protection in the criminal action, the father agreed to the criminal order of protection through 2040, and the father failed to plan for the future of the daughter despite being given updates as to her status during his incarceration. Matter of Robert B. (Paula C.--Tinker A.), 180 A.D.3d 1250, 120

N.Y.S.3d 209, 2020 N.Y. App. Div. LEXIS 1443 (N.Y. App. Div. 3d Dep't), app. denied, *35 N.Y.3d 911, 151 N.E.3d 942, 128 N.Y.S.3d 168, 2020 N.Y. LEXIS 1674 (N.Y. 2020)*.

Grant of petitioner's applications to adjudicate the child to be permanently neglected, and terminated the parents' parental rights was proper because petitioner established, by clear and convincing evidence, that it made diligent efforts to encourage and strengthen the parental relationship but despite petitioner's diligent efforts, the parents failed to adequately plan for the child's future by addressing the problems that prevented the child's return to their care. *Matter of Jase M. (Holly N.), 190 A.D.3d 1238, 141 N.Y.S.3d 153, 2021 N.Y. App. Div. LEXIS 471 (N.Y. App. Div. 3d Dep't)*, app. denied, *37 N.Y.3d 901, 169 N.E.3d 959, 146 N.Y.S.3d 589, 2021 N.Y. LEXIS 934 (N.Y. 2021)*, app. denied, *37 N.Y.3d 901, 169 N.E.3d 959, 146 N.Y.S.3d 589, 2021 N.Y. LEXIS 943 (N.Y. 2021)*.

104. — —Failure to take necessary steps

Family Court properly determined that mother failed to plan adequately for her children's future where maintenance of sobriety was primary objective of her plan and evidence showed that she had participated in several treatment programs for alcoholism but did not maintain sobriety with any consistency sufficient to warrant return of children to her care; since mother made no significant step toward altering her pattern of behavior or providing suitable environment for children, finding of permanent neglect was proper. *In re Regina M. C., 139 A.D.2d 929, 528 N.Y.S.2d 953, 1988 N.Y. App. Div. LEXIS 4192 (N.Y. App. Div. 4th Dep't 1988)*.

In proceeding to terminate mother's parental rights on ground of permanent neglect, evidence showed that mother failed to plan for children's future by taking necessary steps to provide adequate, stable home and parental care, as required by CLS *Soc Serv § 384-b(7)(c)*, where (1) although mother visited children occasionally, wrote letters regularly and verbalized desire to eventually regain their custody, she never attempted to maintain stable home for them, as evidenced by fact that during 2 ½ -year period she relocated at least 7 times, in 3 different states, without notifying county department of social services, (2) before departing from New York for first relocation to Florida, mother's attendance at family assessments and counseling sessions was inappreciable, and (3) mother did not cooperate with Florida social services agency, never responded to letters requesting plans to have children returned to her, and canceled psychological counseling sessions. *In re Terry S., 156 A.D.2d 763, 549 N.Y.S.2d 184, 1989 N.Y. App. Div. LEXIS 15590 (N.Y. App. Div. 3d Dep't 1989)*.

Father's refusal to undergo psychological evaluation and parental training, recommended by agency as step necessary to his providing stable home for child, supported finding that he failed to plan for future of child within meaning of CLS *Soc Serv § 384-b(7)(c)*. *In re Female J., 202 A.D.2d 340, 609 N.Y.S.2d 595, 1994 N.Y. App. Div. LEXIS 3018 (N.Y. App. Div. 1st Dep't 1994)*.

Mother's repeated failure to complete drug program or parenting skills class over course of several years evidenced her failure to plan for child's return. *In re Lameek L., 226 A.D.2d 464, 640 N.Y.S.2d 600, 1996 N.Y. App. Div. LEXIS 3590 (N.Y. App. Div. 2d Dep't 1996)*.

Father failed to plan for future of his children where, in child protective proceeding, dispositional order was issued against him and, for over 2 years, until order was vacated by Family Court, he took no steps to comply therewith, and thereafter, despite agency's continued efforts, he still took no steps to address problems that led to removal of children from his care. *Dutchess County Dep't of Social Servs. ex rel. Cody M. v Mark M., 230 A.D.2d 737, 646 N.Y.S.2d 177, 1996 N.Y. App. Div. LEXIS 8308 (N.Y. App. Div. 2d Dep't)*, app. denied, *89 N.Y.2d 802, 653 N.Y.S.2d 279, 675 N.E.2d 1232, 1996 N.Y. LEXIS 4183 (N.Y. 1996)*.

In a *N.Y. Soc. Serv. Law § 384-b* proceeding to adjudicate a mother's children permanently neglected and to terminate her parental rights, the record supported the trial court's determination that she failed to realistically plan for the children's future, and there was evidence that she was uncooperative regarding many services offered. The children sought permanency in their lives and had bonded with their foster parents, with whom they had resided most of the time for eight years. *Matter of Raena O., 31 A.D.3d 946, 819 N.Y.S.2d 330, 2006 N.Y. App. Div. LEXIS 9218 (N.Y. App. Div. 3d Dep't 2006)*.

Pursuant to N.Y. Soc. Serv. Law § 384-b(7)(a), a father's parental rights were properly terminated based on his permanent neglect of his children because the father failed to adequately address and remedy the problems that led to the children's removal and to articulate any specific plans for regaining and maintaining custody of the children (such as a plan for obtaining employment or securing suitable housing for the children after his release from prison). *Matter of Johanna M. (John L.), 103 A.D.3d 949, 959 N.Y.S.2d 557, 2013 N.Y. App. Div. LEXIS 988 (N.Y. App. Div. 3d Dep't)*, app. denied, *21 N.Y.3d 855, 967 N.Y.S.2d 688, 989 N.E.2d 970, 2013 N.Y. LEXIS 1204 (N.Y. 2013)*.

Court properly terminated the father's parental rights because there was clear and convincing evidence of agency's continued efforts to provide services to the father, including counseling, visitation, substance abuse treatment, and anger management treatment, as well as to provide him with information regarding the children. The father's steadfast refusal to cooperate with petitioner and its service plan demonstrated his unwillingness to plan for the future of his children. *Matter of Cheyenne C. (James M.), 185 A.D.3d 1517, 126 N.Y.S.3d 292, 2020 N.Y. App. Div. LEXIS 4339 (N.Y. App. Div. 4th Dep't 2020)*.

105. — —No feasible plan

In proceeding to terminate mother's parental rights on ground of permanent neglect, evidence was compelling that mother failed to plan for children's future as required by CLS Soc Serv § 384-b(7)(a) where her "plan" to establish stable home for them was apparently good faith but quixotic aspiration to divorce her husband, marry her current boyfriend, begin new family, and house all 5 members of family in one-bedroom apartment located in nearby motel, and where mother never established anything resembling permanent home, relocating 9 times in 2-year period, in many instances to motel or hotel rooms. *In re Christina Q., 156 A.D.2d 770, 549 N.Y.S.2d 195, 1989 N.Y. App. Div. LEXIS 15595 (N.Y. App. Div. 3d Dep't 1989)*, app. denied, *75 N.Y.2d 708, 554 N.Y.S.2d 833, 553 N.E.2d 1343, 1990 N.Y. LEXIS 2016 (N.Y. 1990)*.

Clear and convincing evidence existed that natural parents had failed, for more than one year, to formulate feasible and realistic plan to assume care of their child, despite agency's diligent efforts to encourage and strengthen parental relationship, where both parents reverted to drug use and temporarily lived in shelters while child was in foster care, father failed to complete drug rehabilitation program and seek psychological counseling for his behavioral problems, and father's sister was reluctant to support her brother due to his alleged sexual molestation of her 2 children. *In re Aisha Renee W., 162 A.D.2d 193, 556 N.Y.S.2d 317, 1990 N.Y. App. Div. LEXIS 7091 (N.Y. App. Div. 1st Dep't 1990)*.

Mother's failure to avail herself of much needed psychiatric counseling agency recommended until termination petition was filed constituted failure to plan; nor did mother offer feasible alternative plan for child's future in suggesting as possible resources her mother or sister, neither of whom were willing to take on responsibility. *In re Vincent Anthony C., 235 A.D.2d 283, 652 N.Y.S.2d 289, 1997 N.Y. App. Div. LEXIS 516 (N.Y. App. Div. 1st Dep't 1997)*.

Father failed to make realistic plan for future of his child where he did not cooperate in counseling and parenting classes, he continued to use marihuana, he failed to either terminate or stabilize his relationship with child's mother, and he failed to formulate plan for child's care while he worked on carnival circuit. *In re James R. F., 261 A.D.2d 963, 689 N.Y.S.2d 849, 1999 N.Y. App. Div. LEXIS 5082 (N.Y. App. Div. 4th Dep't 1999)*.

When a department of social services made adequate diligent efforts to strengthen a mother's parental relationship with her child, but the mother struggled in several significant respects, including improving her interaction with the child and budgeting household expenses, and made only marginal progress in removing obstacles preventing the child's return to her and, in general, was unable or unwilling to use skills and suggestions offered by the department, clear and convincing evidence showed the mother failed to realistically plan for her child's future and that termination of the mother's parental rights was in the child's best interest. *In re Ariel PP., 9 A.D.3d 628, 779 N.Y.S.2d 660, 2004 N.Y. App. Div. LEXIS 9376 (N.Y. App. Div. 3d Dep't)*, app. denied, *3 N.Y.3d 608, 786 N.Y.S.2d 811, 820 N.E.2d 290, 2004 N.Y. LEXIS 2432 (N.Y. 2004)*.

Father permanently neglected his children for *N.Y. Soc. Serv. Law § 384-b* purposes as he had an opportunity to engage in services necessary to become a resource for the children and/or otherwise make a meaningful plan for their future care while he was released from incarceration, but he squandered that opportunity by violating the conditions of his parole by using drugs and having contact with the children's mother; the father was incarcerated and unavailable to care for the children, and did not propose any meaningful alternative. *Matter of James J. (James K.), 97 A.D.3d 936, 948 N.Y.S.2d 203, 2012 N.Y. App. Div. LEXIS 5497 (N.Y. App. Div. 3d Dep't 2012)*.

Termination of the father's parental rights was proper because he permanently neglected the children by failing to realistically plan for their future for at least one year following their removal; and because it was in the children's best interests to terminate his parental rights and free them for adoption. *Matter of Joannis P. (Joseph Q.), 110 A.D.3d 1188, 974 N.Y.S.2d 139, 2013 N.Y. App. Div. LEXIS 6735 (N.Y. App. Div. 3d Dep't)*, app. denied, *22 N.Y.3d 857, 980 N.Y.S.2d 68, 3 N.E.3d 134, 2013 N.Y. LEXIS 3278 (N.Y. 2013)*.

106. — —Failure to use services and resources

Parent who actually goes to see children 24 times out of 101 opportunities for visitation, who enrolls in parenting class but attends only 7 classes over course of 2 years, several times while under influence of alcohol, who has continuing drug and alcohol problems but is dropped from alcoholism rehabilitation program after repeatedly failing to keep scheduled appointments, and who, although receiving public assistance, variously states to caseworkers that she is living with friends and with boy friend but who often leaves either no forwarding address or incorrect address, thus hindering attempts to contact and help her, has failed to plan for future of children. *In re Tracy O., 117 A.D.2d 891, 498 N.Y.S.2d 900, 1986 N.Y. App. Div. LEXIS 53156 (N.Y. App. Div. 3d Dep't)*, app. denied, *67 N.Y.2d 608, 502 N.Y.S.2d 1027, 494 N.E.2d 114, 1986 N.Y. LEXIS 18169 (N.Y. 1986)*.

Parents' refusal to co-operate in agency plans, primarily by failing to keep scheduled appointments for counseling and meetings, and father's failure to co-operate with attempt to arrange counseling for alcohol problem, notwithstanding agency's diligent effort to strengthen parent-child relationship, and parent's failure to plan for future of children by co-operating with agency's offer of assistance in teaching parents to budget resources support finding of permanent neglect regardless of maintenance of contact with children. *In re Lisa L., 117 A.D.2d 931, 499 N.Y.S.2d 237, 1986 N.Y. App. Div. LEXIS 53183 (N.Y. App. Div. 3d Dep't 1986)*.

Mother's parental rights would be terminated on ground that she failed for more than one year to substantially and continuously or repeatedly plan for children's future, even though mother complied with portions of agency's plan by completing parental skills course and by obtaining larger apartment, where (1) mother's visits with children were extremely irregular (she visited only 5 times in one year, even though agency recommended bi-weekly visits), and (2) mother failed to become involved in psychotherapy, and she adamantly maintained that therapy was unnecessary even though several psychiatrists recommended that children not be returned to her care unless she made substantial progress in counseling. *In re Kandu Anthony Y., 166 A.D.2d 653, 561 N.Y.S.2d 79, 1990 N.Y. App. Div. LEXIS 12968 (N.Y. App. Div. 2d Dep't 1990)*.

Evidence supported Family Court's finding that parents failed to plan for future of their 4 ½ -year-old son, afflicted with severe Down's Syndrome, where record showed, inter alia, that (1) they did not successfully participate in or complete arranged counseling programs, father having attended only one parenting class, (2) they did not acknowledge need to improve their parenting skills and saw no reason for mental health therapy, (3) they failed to acknowledge importance of sign language as means of communicating with child, mother having only intermittently attended signing classes and father never having attended such classes, (4) they failed to involve themselves in child's schooling even though intensive parental participation was required, given his disability, and (5) they attended only 2 of 4 service plan review meetings designed to help them plan for child's return. *In re George U, 195 A.D.2d 718, 600 N.Y.S.2d 325, 1993 N.Y. App. Div. LEXIS 7065 (N.Y. App. Div. 3d Dep't 1993)*.

Mother's failure to complete drug rehabilitation program did not invalidate efforts of agency to encourage parental relationship by urging and arranging for her to attend such program; thus, mother's failure to complete program was evidence of her failure to plan for future of child. *In re Natajha Starr M., 204 A.D.2d 232, 612 N.Y.S.2d 413, 1994*

N.Y. App. Div. LEXIS 5613 (N.Y. App. Div. 1st Dep't), app. denied, *84 N.Y.2d 806, 621 N.Y.S.2d 515, 645 N.E.2d 1215, 1994 N.Y. LEXIS 3410 (N.Y. 1994)*.

In proceeding for termination of parental rights, county department of social services met its burden of establishing by clear and convincing proof that, despite its diligent efforts, parents did not plan for future of their child where record showed that parents failed to take advantage of services and resources made available to them and failed to address lack of parenting skills that resulted in their child's removal. *In re Kimberly J., 216 A.D.2d 940, 629 N.Y.S.2d 142, 1995 N.Y. App. Div. LEXIS 7278 (N.Y. App. Div. 4th Dep't)*, app. denied, *87 N.Y.2d 801, 637 N.Y.S.2d 688, 661 N.E.2d 160, 1995 N.Y. LEXIS 4937 (N.Y. 1995)*.

Father failed to plan for his children's future where he repeatedly refused to admit that he had engaged in inappropriate sexual contact with them, his denial and lack of cooperation subsequently led to his expulsion from his sexual offender treatment program, and he thereafter did not participate in any consistent counseling program. *In re John F., 221 A.D.2d 858, 634 N.Y.S.2d 256, 1995 N.Y. App. Div. LEXIS 12344 (N.Y. App. Div. 3d Dep't 1995)*, app. denied, *88 N.Y.2d 811, 649 N.Y.S.2d 378, 672 N.E.2d 604, 1996 N.Y. LEXIS 3009 (N.Y. 1996)*.

Father failed to plan for return of children where his response to agency's efforts was abusive and uncooperative, he completed alcohol evaluation but failed to complete any other classes or groups mandated by plan, and his contact with children was sporadic. *In re Dina UU., 224 A.D.2d 877, 638 N.Y.S.2d 247, 1996 N.Y. App. Div. LEXIS 1532 (N.Y. App. Div. 3d Dep't 1996)*.

Father failed to plan for his children's future where he never completed alcohol or drug evaluations that were condition of dismissal of neglect proceeding against him, he failed to attend family counseling related to parenting and domestic violence, and he would not furnish address where he was living and frequently missed monthly visitation opportunities. *In re Evin C., 232 A.D.2d 767, 648 N.Y.S.2d 738, 1996 N.Y. App. Div. LEXIS 10316 (N.Y. App. Div. 3d Dep't 1996)*.

Father failed to plan for his children's future where, during relevant time period, he failed to attend one fourth of scheduled appointments for visitation and failed to avail himself of drug treatment; although father attended drug treatment program on fairly regular basis, he failed to complete program, failed to regularly pass random drug testing, and failed to attend additional counseling in accordance with agency's recommendations. *In re Commitment of Tiwana M., 267 A.D.2d 144, 700 N.Y.S.2d 175, 1999 N.Y. App. Div. LEXIS 13244 (N.Y. App. Div. 1st Dep't 1999)*, app. denied, *95 N.Y.2d 753, 711 N.Y.S.2d 155, 733 N.E.2d 227, 2000 N.Y. LEXIS 1022 (N.Y. 2000)*.

Father failed to plan for future of his children where he failed to complete parenting program and failed to complete any substance abuse treatment programs that he entered, thereby supporting finding of permanent neglect. *In re Michael "F", 285 A.D.2d 694, 726 N.Y.S.2d 810, 2001 N.Y. App. Div. LEXIS 7038 (N.Y. App. Div. 3d Dep't)*, app. denied, *96 N.Y.2d 722, 733 N.Y.S.2d 374, 759 N.E.2d 373, 2001 N.Y. LEXIS 3177 (N.Y. 2001)*.

Father's parental rights were properly terminated based on permanent neglect where, despite an agency's diligent efforts to encourage and strengthen the parental relationship under *N.Y. Soc. Serv. Law § 384-b(7)(f)*, the father failed to attend most of his scheduled visits with his child or to complete any of the suggested programs and, thus, failed to plan for the child's future. *Matter of Jonathan R.M., 26 A.D.3d 205, 809 N.Y.S.2d 43, 2006 N.Y. App. Div. LEXIS 1758 (N.Y. App. Div. 1st Dep't 2006)*.

107. — —Failure to make progress

Family Court erred as matter of fact and law in determining that child was not neglected within meaning of CLS *Soc Serv § 384-b* where court held that mother's attempt to plan for child's future negated finding of permanent neglect, and mother, despite finding that "in her mind" she was attempting to get herself in position to have child returned to her, repeatedly failed over child's 7-year life to make use of many educational and vocational opportunities presented to her by agency, to maintain her welfare benefits, or to establish adequate and stable home for child. *In*

re Louise Wise Services, 135 A.D.2d 385, 521 N.Y.S.2d 682, 1987 N.Y. App. Div. LEXIS 52358 (N.Y. App. Div. 1st Dep't 1987).

Evidence established that father failed to plan for child's future where (1) after child was removed from custody of her parents, father was found to have sexually abused her, (2) court ordered father to obtain therapy if he wanted reunion with child, and (3) father attended therapy sessions but, due to his lack of acknowledgment of guilt, cause of abuse was never explored and he was unable to gain any insight into his behavior; since father failed to make any therapeutic progress, he could not make adequate plan for child's future. *In re Tammy B., 185 A.D.2d 881, 587 N.Y.S.2d 377, 1992 N.Y. App. Div. LEXIS 9970 (N.Y. App. Div. 2d Dep't)*, app. denied, *81 N.Y.2d 702, 594 N.Y.S.2d 716, 610 N.E.2d 389, 1992 N.Y. LEXIS 4418 (N.Y. 1992)*.

In permanent neglect proceeding, evidence supported determination that mother failed to plan for children's future where her participation in programs provided by social service agency was superficial and she had regressed in areas such as codependency, anger management and independent living skills, and where psychologist who examined her did not believe that she could effectively parent her children. *In re Matthew "C", 216 A.D.2d 637, 627 N.Y.S.2d 822, 1995 N.Y. App. Div. LEXIS 6087 (N.Y. App. Div. 3d Dep't 1995)*.

Mother failed to plan for her children's future, even though she attended therapy sessions, since she failed to make any therapeutic progress. *Society for Seamen's Children ex rel. Lydia L. v Shirley L., 224 A.D.2d 626, 638 N.Y.S.2d 668, 1996 N.Y. App. Div. LEXIS 1348 (N.Y. App. Div. 2d Dep't 1996)*.

Mother, whose primary problems were identified as alcoholism and mental illness, failed to plan for her children's future where she made little progress in her treatment, counseling, and therapy, she relapsed on frequent basis, rarely maintaining sobriety for more than 3 to 4 months at a time, she was diagnosed as schizo-affective disorder, she often refused to take her medication, and she was at best unable to interact appropriately with her children and at worst dangerous in absence of prescribed medication or while under influence of alcohol. *In re Shavonda GG., 232 A.D.2d 780, 648 N.Y.S.2d 731, 1996 N.Y. App. Div. LEXIS 10200 (N.Y. App. Div. 3d Dep't 1996)*.

Mother's parental rights were properly terminated for permanent neglect where, inter alia, (1) she was convicted of criminally negligent homicide in connection with one child's death, (2) she failed to seek professional medical treatment for another child's burns, (3) she disclaimed accountability for those incidents, (4) despite resources made available to her, she made no progress toward developing realistic and feasible plan for her children's future, and (5) she missed several visitation appointments and counseling sessions. *In re Edward "I", 281 A.D.2d 667, 721 N.Y.S.2d 412, 2001 N.Y. App. Div. LEXIS 2038 (N.Y. App. Div. 3d Dep't 2001)*.

Family Court correctly determined that mother failed to plan for her children's future where (1) her belated participation in mandated parenting classes and counseling resulted in no improvement in her parenting skills or her understanding of, or ability to cope with, problems that originally caused petitioner to remove children, and (2) although she consistently visited children in foster case, she failed to declare her desire for their return and was incapable of interacting with and appropriately disciplining them. *In re Jamal "B.", 287 A.D.2d 898, 731 N.Y.S.2d 567, 2001 N.Y. App. Div. LEXIS 9975 (N.Y. App. Div. 3d Dep't 2001)*, app. denied, *97 N.Y.2d 609, 739 N.Y.S.2d 98, 765 N.E.2d 301, 2002 N.Y. LEXIS 77 (N.Y. 2002)*.

Because a father's persistent failure to correct the conditions that led to the removal of his children amounted to a failure to plan for their future, he permanently neglected them; therefore, termination of his parental rights under *N.Y. Soc. Serv. Law § 384-b* was in the children's best interests. *Matter of Anastasia FF. v Ralph AA., 66 A.D.3d 1185, 888 N.Y.S.2d 624, 2009 N.Y. App. Div. LEXIS 7398 (N.Y. App. Div. 3d Dep't 2009)*, app. denied, *13 N.Y.3d 716, 895 N.Y.S.2d 316, 922 N.E.2d 905, 2010 N.Y. LEXIS 169 (N.Y. 2010)*.

108. — —Failure to make living arrangements

Evidence established that father failed to adequately plan for future of his children where, aside from providing names of relatives who were either unable or ill-suited to care for children, his only plan was to permit foster care to

continue for one child until father's release from prison, which was unrealistic in light of his prison sentence of 25 years to life. *Delores B. Cardinal McCloskey Children's & Family Services v Willie B., 141 A.D.2d 100, 533 N.Y.S.2d 706, 1988 N.Y. App. Div. LEXIS 10225 (N.Y. App. Div. 1st Dep't 1988)*, aff'd, *74 N.Y.2d 77, 544 N.Y.S.2d 535, 542 N.E.2d 1052, 1989 N.Y. LEXIS 876 (N.Y. 1989)*.

Incarcerated father failed to make plans for his child's future where he suggested that child be placed with friends, who expressed interest in taking child, but matter was never pursued, his alternative suggestion of placement with his second wife, whom he met and married while in prison, was determined to be unsuitable, and long-term foster care was not in child's best interest and was not viable plan. *In re Abdul W., 224 A.D.2d 875, 638 N.Y.S.2d 249, 1996 N.Y. App. Div. LEXIS 1513 (N.Y. App. Div. 3d Dep't 1996)*.

Agency met its burden of showing that, despite diligent efforts to encourage and strengthen parental relationship, including bringing children to visit father in prison, attempting to keep him abreast of their lives and attempting to find therapist to treat him on individual basis, father failed to plan for children in that he did not arrange alternative living arrangements for children while he was in prison or even begin to correct psychological problems underlying his criminal record for attempted rape that led to removal of children. *In re Ronald Jamel W., 227 A.D.2d 169, 642 N.Y.S.2d 18, 1996 N.Y. App. Div. LEXIS 4838 (N.Y. App. Div. 1st Dep't)*, app. denied, *89 N.Y.2d 803, 653 N.Y.S.2d 281, 675 N.E.2d 1234, 1996 N.Y. LEXIS 4301 (N.Y. 1996)*.

Long-term foster care is not adequate plan for care and custody of child of incarcerated parent where foster care will continue for remainder of child's minority or for extended period. *In re Latasha F., 251 A.D.2d 1005, 674 N.Y.S.2d 237, 1998 N.Y. App. Div. LEXIS 7023 (N.Y. App. Div. 4th Dep't 1998)*.

Agency made diligent efforts to encourage and strengthen parental relationship by, inter alia, trying to establish relationship between children and respondent father's paramour, helping father apply for social security benefits, and helping him obtain adequate housing, and evidence supported permanent neglect finding and termination of parental rights where father failed to plan for children by presenting living arrangement that included likelihood of leaving children with his paramour, who showed no interest in fostering any relationship with them. *In re Guardianship of James Roosevelt H., 261 A.D.2d 337, 691 N.Y.S.2d 425, 1999 N.Y. App. Div. LEXIS 5836 (N.Y. App. Div. 1st Dep't 1999)*.

In proceeding to terminate father's parental rights to his 2 biological children, based on permanent neglect while he was incarcerated for first degree sexual abuse of his stepdaughter, father did not provide realistic plan for children's future where (1) his proposed placements with children's mother, his grandmother, or his siblings were untenable, (2) because he was serving consecutive sentences for other felonies unrelated to his sexual abuse conviction, he would not be eligible for parole until 2004 and might not be released until his conditional release date in fall of 2005, and (3) his "plan" necessarily relegated children to long-term foster care, which was antithetical to their need for permanency. *In re Amanda "C", 281 A.D.2d 714, 722 N.Y.S.2d 267, 2001 N.Y. App. Div. LEXIS 2307 (N.Y. App. Div. 3d Dep't)*, app. denied, *96 N.Y.2d 714, 729 N.Y.S.2d 441, 754 N.E.2d 201, 2001 N.Y. LEXIS 1439 (N.Y. 2001)*.

109. — —Inadequate living arrangements

To substantially plan means to formulate and act to accomplish reasonable and realistic plan; failure to substantially plan exists where caseworker who visits apartment 10 to 15 times over 3-month period describes odors of strongly soiled diapers, human and animal excrement, urine, dirty laundry and sour milk, kitchen floor is littered by garbage and soiled diapers, children are ill clad, in dirty clothes, with dry food matted in hair, and wide variety of medicines are located on table in living room within easy reach; lack of any plan for return of children is apparent from mother's residence during year prior to dispositional hearing in single room without kitchen, living room or bathroom. *In re Nicole TT., 109 A.D.2d 919, 486 N.Y.S.2d 388, 1985 N.Y. App. Div. LEXIS 47446 (N.Y. App. Div. 3d Dep't)*, app. dismissed, *65 N.Y.2d 925, 1985 N.Y. LEXIS 15235 (N.Y. 1985)*, app. denied, *66 N.Y.2d 601, 496 N.Y.S.2d 1025, 490 N.E.2d 553, 1985 N.Y. LEXIS 17212 (N.Y. 1985)*.

In proceeding under CLS *Soc Serv § 384-b*, infant child was properly adjudicated to be permanently neglected and mother's parental rights were properly terminated, since mother failed to plan for future of child and failed to establish meaningful relationship with him where (1) she took advantage of counseling and parenting classes, but her attitude was generally one of resistance and denial, (2) she lived in 2-bedroom trailer with her boyfriend and 2 older children, and did not look for better accommodations because she felt trailer was adequate, (3) she rarely disciplined child during visitation and did not control his behavior, (4) she generally spent half of visitation time watching television and doing other things without child and would rely on other children to supervise him, and (5) more than once, she failed to feed child or change him during visitation. *In re Salvatore TT., 159 A.D.2d 809, 552 N.Y.S.2d 696, 1990 N.Y. App. Div. LEXIS 2918 (N.Y. App. Div. 3d Dep't 1990)*.

Father failed to plan for child's future by proposing living arrangement that included possibility of leaving child in care of girlfriend who, he indicated, had her own children in placement. *In re Emily A., 216 A.D.2d 124, 629 N.Y.S.2d 206, 1995 N.Y. App. Div. LEXIS 6565 (N.Y. App. Div. 1st Dep't 1995)*.

Mother failed to plan for her child's future where, declining housing services offered by agency, mother instead chose to move from one location to another, including living in attic room, apartment with group of unrelated men and women, and in van, and at other times she lived at remote camp without plumbing, utilities, or telephone in isolated area. *In re Veronica T., 244 A.D.2d 654, 664 N.Y.S.2d 171, 1997 N.Y. App. Div. LEXIS 11491 (N.Y. App. Div. 3d Dep't 1997)*.

Pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)*, a mother failed to show that her problems were addressed and that she had a meaningful plan for her children's future where she failed to consistently keep her home in a hazard-free state, did not consider the health needs of the children, and acted inappropriately during unsupervised visitations. *Matter of Isaiah F. v Virginia. F., 55 A.D.3d 1004, 871 N.Y.S.2d 390, 2008 N.Y. App. Div. LEXIS 7768 (N.Y. App. Div. 3d Dep't 2008)*, app. denied, *11 N.Y.3d 716, 874 N.Y.S.2d 5, 2009 N.Y. LEXIS 156 (N.Y. 2009)*, app. denied, *11 N.Y.3d 716, 874 N.Y.S.2d 5, 2009 N.Y. LEXIS 550 (N.Y. 2009)*.

110. — —Residing or associating with inappropriate person

In permanent neglect proceeding under CLS *Soc Serv § 384-b*, clear and convincing evidence established that mother failed to plan for child's future despite having ample opportunity to do so where (1) mother's live-in paramour was convicted of endangering welfare of child arising from incident in which he stated that he accidentally hit child while beating mother, and (2) mother continued to live with paramour, and even moved to locations that were unsuitable for raising child in order to be with him. *In re Albert T., 188 A.D.2d 934, 592 N.Y.S.2d 87, 1992 N.Y. App. Div. LEXIS 14690 (N.Y. App. Div. 3d Dep't 1992)*, overruled in part, *Matter of Alyssa L. (Deborah K.), 93 A.D.3d 1083, 941 N.Y.S.2d 740, 2012 N.Y. App. Div. LEXIS 2347 (N.Y. App. Div. 3d Dep't 2012)*.

Mother failed to adequately plan for her child's future where child was placed in foster care because mother's paramour had physically abused him, mother continued to associate herself with same man, she attended only limited amount of court-ordered counseling, and she did not maintain regular pattern of visitation. *In re Comm'r of Social Servs. ex rel. David S., 218 A.D.2d 798, 630 N.Y.S.2d 801, 1995 N.Y. App. Div. LEXIS 8950 (N.Y. App. Div. 2d Dep't 1995)*.

Mother failed to plan for her children's future where her recent past included cohabitation with several sexual offenders. *In re John F., 221 A.D.2d 858, 634 N.Y.S.2d 256, 1995 N.Y. App. Div. LEXIS 12344 (N.Y. App. Div. 3d Dep't 1995)*, app. denied, *88 N.Y.2d 811, 649 N.Y.S.2d 378, 672 N.E.2d 604, 1996 N.Y. LEXIS 3009 (N.Y. 1996)*.

Mother failed to plan for return of child to her care, despite her contention that she was under father's control and abused by him, since she did not lack will of her own, she rejected all assistance offered to help in extricating herself from abusive situation, and she was likely to return to father should he return to area. *In re Samantha ZZ., 221 A.D.2d 865, 634 N.Y.S.2d 253, 1995 N.Y. App. Div. LEXIS 12346 (N.Y. App. Div. 3d Dep't 1995)*.

Mother failed to plan for her children's future where she was unable to separate from her controlling and physically abusive husband for any appreciable period of time, she failed to recognize and address detrimental effect that severe and recurring sexual abuse of her daughter had on both of her children or to accept responsibility for role in failing to prevent that abuse, and she failed or refused to participate meaningfully in counseling programs offered under revised plan. *In re Jesus II., 249 A.D.2d 846, 672 N.Y.S.2d 485, 1998 N.Y. App. Div. LEXIS 4812 (N.Y. App. Div. 3d Dep't 1998)*.

Mother's persistent denial of the father's sexual abuse of their child, and the risk that the father continued to pose, resulted in there being no likelihood of reuniting her with the child, and thus, the Family Court did not err in excusing the county department of social services from making additional diligent efforts to encourage and strengthen the parental relationship between the mother and her child pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)(f)*. Additionally, clear and convincing evidence upheld the Family Court's conclusion that the mother failed to plan for the child's future although physically and financially able to do so pursuant to § 384-b(7)(a), *N.Y. Fam. Ct. Act § 614(1)(d)* because the mother never acknowledged that any harm was inflicted, she continued to maintain a relationship with the father, and she expressed a strong desire to reunite herself and the child with him. *Matter of Vivian OO., 34 A.D.3d 1111, 826 N.Y.S.2d 763, 2006 N.Y. App. Div. LEXIS 13801 (N.Y. App. Div. 3d Dep't 2006)*, app. denied, *8 N.Y.3d 808, 834 N.Y.S.2d 89, 865 N.E.2d 1256, 2007 N.Y. LEXIS 547 (N.Y. 2007)*.

111. — —Multiple factors

Mother failed to plan for child's future where she (1) changed her residence 6 times after child's placement, (2) had continued budgeting problems, (3) failed to regularly attend alcohol abuse program, mental health clinic sessions, and parenting classes, or to follow her doctor's medical advice, (4) behaved inappropriately during visits with child, and (5) failed to discipline child or plan activities for their visits. *In re Mary Ann FF., 129 A.D.2d 899, 514 N.Y.S.2d 536, 1987 N.Y. App. Div. LEXIS 45577 (N.Y. App. Div. 3d Dep't)*, app. denied, *70 N.Y.2d 605, 519 N.Y.S.2d 1028, 513 N.E.2d 1308, 1987 N.Y. LEXIS 18228 (N.Y. 1987)*.

In proceeding pursuant to CLS *Soc Serv § 384-b* to adjudicate respondent's children to be permanently neglected and to terminate respondent's parental rights, evidence clearly supported finding that respondent failed to plan for children's future where (1) respondent did not comply with visitation schedule until March, 1983, (2) respondent then went to Texas ostensibly to visit her son, who was in custody of Texas social services agency and was diagnosed with potentially life threatening disease, but only saw him 3 times in 10-month period, (3) respondent was told by caseworker that leaving state would interfere with plan devised by department of social services, (4) respondent refused to visit with her daughters during brief return to state, and (5) when respondent first left for Texas, she only belatedly gave forwarding address, and when she again left, no forwarding address was ever received; although respondent had number of contacts with her children, she failed to adhere to department's plan to enable her to establish bonds with children and to work toward providing secure and stable home for them. *In re Dixie Lu EE, 142 A.D.2d 747, 530 N.Y.S.2d 655, 1988 N.Y. App. Div. LEXIS 7792 (N.Y. App. Div. 3d Dep't 1988)*.

Mother failed to plan for her children's future where, despite her alcoholism, her commitment to and attendance at alcohol treatment programs were sporadic, she refused to be evaluated by psychiatrist, she resided with substance abuser who refused to accept her children's problems, and she refused to meaningfully discuss or acknowledge her involvement in sexual abuse of her children or meaningfully address that problem. *In re Cheyenne Q., 239 A.D.2d 620, 657 N.Y.S.2d 224, 1997 N.Y. App. Div. LEXIS 4497 (N.Y. App. Div. 3d Dep't 1997)*.

Father's parental rights were properly terminated under CLS *Soc Serv § 384-b* on ground that he permanently neglected his children by failing to plan for their future where he was uncooperative with agency and unresponsive to its efforts, he failed to complete parenting skills training sessions or to obtain permanent and adequate housing, and his visitations with children were sporadic and brief. *In re Alicia Shante H., 245 A.D.2d 509, 666 N.Y.S.2d 682, 1997 N.Y. App. Div. LEXIS 13229 (N.Y. App. Div. 2d Dep't 1997)*.

Father's parental rights were properly terminated for permanent neglect of his daughter by failing to plan for her future where, despite agency's efforts, he failed to avail himself of various resources necessary for reunification, he

had unsatisfactory record of parental visits, he stated that it was not his responsibility to plan for his daughter, he failed to provide certificate of completion of parenting skills class, and he failed to remain drug-free. *In re Sarafina Aisha F., 255 A.D.2d 584, 680 N.Y.S.2d 657, 1998 N.Y. App. Div. LEXIS 12864 (N.Y. App. Div. 2d Dep't 1998)*.

Evidence showed that mother failed to properly plan for children's future where she had relatively poor record of meeting goals established by agency through utilization of available services, she attended mental health counseling and parenting classes only few times, she missed about one third of supervised visitation sessions and was late for many appointments, she did not always follow through with suggestions of parent aide supervising visitation, she maintained infrequent contact with foster mother, and she did not apply for public assistance nor seek stable housing through housing department, despite agency's suggestions. *In re Matthew "YY", 274 A.D.2d 685, 710 N.Y.S.2d 460, 2000 N.Y. App. Div. LEXIS 7802 (N.Y. App. Div. 3d Dep't 2000)*.

In proceeding under CLS *Soc Serv § 384-b* based on respondent's failure to take action to stop his wife's sexual abuse of their children and failure to properly care for children, including lack of sanitary living conditions, court properly terminated respondent's parental rights for failure to plan where (1) petitioning agency had provided preventive services to family for one year prior to removing children, (2) after removal, when it was determined that family reunification would be inappropriate for foreseeable future, goal became to encourage respondent to create separate home for children, and specific objectives were established for him, but he failed to consistently respond to agency's frequent correspondence or to promptly notify agency of his changes of address, and (3) he failed to complete mental health counseling or use other rehabilitation services provided to address underlying problems which led to removal of children, and he did not attain basic goals set by agency. *In re Marybeth, 277 A.D.2d 743, 716 N.Y.S.2d 133, 2000 N.Y. App. Div. LEXIS 12201 (N.Y. App. Div. 3d Dep't 2000)*.

Mother failed to plan for children's future, even though she attended required counseling sessions for one year, where she failed to successfully complete program due to her unwillingness to acknowledge that her paramour could have sexually abused her daughter and despite agency's recommendations of other types of counseling to assist her, mother's testimony reflected same resistant attitude previously exhibited by her when she was held in contempt for violating order of protection for bidding further contact between paramour and daughter, and mother also utilized unsupervised day visitation to subject daughter to interrogation by private investigator retained by paramour in connection with criminal charges then pending as result of sexual abuse. *In re Cassandra "JJ", 284 A.D.2d 619, 725 N.Y.S.2d 467, 2001 N.Y. App. Div. LEXIS 6024 (N.Y. App. Div. 3d Dep't 2001)*.

In a proceeding under *N.Y. Soc. Serv. Law § 384-b*, clear and convincing evidence supported a trial court's finding that a mother permanently neglected her children by failing to realistically plan for their future. The mother did not regularly attend scheduled visits with her children, did not cooperate with substance abuse treatment, and did not maintain a stable home, moving approximately 20 times after the children were taken into care and failing to notify the social services department of her moves on several occasions. *Matter of Jayde M. v Kimberly N., 36 A.D.3d 1168, 827 N.Y.S.2d 786, 2007 N.Y. App. Div. LEXIS 693 (N.Y. App. Div. 3d Dep't)*, app. denied, *8 N.Y.3d 809, 834 N.Y.S.2d 507, 866 N.E.2d 453, 2007 N.Y. LEXIS 837 (N.Y. 2007)*.

Mother's parental rights were properly terminated as she failed to plan for her children's future within the meaning of *N.Y. Soc. Serv. Law § 384-b(7)(a)* because the mother, inter alia, missed 75% of her scheduled visits with the children, refused to accept responsibility after a finding of severe sexual abuse by an invitee of the mother's then paramour, failed to submit to a mental health evaluation until almost two years after the children's placement, failed to attend an Alcoholics Anonymous program, and failed to inform the agencies of her history of PCP abuse. *Matter of Mentora Monique B., 44 A.D.3d 445, 843 N.Y.S.2d 284, 2007 N.Y. App. Div. LEXIS 10671 (N.Y. App. Div. 1st Dep't 2007)*.

In a permanent neglect proceeding, evidence that a father did not meaningfully benefit from services provided by the department of social service; rarely contacted his caseworker; refused to provide accurate information as to where and with whom he lived and worked; and did not obtain a court-approved residence for his children, was sufficient to establish that despite DDS's diligent efforts, he failed, for a period of more than a year, to adequately

plan for the future of his children. Matter of *Matter of Jyashia RR. (John VV.), 92 A.D.3d 982, 938 N.Y.S.2d 645, 2012 N.Y. App. Div. LEXIS 734 (N.Y. App. Div. 3d Dep't 2012)*.

112. —Not shown

Conclusion that the parents' plans for the child's future were inadequate (see *Social Services Law, § 384-b*, subd 7, par [a]) was unsupported where it appeared that the parents remedied a number of personal problems which led to the initial removal of three of their children, secured employment, located more suitable living quarters, followed what little guidance was given them by petitioner, and sought psychological counseling. *In re Leon R.R., 48 N.Y.2d 117, 421 N.Y.S.2d 863, 397 N.E.2d 374, 1979 N.Y. LEXIS 2318 (N.Y. 1979)*.

In an action in the Family Court pursuant to *Soc Serv L § 384-b(4)(d)* for an order committing to an authorized agency the guardianship and custody of children on the ground that they were permanently neglected, it was improper as a matter of law, in view of the insufficient record, to determine that the children were permanently neglected on the ground that the mother had failed for the prescribed period to plan for the future of her children where the mother had participated in several conferences with her case worker related at least in part to the future plans for her children, and where the mother had actively participated in the review and modification of a "service plan," prepared by the mother's case worker, designed to reunite the mother with her children. *In re Lisa Ann U., 52 N.Y.2d 1055, 438 N.Y.S.2d 514, 420 N.E.2d 395, 1981 N.Y. LEXIS 2274 (N.Y. 1981)*.

Evidence of petitioner's failure to plan for child's future was insufficient where any effort to engage in such planning was nearly impossible on and after the surrender for adoption because the Department of Social Services refused to recognize her legal right to revoke that surrender. Results which flow naturally from the intransigence of the agency having custody of a child should not be utilized to support findings against a single parent. *In re "GG", 69 A.D.2d 311, 419 N.Y.S.2d 275, 1979 N.Y. App. Div. LEXIS 11355 (N.Y. App. Div. 3d Dep't 1979)*, aff'd, *51 N.Y.2d 741, 432 N.Y.S.2d 363, 411 N.E.2d 782, 1980 N.Y. LEXIS 2602 (N.Y. 1980)*.

In proceeding to terminate incarcerated mother's parental rights, she satisfied her obligation to plan for her child's future where she proposed either foster care or placement of child with mother's retired stepmother pending mother's release from prison, mother maintained contact with child through correspondence and phone calls, she obeyed every directive by caseworkers, and she took steps to resolve her problems and change her behavior pattern by successfully completing 2 substance abuse programs, Reach program about infectious diseases associated with drug use, and 2 family violence programs, she obtained high school diploma and certificate of industry labor in metal industry work, she became qualified teacher's aide, and she began attending parenting classes. *In re Latasha F., 251 A.D.2d 1005, 674 N.Y.S.2d 237, 1998 N.Y. App. Div. LEXIS 7023 (N.Y. App. Div. 4th Dep't 1998)*.

Social services department failed to prove that immigrant mother had not planned for future of son where she had attended English classes and treatment review meetings, had attended and completed parenting course, and had maintained suitable home to which son could return and visit. *In re Richard "W", 265 A.D.2d 685, 696 N.Y.S.2d 298, 1999 N.Y. App. Div. LEXIS 10683 (N.Y. App. Div. 3d Dep't 1999)*.

In custody and adoption proceeding, record did not support finding that birth father failed to plan for child's future, where he had good income from his job as commercial carpenter and he planned to build his own home, he utilized his family for day care, he was fully involved in child's development, and he demonstrated his willingness to put child's best interests above his own. *In re Adoption of Gabriela, 283 A.D.2d 983, 723 N.Y.S.2d 797, 2001 N.Y. App. Div. LEXIS 4610 (N.Y. App. Div. 4th Dep't)*, app. denied, *96 N.Y.2d 721, 733 N.Y.S.2d 373, 759 N.E.2d 372, 2001 N.Y. LEXIS 3184 (N.Y. 2001)*.

Agency failed to establish that a father failed to plan for his child's future although physically and financially able to do so (*N.Y. Soc. Serv. Law § 384-b(7)(a)*). The agency established that the father was unable, by reason of his personality disorders and mental health problems, to plan for the child's future, but failed to establish that the father

permanently neglected the child. *Matter of Olivia L., 43 A.D.3d 1339, 842 N.Y.S.2d 821, 2007 N.Y. App. Div. LEXIS 10203 (N.Y. App. Div. 4th Dep't 2007)*.

Application to terminate a father's parental rights was properly denied because (1) the father demonstrated affection and concern and did whatever was required to be reunited with the child, (2) the child's rejection of the father did not establish grounds for the termination of parental rights, and (3) the evidence did not show that the father's inability to win the child's trust was caused by the degree of lack of insight that would justify finding that the father failed to plan for the child's return. *Matter of Albert Milton K., 47 A.D.3d 261, 848 N.Y.S.2d 97, 2007 N.Y. App. Div. LEXIS 12782 (N.Y. App. Div. 1st Dep't 2007)*.

Although perhaps begrudgingly bestowed, parents of allegedly permanently neglected children could not be found to have failed to plan for the children's future where, to a degree, the parents had utilized the medical, psychiatric, psychological and other social and rehabilitative services and material resources made available to them, including moving to more spacious living quarters and husband's attending vocational programs; furthermore, the parents were financially unable to plan for the children's future and their financial inability could not be said to be result of their own transgressions. *In re Santosky, 89 Misc. 2d 730, 393 N.Y.S.2d 486, 1977 N.Y. Misc. LEXIS 1969 (N.Y. Fam. Ct. 1977)*.

In a proceeding pursuant to *N.Y. Soc. Serv. Law § 384-b*, a family court properly dismissed an application to terminate a mother's parental rights to her two children because, even though the mother's shortcomings were significant and her progress was inconsistent, the mother cooperated with the services provided to her, made considerable efforts to visit her children regularly and, by all accounts, maintained a close, appropriate and mutually affectionate relationship with the children throughout their stay in the care of a county department of social services; the record did not provide clear and convincing proof that she substantially and continuously or repeatedly failed to maintain contact with or plan for the future of the children, § 384-b(7)(a), or failed to take meaningful steps to correct the conditions that led to the children's removal, § 384-b(7)(c). Matter of *Matter of Victor WW. (Salma XX.), 96 A.D.3d 1281, 947 N.Y.S.2d 213, 2012 N.Y. App. Div. LEXIS 4999 (N.Y. App. Div. 3d Dep't 2012)*.

113. Failure to maintain contact with child

Responsibility for mother's failure to maintain contact with her child could not be deflected to agency. *In re Erica C., 257 A.D.2d 445, 683 N.Y.S.2d 262, 1999 N.Y. App. Div. LEXIS 172 (N.Y. App. Div. 1st Dep't 1999)*.

Extreme inadequacy of mother's efforts at maintaining contact with her child was not mitigated by her illiteracy or her incarceration. *In re Erica C., 257 A.D.2d 445, 683 N.Y.S.2d 262, 1999 N.Y. App. Div. LEXIS 172 (N.Y. App. Div. 1st Dep't 1999)*.

In proceeding to terminate parental rights, sporadic or insubstantial contact is insufficient to defeat finding of abandonment. *In re Chantelle "TT", 281 A.D.2d 660, 721 N.Y.S.2d 417, 2001 N.Y. App. Div. LEXIS 2037 (N.Y. App. Div. 3d Dep't 2001)*.

County department of social services (DSS) failed to establish that father abandoned child, with whom he had regular and frequent contract until child was removed from mother's custody, where father concededly had no contact with child or DSS during 6-month period before permanent neglect petition was filed, but DSS did not controvert father's testimony that its employee told him he would not be permitted to have any contact with child until prior indicated report of sexual abuse was expunged, and father's assertion that he did not intend to forego his parental rights was supported by his petition seeking custody of child. *In re Jeffrey M., 283 A.D.2d 974, 723 N.Y.S.2d 790, 2001 N.Y. App. Div. LEXIS 4566 (N.Y. App. Div. 4th Dep't 2001)*.

114. —Shown

Mother's sporadic visits did not satisfy her obligation to maintain contact with child. *In re Vincent Anthony C., 235 A.D.2d 283, 652 N.Y.S.2d 289, 1997 N.Y. App. Div. LEXIS 516 (N.Y. App. Div. 1st Dep't 1997)*.

In proceeding to terminate mother's parental rights, her sporadic and insubstantial contacts with county social services department during 6-month period immediately preceding filing of petition were insufficient to preclude finding of abandonment where, despite department's diligent efforts to encourage and strengthen parental relationship, mother failed to substantially and continuously maintain contact with her children or to plan for their future. *In re Christina W. , 273 A.D.2d 918, 710 N.Y.S.2d 280, 2000 N.Y. App. Div. LEXIS 6980 (N.Y. App. Div. 4th Dep't 2000)*.

Evidence that a father had no contact with the father's children from January 1997 until April 1998, that the father did not pay child support, and that the father did not take any action to locate the children after their mother allegedly concealed their whereabouts supported the trial court's judgment that the father did not maintain substantial and continuous or repeated contact with the children, within the meaning of *N.Y. Dom. Rel. Law § 111(1)(d)*, and the appellate court affirmed the trial court's judgment that the father's consent was not required for adoption of the children. *In re Jason Brian S., 303 A.D.2d 759, 758 N.Y.S.2d 96, 2003 N.Y. App. Div. LEXIS 3441 (N.Y. App. Div. 2d Dep't 2003)*.

Agency established that, for a period of more than one year, a parent failed substantially and continuously or repeatedly to maintain contact with or plan for the future of the parent's children (*N.Y. Soc. Serv. Law § 384-b(7)(a)*). The record established that the parent chose to have no contact with the children for a period of almost five months and that the parent's visitation was sporadic for a period of over seven months, for periods of time both before and after the five-month period. *Matter of Charles B., 46 A.D.3d 1430, 848 N.Y.S.2d 470, 2007 N.Y. App. Div. LEXIS 13098 (N.Y. App. Div. 4th Dep't 2007)*, app. denied, *10 N.Y.3d 705, 857 N.Y.S.2d 37, 886 N.E.2d 802, 2008 N.Y. LEXIS 619 (N.Y. 2008)*.

Family court properly determined that the father permanently neglected the children because the father failed to take the necessary steps to adequately address the issues that led to the children's removal despite having been provided numerous resources and support intended to address the; in addition, the father failed to adequately complete the required parent education meetings and failed to engage in mental health treatment. *Matter of Logan C. (John C.), 169 A.D.3d 1240, 94 N.Y.S.3d 696, 2019 N.Y. App. Div. LEXIS 1307 (N.Y. App. Div. 3d Dep't 2019)*.

115. —Not shown

A petition to terminate parental rights is dismissed, the child having been removed from his parents' home at the age of 19 months and having remained with his present foster parents for some eight years, since the primary concern of the petitioner, the county Department of Social Services, was not in uniting the child with his family and the record established that the parents availed themselves of every opportunity to visit their son notwithstanding the many obstacles thrown in their path by petitioner. *In re Leon R.R., 48 N.Y.2d 117, 421 N.Y.S.2d 863, 397 N.E.2d 374, 1979 N.Y. LEXIS 2318 (N.Y. 1979)*.

Even though mother visited child regularly, she failed to satisfy the "plan for the future of the child" prong of *N.Y. Soc. Serv. Law § 384-b(7)(a)* so her parental rights were terminated. *In re Elijah NN., 20 A.D.3d 728, 798 N.Y.S.2d 252, 2005 N.Y. App. Div. LEXIS 7813 (N.Y. App. Div. 3d Dep't 2005)*.

Family court properly determined that a putative father's consent to the adoption of the subject child was required and dismissed a petition to terminate the parental rights of the mother and the putative father because, while the petitioner demonstrated that it made diligent efforts to encourage and strengthen the parental relationship and to reunite the family, it did not establish that the mother and the putative father failed substantially and consistently to maintain contact with the child or to plan for the child's future during the relevant period of time. *Matter of Samatha B. (Cynthia J.), 159 A.D.3d 1006, 73 N.Y.S.3d 227, 2018 N.Y. App. Div. LEXIS 2072 (N.Y. App. Div. 2d Dep't 2018)*.

116. Permanent neglect

Statute does not condition adjudication of permanent neglect on parents first being accorded opportunity to actually demonstrate their capacity to furnish day-to-day care for child; it is adequacy of parents' behavior subsequent to agency intervention which is relevant in deciding whether child is permanently neglected, and that determination can properly be reached without child ever having been in parents' custody; child of mentally retarded parents is permanently neglected where parents refuse to avail themselves of financial and parental counseling opportunities and where mother neglects to plan for child's future. *In re Alfredo HH, 109 A.D.2d 980, 486 N.Y.S.2d 689, 1985 N.Y. App. Div. LEXIS 47482 (N.Y. App. Div. 3d Dep't 1985)*.

In custody dispute between natural parent and nonparent, "persistent neglect," sufficient to rise to level of extraordinary circumstances justifying custodial disposition based on best interests of child, requires showing of "permanent neglect" as defined in CLS *Soc Serv § 384-b(4)*; thus, evidence supported finding of natural mother's persistent neglect where she left child in maternal grandmother's care without disclosing her (mother's) whereabouts, got married to man with whom she had been living without telling her parents, and only sporadically visited or called her parents' home. *Bisignano v Walz, 164 A.D.2d 317, 563 N.Y.S.2d 938, 1990 N.Y. App. Div. LEXIS 15520 (N.Y. App. Div. 3d Dep't 1990)*.

Imprisoned father's status as "consent father" did not have to be demonstrated under CLS *Dom Rel § 111(1)(d)* in permanent neglect proceeding under CLS *Soc Serv § 384-b(4)(d)* where mother wanted to give child up for adoption, because consent requirement has been omitted from § 384-b(4)(d). *In re Custody & Guardianship of Sasha R., 246 A.D.2d 1, 675 N.Y.S.2d 605, 1998 N.Y. App. Div. LEXIS 8425 (N.Y. App. Div. 1st Dep't 1998)*.

Mother's neglectful conduct, including her refusal to permit her 13-year-old daughter to live in her household and her unwillingness to participate in various counseling programs to assist daughter, amounted to neglect of daughter by placing her mental or emotional condition in imminent danger of becoming impaired. *In re Chantel "ZZ", 279 A.D.2d 669, 717 N.Y.S.2d 802, 2001 N.Y. App. Div. LEXIS 41 (N.Y. App. Div. 3d Dep't 2001)*.

Pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)*, to establish permanent neglect as a basis for terminating parental rights, the petitioner is required to show that the parent failed for a period of more than one year following the date that the child came into its care substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship; in an action to terminate parental rights, evidence established that it would be in the children's best interest to be freed for adoption by the foster mother, to whom they were strongly attached, and who provided them with a stable home environment. *In re Avery Curtis Foster Joe D., 306 A.D.2d 276, 761 N.Y.S.2d 672, 2003 N.Y. App. Div. LEXIS 6263 (N.Y. App. Div. 2d Dep't 2003)*.

Child protection agency showed by clear and convincing evidence that, despite its diligent efforts to encourage and strengthen the parental relationship, a mother permanently neglected her child by failing to maintain continuous contact with him on a regular basis and failing to plan for his future, and, on appeal, the mother's counsel correctly alleged that there were no nonfrivolous issues to be raised on appeal, so he was allowed to withdraw. *In re Jeffrey Raymond D., 3 A.D.3d 568, 770 N.Y.S.2d 651, 2004 N.Y. App. Div. LEXIS 710 (N.Y. App. Div. 2d Dep't 2004)*.

N.Y. Soc. Serv. Law § 384-b(7)(a) does not make any distinction as to how or why the child comes under an agency's care. Therefore, it is appropriate for the agency to file a permanent neglect petition after a child has been in its custody for over a year regardless of the circumstances under which that child came into its care. *In re Elijah NN., 20 A.D.3d 728, 798 N.Y.S.2d 252, 2005 N.Y. App. Div. LEXIS 7813 (N.Y. App. Div. 3d Dep't 2005)*.

Because the parents failed to plan for their child's future, the family court properly found that they permanently neglected the child under *Soc. Serv. Law § 384-b(7)(a)*; given the evidence of permanent neglect and the length of time that the child had spent in foster care, the dispositional hearing was properly held in the parents' absence. *Matter of Perla B. v Elsa M., 48 A.D.3d 261, 851 N.Y.S.2d 173, 2008 N.Y. App. Div. LEXIS 1007 (N.Y. App. Div. 1st Dep't 2008)*.

Termination of the father's parental rights was in the children's best interests as sound and substantial evidence in the record showed that he had permanently neglected them. The caseworker testified that when she visited the father's home, she observed that the children's mother, who had surrendered her parental rights to the children in March 2017 was still living with them. The caseworker further testified that, besides minor home improvements, the father had not taken meaningful steps or made substantial plans for the children to return to his care and had not rectified the behavior causing the initial removal. Further, the caseworker testified that he did not think that the children suffered from trauma-related injuries as a result of his parenting but believed that the children's trauma was the result of agency's caseworkers and the foster parents brain-washing them. *Matter of Arianna K. (Maximus L.), 184 A.D.3d 967, 125 N.Y.S.3d 195, 2020 N.Y. App. Div. LEXIS 3533 (N.Y. App. Div. 3d Dep't 2020)*.

117. —Permanent neglect shown

Finding that respondent permanently neglected her child, who had been in foster care since shortly after his birth, was supported by clear and convincing evidence where, despite diligent efforts to encourage and strengthen parental relationship, respondent visited child only once in 7 months preceding fact-finding hearing, there was no evidence of bonding during that visit, respondent's actions indicated that development of bond with child was not her priority, and fact that neglect proceeding was not commenced with respect to older children did not preclude determination respecting youngest child. *In re Jason J., 283 A.D.2d 982, 723 N.Y.S.2d 922, 2001 N.Y. App. Div. LEXIS 4653 (N.Y. App. Div. 4th Dep't 2001)*.

There was clear and convincing evidence to support the family court's finding against a mother of permanent neglect based on the mother's failure to substantially and continuously, or repeatedly, maintain contact with her children, or to plan for their future, during the statutorily relevant period of *N.Y. Soc. Serv. Law § 384-b(7)(a)* despite an agency's diligent efforts in arranging scheduled visitation. *In re Guardianship of Devon Dupree F., 298 A.D.2d 103, 747 N.Y.S.2d 501, 2002 N.Y. App. Div. LEXIS 9203 (N.Y. App. Div. 1st Dep't 2002)*.

Trial court properly found a mother's child to be neglected and transferred the mother's guardianship and custody rights to an agency; the agency proved that it made diligent efforts to encourage and strengthen the parental relationship as required by *N.Y. Soc. Serv. Law § 384-b(7)(a)*, including formulating a specific plan for the return of the child, setting up a visitation schedule, and assisting the mother with housing, and the agency also met its burden of proving by clear and convincing evidence that the mother failed substantially and continuously to plan for the future of the child. *Erie County Dep't of Soc. Servs. v Tangry F. (In re Ja-Nathan F.), 300 A.D.2d 1030, 752 N.Y.S.2d 573, 2002 N.Y. App. Div. LEXIS 12894 (N.Y. App. Div. 4th Dep't 2002)*, app. denied, *99 N.Y.2d 511, 760 N.Y.S.2d 102, 790 N.E.2d 276, 2003 N.Y. LEXIS 417 (N.Y. 2003)*.

While a mother attempted to comply with most of the provisions of a service plan for the mother's child's future, the health and human services department established that, notwithstanding its efforts, the mother was simply not capable of caring for the child; thus, the trial court's finding of permanent neglect was proper. *Cayuga County Dep't of Health & Human Servs. v Sally V. (In re James V.), 302 A.D.2d 916, 754 N.Y.S.2d 506, 2003 N.Y. App. Div. LEXIS 1116 (N.Y. App. Div. 4th Dep't 2003)*.

Court erred in denying a petition to terminate a mother's parental rights pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)* because agency satisfied its burden of proving permanent neglect by establishing that the mother failed to complete several drug treatment programs and a parenting skills class and failed to maintain regular contact with the child, all of which were a necessary part of the plan for the child's return to the mother, despite the diligent efforts by the agency to encourage and strengthen the parent-child relationship. *In re Ebony Starr B., 14 A.D.3d 507, 787 N.Y.S.2d 393, 2005 N.Y. App. Div. LEXIS 198 (N.Y. App. Div. 2d Dep't 2005)*.

Agency established permanent neglect by the mother and father pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)* by showing that, despite the agency's diligent efforts to strengthen and encourage the parent-child relationship, the mother and father failed maintain regular contact with the child, to actively involve themselves in the child's medical care, and to secure adequate housing and steady employment, all of which were a necessary part of the plan for

the child's return. *Matter of Lauramarie Addie W., 18 A.D.3d 473, 794 N.Y.S.2d 120, 2005 N.Y. App. Div. LEXIS 4769 (N.Y. App. Div. 2d Dep't 2005)*.

County department of health and human services made a sufficient showing to justify a disposition that children were permanently neglected under *N.Y. Soc. Serv. Law § 384-b(7)(a)* where the department showed that it made diligent efforts to strengthen the relationship between the parents and the children by providing services and assistance to resolve the problems that had prevented the children's return to the parents' care, where it showed that each parent substantially and repeatedly failed to plan for their children's future for more than a year after the children were placed with the department despite being physically and financially able to do so, and where it showed that the parents failed to overcome the problems that caused the children to initially be placed with the department. Moreover, a family court's dispositional orders terminating parental rights, transferring guardianship and custody to the department, and allowing the department to consent to the children's adoption were supported by admissible evidence in the record; an argument on appeal that the family court relied on documents that were not in evidence was not supported by the record and, regardless, alleged a harmless error since admissible evidence existed in the record to support the family court's dispositional orders. *Matter of Nathaniel W., 24 A.D.3d 1240, 806 N.Y.S.2d 838, 2005 N.Y. App. Div. LEXIS 14587 (N.Y. App. Div. 4th Dep't 2005)*, app. denied, *6 N.Y.3d 711, 814 N.Y.S.2d 600, 847 N.E.2d 1173, 2006 N.Y. LEXIS 665 (N.Y. 2006)*.

Evidence supported family court's finding that a father's parental rights to his three minor children should be terminated based on permanent neglect under *N.Y. Soc. Serv. Law § 384-b* as a social services organization made diligent efforts to strengthen the parent-child relationships but the father failed to meaningfully plan for the future of his children. *Matter of Evelyn Moncrieff G. v Edmund Emerson G., 42 A.D.3d 568, 840 N.Y.S.2d 142, 2007 N.Y. App. Div. LEXIS 8818 (N.Y. App. Div. 2d Dep't 2007)*.

Termination of a father's parental rights based on permanent neglect under *Social Services Law § 384-b* was proper. The agency made diligent efforts to facilitate the father's relationship with the child; the father, who was incarcerated, failed to maintain contact with the child or to plan for his future; and a suspended judgment under *Family Ct Act §§ 631* and *633* was inappropriate, as it would not be in the child's best interests to add several years to his foster care placement and the goal of permanency would not be served by placement with the father's aunt. *Matter of Marquise JJ. (Jamie KK.), 91 A.D.3d 1137, 938 N.Y.S.2d 211, 2012 N.Y. App. Div. LEXIS 274 (N.Y. App. Div. 3d Dep't)*, app. denied, *19 N.Y.3d 801, 957 N.Y.S.2d 285, 980 N.E.2d 950, 2012 N.Y. LEXIS 872 (N.Y. 2012)*.

Termination of a mother's parental rights and freeing the child for adoption was in the child's best interests under *N.Y. Soc. Serv. Law § 384-b(7)(a)* and *N.Y. Fam. Ct. Act § 614(1)(d)* because the mother's parenting skills did not meaningfully improve, her employment was intermittent, her living arrangements remained unstable, and she consistently failed to accept the role that her conduct played in the removal of her children. *Matter of Alysheionna HH. (Tara II.), 101 A.D.3d 1413, 956 N.Y.S.2d 331, 2012 N.Y. App. Div. LEXIS 8777 (N.Y. App. Div. 3d Dep't 2012)*, app. denied, *20 N.Y.3d 861, 965 N.Y.S.2d 81, 987 N.E.2d 642, 2013 N.Y. LEXIS 541 (N.Y. 2013)*.

Family Court properly adjudicated a father's children to be permanently neglected and terminated his parental rights as in the children's best interest because he admitted to substantial portions of the neglect allegations, refused to engage in recommended parenting classes and court-ordered mental health treatment, did not maintain contact with the children, made no effort to stay informed as to their lives, and did not make any inquiry as to their mental health needs and progress. *Matter of Katie I. (Jonathan I.), 116 A.D.3d 1309, 984 N.Y.S.2d 465, 2014 N.Y. App. Div. LEXIS 2770 (N.Y. App. Div. 3d Dep't 2014)*.

Family court properly terminated a mother's parental rights to her children based on permanent neglect because the mother failed to plan for the future of the children despite the efforts by the social services agency to encourage and strengthen the relationship between them, the mother's partial and belated compliance with the service plan was insufficient to preclude a finding of permanent neglect, it was in the children's best interests to terminate the mother's parental rights, rather than to enter a suspended judgment, and to free them for adoption by the foster mother, and she failed to show good cause for substitution of assigned counsel. *Matter of Daniel K. L. (Shaquanna L.), 138 A.D.3d 743, 29 N.Y.S.3d 436, 2016 N.Y. App. Div. LEXIS 2527 (N.Y. App. Div. 2d Dep't 2016)*.

Clear and convincing evidence supported the family court's finding the mother failed to develop a realistic plan for the children's future and the children were permanently neglected because, inter alia, the mother did not communicate to the caseworker what services she was engaged in and the mother was facing a substantial term of imprisonment. *Matter of Zoey O. (Veronica O.), 147 A.D.3d 1227, 47 N.Y.S.3d 509, 2017 N.Y. App. Div. LEXIS 1392 (N.Y. App. Div. 3d Dep't 2017)*.

Preponderance of the evidence supported the determination that it was in the child's best interests to terminate the parents' parental rights based on permanent neglect as the record established that since the child was placed under foster care, the parents failed to substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship. *Matter of Stefano E.W. (Stephan J.W.), 172 A.D.3d 882, 100 N.Y.S.3d 307, 2019 N.Y. App. Div. LEXIS 3555 (N.Y. App. Div. 2d Dep't)*, app. denied, *33 N.Y.3d 911, 131 N.E.3d 274, 107 N.Y.S.3d 265, 2019 N.Y. LEXIS 2272 (N.Y. 2019)*.

Evidence supported the finding of permanent neglect to warrant termination of the mother and the father's parental rights because despite receiving services, the mother continued to have great difficulty managing the children during supervised visits and never progressed to unsupervised visits, while the father, after his incarceration, it became increasingly difficult to work with him, as he was not responsive to caseworker communications and accused one caseworker of harassment. *Matter of Dawn M. (Michael M.), 174 A.D.3d 972, 107 N.Y.S.3d 450, 2019 N.Y. App. Div. LEXIS 5351 (N.Y. App. Div. 3d Dep't 2019)*, app. denied, *34 N.Y.3d 907, 139 N.E.3d 402, 115 N.Y.S.3d 779, 2020 N.Y. LEXIS 32 (N.Y. 2020)*.

On appeal against an order granting application to adjudicate the children permanently neglected, the Family Court's determination that petitioner made diligent efforts to encourage and strengthen respondent's relationship with the children was amply supported in the record. Petitioner established that the mother failed to substantially plan for the children's future by taking meaningful steps to correct the conditions that led to their removal. *Matter of Chloe B. (Sareena B.), 189 A.D.3d 2011, 137 N.Y.S.3d 592, 2020 N.Y. App. Div. LEXIS 8339 (N.Y. App. Div. 3d Dep't 2020)*.

On appeal against an order granting application to adjudicate the children permanently neglected and terminating the mother's parental rights, the mother was regularly inconsistent in exercising her visitation with the children, frequently missed visitations and, at one point, moved to New Jersey for a period of approximately six months without having made any plans as to how she would comply with court-ordered programming or otherwise continue to exercise her weekly visitation with the children. *Matter of Chloe B. (Sareena B.), 189 A.D.3d 2011, 137 N.Y.S.3d 592, 2020 N.Y. App. Div. LEXIS 8339 (N.Y. App. Div. 3d Dep't 2020)*.

118. — —Failure to take responsibility for problems

Record supported finding of permanent neglect where (1) mother took token steps toward improving her problems, but consistently refused to accept responsibility for problem that led to her son's removal, claiming that his condition was caused by medication she was given during delivery, and (2) final product of her efforts did not rise to level of planning for child's future. *In re Matthew C., 227 A.D.2d 679, 641 N.Y.S.2d 753, 1996 N.Y. App. Div. LEXIS 4801 (N.Y. App. Div. 3d Dep't 1996)*.

Mother permanently neglected her 2 children where she failed to recognize and take responsibility for problems that led to children's foster care placement and failed to complete programs to which she was referred. *In re Angel, 263 A.D.2d 354, 692 N.Y.S.2d 376, 1999 N.Y. App. Div. LEXIS 7732 (N.Y. App. Div. 1st Dep't 1999)*.

Findings of permanent neglect were supported by clear and convincing evidence as a mother denied accountability regarding allegations of sexual abuse and her conviction for endangering the welfare of a child and, thus, established that she failed to gain insight into the cause of her children's extended placement in foster care; therefore, the mother failed to plan meaningfully for her children's future, and her parental rights were properly terminated. *Matter of Milan N. v Lucia N., 45 A.D.3d 358, 846 N.Y.S.2d 18, 2007 N.Y. App. Div. LEXIS 11600 (N.Y.*

App. Div. 1st Dep't 2007), app. denied, *10 N.Y.3d 703, 854 N.Y.S.2d 104, 883 N.E.2d 1011, 2008 N.Y. LEXIS 296 (N.Y. 2008)*.

Father permanently neglected children two, three and four as: (1) a critical service plan goal in the father's case was for him to acknowledge the cause of and responsibility for child two's severe injuries; (2) he did not complete counseling, and refused to acknowledge that child two was severely abused or to accept any responsibility for her injuries; (3) he was unable to provide an acceptable explanation for what happened to child two; and (4) these failures prevented him from gaining any insight into how to address the issues that led to the children's removal. *Matter of Kayden E. (Luis E.), 111 A.D.3d 1094, 975 N.Y.S.2d 789, 2013 N.Y. App. Div. LEXIS 7744 (N.Y. App. Div. 3d Dep't 2013)*, app. denied, *22 N.Y.3d 862, 983 N.Y.S.2d 494, 6 N.E.3d 613, 2014 N.Y. LEXIS 393 (N.Y. 2014)*.

119. — —Failure to attend or complete programs

Evidence sustained finding that mother permanently neglected children after she voluntarily placed them with social services agency where she (1) failed to attend counseling sessions to improve her parenting skills and her relationship with children's father, (2) failed to obtain adequate housing for children, despite agency's efforts on her behalf, and (3) failed to keep agency apprised of her location for period of 7 months. *In re June Y., 128 A.D.2d 538, 512 N.Y.S.2d 469, 1987 N.Y. App. Div. LEXIS 44227 (N.Y. App. Div. 2d Dep't 1987)*.

In proceeding to terminate mother's parental rights on ground of permanent neglect, evidence was sufficient to show that mother failed to utilize medical, psychiatric, psychological and other social and rehabilitative services and material resources made available to her as required by CLS *Soc Serv § 384-b(7)(c)* where it was demonstrated, inter alia, that mother regularly missed counselling sessions and parenting classes, did not pursue job opportunities and apartment openings, and omitted to take classes to obtain her graduate equivalency diploma or otherwise further her limited education. *In re Christina Q., 156 A.D.2d 770, 549 N.Y.S.2d 195, 1989 N.Y. App. Div. LEXIS 15595 (N.Y. App. Div. 3d Dep't 1989)*, app. denied, *75 N.Y.2d 708, 554 N.Y.S.2d 833, 553 N.E.2d 1343, 1990 N.Y. LEXIS 2016 (N.Y. 1990)*.

Finding of permanent neglect by father was properly based on his failure to avail himself of medical training necessary to enable him to care for HIV-positive child, notwithstanding agency's diligent efforts to encourage his attendance at medical training sessions scheduled to coincide and be held in conjunction with his child visitation at agency. *In re Atreyu Rashawn G., 254 A.D.2d 215, 679 N.Y.S.2d 129, 1998 N.Y. App. Div. LEXIS 11363 (N.Y. App. Div. 1st Dep't 1998)*.

Mother permanently neglected children, by failing to plan for their future, where she repeatedly refused agency's reasonable requests to attend additional parenting skills program and to undergo random drug testing. *In re Destiny Shantiqua C., 282 A.D.2d 370, 723 N.Y.S.2d 646, 2001 N.Y. App. Div. LEXIS 4094 (N.Y. App. Div. 1st Dep't 2001)*.

Agency established permanent neglect under *N.Y. Soc. Serv. Law § 384-b(7)(f)* as a father failed to plan for the children's future by his failure to complete a required program of mental health counseling and his failure to acknowledge the children's educational problems. *Matter of Kyle K. v Harry K., 49 A.D.3d 1333, 854 N.Y.S.2d 270, 2008 N.Y. App. Div. LEXIS 2624 (N.Y. App. Div. 4th Dep't)*, app. denied, *10 N.Y.3d 715, 862 N.Y.S.2d 335, 892 N.E.2d 401, 2008 N.Y. LEXIS 1862 (N.Y. 2008)*.

Clear and convincing evidence supported the family court's determination of permanent neglect to the older child because the father missed parenting classes and counseling sessions and that he failed to show significant improvement despite the offered services. *Matter of Derick L. (Michael L.), 166 A.D.3d 1325, 89 N.Y.S.3d 354, 2018 N.Y. App. Div. LEXIS 7917 (N.Y. App. Div. 3d Dep't 2018)*, app. denied, *32 N.Y.3d 915, 122 N.E.3d 566, 98 N.Y.S.3d 768, 2019 N.Y. LEXIS 186 (N.Y. 2019)*.

Mother's parental rights was terminated because mother permanently neglected the child by failing to plan for the child for the statutorily relevant time period as the mother did not successfully address the problem of her continued substance abuse and failed to complete a drug treatment program. Termination of the mother's parental rights with

the goal of adoption was in the best interests of the child. *Matter of Mateo M. Q. (Jessica Q.), 185 A.D.3d 1037, 127 N.Y.S.3d 593, 2020 N.Y. App. Div. LEXIS 4390 (N.Y. App. Div. 2d Dep't)*, app. denied, *35 N.Y.3d 917, 158 N.E.3d 561, 133 N.Y.S.3d 544, 2020 N.Y. LEXIS 2559 (N.Y. 2020)*.

120. — —Failure to plan for future

A child whose mother has made plans for the child's future which are not realistic and feasible is a permanently neglected child. Finding of neglect requires showing that the mother has failed for a period of more than one year, following the date such child came into the care of an agency, substantially and continuously to plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship. *In re M., 68 A.D.2d 531, 417 N.Y.S.2d 712, 1979 N.Y. App. Div. LEXIS 10971 (N.Y. App. Div. 1st Dep't 1979)*.

The Family Court's determination that a child's natural mother was guilty of permanent neglect was supported by clear and convincing evidence, where the natural mother failed to formulate any plan for the return of the infant to her custody, notwithstanding diligent efforts by the local agency to encourage and strengthen parental relationship, and where the infant had been in the custody of his foster parents for more than four years, during which time his medical needs had been meticulously attended to. *In re Charles W., 94 A.D.2d 800, 463 N.Y.S.2d 50, 1983 N.Y. App. Div. LEXIS 18268 (N.Y. App. Div. 2d Dep't)*, app. denied, *60 N.Y.2d 554, 1983 N.Y. LEXIS 5593 (N.Y. 1983)*, app. denied, app. dismissed, *60 N.Y.2d 654, 467 N.Y.S.2d 573, 454 N.E.2d 1316, 1983 N.Y. LEXIS 3361 (N.Y. 1983)*.

The Family Court properly found that a child was permanently neglected and directed her placement with a county department of social services for adoption, where the child's parents failed to plan for the future of the child, changed their minds several times regarding who should care for the child, made an apparently indefinite move to California without informing the department or making interim plans for maintaining contact with the child, and resisted the department's efforts to ascertain their exact whereabouts, where the record revealed no evidence that the parents were physically unable to plan for the future of their child, and where the department attempted to explain to the child's mother the types of assistance available and how to apply for them. *In re Jennifer "VV", 99 A.D.2d 882, 472 N.Y.S.2d 478, 1984 N.Y. App. Div. LEXIS 17290 (N.Y. App. Div. 3d Dep't 1984)*.

In proceeding pursuant to CLS *Soc Serv § 384-b* to terminate parental rights, Family Court did not err in concluding that mother permanently neglected child by failing to substantially plan for child's future despite foster care agency's diligent efforts to strengthen parental relationship since mother's lack of progress in planning for child's future was directly attributable to her repeated rejection of agency's offers of financial, social, and psychological counseling. *In re Ann Marie D., 127 A.D.2d 764, 512 N.Y.S.2d 157, 1987 N.Y. App. Div. LEXIS 53411 (N.Y. App. Div. 2d Dep't 1987)*.

In proceeding pursuant to CLS *Soc Serv § 384-b* to terminate 22-year-old mother's parental rights, clear and convincing evidence demonstrated that child was permanently neglected within meaning of CLS *Soc Serv § 384-b(7)(a)* in that mother, although physically and financially able to do so, failed to plan for future of child for more than one year following date child was placed in care of department of social services, and that department fulfilled its statutory duty to exercise diligent efforts to encourage and strengthen mother's relationship with child. *In re Camille M., 143 A.D.2d 755, 533 N.Y.S.2d 464, 1988 N.Y. App. Div. LEXIS 10029 (N.Y. App. Div. 2d Dep't 1988)*.

Fact that mother maintained fairly regular visitation with child did not undermine finding of permanent neglect where she failed to take any steps toward planning for child's future despite child care agency's diligent efforts to encourage and strengthen parental relationship. *In re Taqueena Louise C., 222 A.D.2d 283, 635 N.Y.S.2d 210, 1995 N.Y. App. Div. LEXIS 12854 (N.Y. App. Div. 1st Dep't 1995)*, app. denied, *87 N.Y.2d 812, 644 N.Y.S.2d 145, 666 N.E.2d 1059, 1996 N.Y. LEXIS 1025 (N.Y. 1996)*.

Parental rights were properly terminated on the ground of permanent neglect based on parents' failure to plan for their three children's future under *N.Y. Soc. Serv. Law § 384-b(7)(c)* because the father never attended any

program of domestic violence counseling and the mother did not complete her domestic violence counseling or gain any insight as to why she had to attend. *Matter of Tynell S., 43 A.D.3d 1171, 842 N.Y.S.2d 90, 2007 N.Y. App. Div. LEXIS 10045 (N.Y. App. Div. 2d Dep't 2007)*.

Permanent neglect under *N.Y. Soc. Serv. Law § 384-b(7)(a)* was properly found because for a continuous period of 17 months after the children's placement into foster care, both parents failed to plan for the children's return despite the diligent efforts of an agency to strengthen and encourage the parental relationship. *Matter of Michelle Rennee H., 48 A.D.3d 684, 850 N.Y.S.2d 918, 2008 N.Y. App. Div. LEXIS 1547 (N.Y. App. Div. 2d Dep't)*, app. denied, *10 N.Y.3d 710, 859 N.Y.S.2d 395, 889 N.E.2d 82, 2008 N.Y. LEXIS 1440 (N.Y. 2008)*.

Although an agency exercised diligent efforts to encourage and strengthen the parent-child relationship, the mother and father failed to plan for their children's future; accordingly, the children were properly found to have been permanently neglected under *N.Y. Soc. Serv. Law § 384-b*, and were placed for adoption with an agency. *Matter of Leah Tanisha A.-N. v Omar Xavier A., 48 A.D.3d 801, 853 N.Y.S.2d 145, 2008 N.Y. App. Div. LEXIS 1688 (N.Y. App. Div. 2d Dep't)*, app. denied, *10 N.Y.3d 710, 859 N.Y.S.2d 395, 889 N.E.2d 83, 2008 N.Y. LEXIS 1438 (N.Y. 2008)*.

Termination of the father's parental rights was proper because he permanently neglected his child as he failed to substantially plan for the child's future under *N.Y. Soc. Serv. Law § 384-b(7)(a)*; under *N.Y. Fam. Ct. Act § 1039-b(b)(6)*, he had his rights to another daughter previously terminated for sexually abusing her; and termination of the father's parental rights, rather than an entry of a suspended judgment, was in the child's best interests under *N.Y. Fam. Ct. Act § 631*. *Matter of Dakota Y. (Robert Y.), 97 A.D.3d 858, 948 N.Y.S.2d 176, 2012 N.Y. App. Div. LEXIS 5260 (N.Y. App. Div. 3d Dep't)*, app. denied, *20 N.Y.3d 852, 957 N.Y.S.2d 689, 2012 N.Y. LEXIS 3553 (N.Y. 2012)*.

Family court correctly found that the appellants permanently neglected the children, *Social Services Law § 384-b*, because the agency, inter alia, scheduled regular visits between appellants and the children and provided appellants with referrals for various services, but despite the agency's efforts, appellants failed to plan for the children's future. *Matter of Marthina S. J. Z. H.-B. R. (Calvin R.), 198 A.D.3d 655, 156 N.Y.S.3d 50, 2021 N.Y. App. Div. LEXIS 5437 (N.Y. App. Div. 2d Dep't 2021)*.

County department of social services satisfied its burden of proving by clear and convincing evidence that a mother and father failed to substantially plan for the children's future because they often missed service plan review meetings and sessions with their caseworker, and they failed to acknowledge the allegations of sexual abuse against the children; thus, there was a sound and substantial basis supporting the determination that they permanently neglected the children. *Matter of Makayla I. (Sheena K.), 201 A.D.3d 1145, 160 N.Y.S.3d 476, 2022 N.Y. App. Div. LEXIS 230 (N.Y. App. Div. 3d Dep't 2022)*.

121. — —Failure to maintain contact or visit

Court would affirm finding of permanent neglect where (1) agency had urged mother to visit hospital to learn to care for her child, who was born with severe physical deformities, (2) mother visited hospital only once, despite being offered free transportation and room and board during visits, and (3) agency efforts to strengthen parental relationship continued until it became clear that child's best interests would not be served thereby due to mother's chronic mental illness. *In re Vaketa Y., 141 A.D.2d 892, 528 N.Y.S.2d 932, 1988 N.Y. App. Div. LEXIS 6073 (N.Y. App. Div. 3d Dep't 1988)*.

Father's single letter to agency having custody of his child, written one day prior to date of agency's petition seeking determination that child had been abandoned and permanently neglected by father, was not sufficient to dispel notion that his silence evinced decision to forego his parental rights where father had made no effort to communicate with child, father did not contact agency for almost one year after being informed of child's whereabouts, and agency attempted to locate father. *In re Commitment of Crawford, 153 A.D.2d 108, 549 N.Y.S.2d 667, 1990 N.Y. App. Div. LEXIS 164 (N.Y. App. Div. 1st Dep't 1990)*.

Father's conduct in missing 13 out of 33 scheduled visits with child without providing reasonable excuse was sufficient to constitute independent basis for finding of permanent neglect. *In re Emily A., 216 A.D.2d 124, 629 N.Y.S.2d 206, 1995 N.Y. App. Div. LEXIS 6565 (N.Y. App. Div. 1st Dep't 1995)*.

Department of Social Services met its burden of proving that mother permanently neglected her child by failing to maintain sufficient contact with him where it was shown that, after child was born with positive toxicology for cocaine, mother either failed to visit him while he was in foster care, or was at least one hour late for 2-hour visits, and that mother failed to complete drug rehabilitation program. *In re Hasson B., 219 A.D.2d 649, 631 N.Y.S.2d 382, 1995 N.Y. App. Div. LEXIS 9284 (N.Y. App. Div. 2d Dep't 1995)*, app. dismissed, *87 N.Y.2d 918, 641 N.Y.S.2d 599, 664 N.E.2d 510, 1996 N.Y. LEXIS 96 (N.Y. 1996)*.

Clear and convincing evidence established that respondent permanently neglected her child when she did not visit child for more than 2 years after child was placed in foster care. *In re Trudya J., 223 A.D.2d 470, 637 N.Y.S.2d 43, 1996 N.Y. App. Div. LEXIS 498 (N.Y. App. Div. 1st Dep't)*, app. denied, *87 N.Y.2d 812, 644 N.Y.S.2d 145, 666 N.E.2d 1059, 1996 N.Y. LEXIS 1033 (N.Y. 1996)*.

Family Court improperly adjudicated that child was permanently neglected by reason of father's failure to maintain contact with or plan for child's future for period of one year or more where agency failed to showed that it used diligent efforts to strengthen parental relationship between father and his child and further failed to show that any of exceptions to such requirement were applicable. *In re Jawan "Y", 274 A.D.2d 696, 710 N.Y.S.2d 209, 2000 N.Y. App. Div. LEXIS 7773 (N.Y. App. Div. 3d Dep't 2000)*.

Clear and convincing evidence supported a finding of permanent neglect since, for more than a year, a father did not maintain substantial contact with his child. *Matter of Kimberly Vanessa J. v Thomas J., 37 A.D.3d 185, 829 N.Y.S.2d 473, 2007 N.Y. App. Div. LEXIS 1378 (N.Y. App. Div. 1st Dep't 2007)*.

Adjudication of children as permanently neglected pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)* was proper because the department established that the father failed to maintain contact with or plan for the children's future although physically and financially able to do so, despite the department's diligent efforts to encourage and strengthen the relationship between the father and his children. *Matter of Alyshia M.R., 53 A.D.3d 1060, 861 N.Y.S.2d 551, 2008 N.Y. App. Div. LEXIS 5913 (N.Y. App. Div. 4th Dep't)*, app. denied, *11 N.Y.3d 707, 868 N.Y.S.2d 599, 897 N.E.2d 1083, 2008 N.Y. LEXIS 3264 (N.Y. 2008)*.

In an action to terminate parental rights on the ground of permanent neglect, the family court properly determined that terminating the mother's parental rights and freeing the subject children for adoption by the foster family was in the children's best interests because a suspended judgment was not appropriate in light of her failure to consistently visit with the children. *Matter of Davon K. W. (Lissette N. C.), 187 A.D.3d 766, 131 N.Y.S.3d 393, 2020 N.Y. App. Div. LEXIS 5653 (N.Y. App. Div. 2d Dep't 2020)*.

122. — —Residing or associating with inappropriate person

In proceeding to terminate mother's parental rights on ground of permanent neglect, evidence showed that she failed to attempt to alleviate problems initially leading to children's placement in foster care where she never attended or enrolled in parenting classes and continued to live with boyfriend despite outstanding court order prohibiting him from being alone with children due to previous abuse, although she had been advised that children were in placement because she exhibited poor parenting skills, inability to keep children safe from others and incapacity to handle stressful situations. *In re Terry S., 156 A.D.2d 763, 549 N.Y.S.2d 184, 1989 N.Y. App. Div. LEXIS 15590 (N.Y. App. Div. 3d Dep't 1989)*.

Mother permanently neglected her son, and thus her parental rights were properly terminated, where, despite being repeatedly advised by agency of need to establish residence separate from that of her boyfriend and to become more assertive and self-sufficient, and despite being offered resources and support to accomplish those objectives, mother did not follow through, articulate plan for son's future, or remove any destructive tendencies from her own

life. *In re Jeffrey LL., 251 A.D.2d 756, 674 N.Y.S.2d 453, 1998 N.Y. App. Div. LEXIS 6747 (N.Y. App. Div. 3d Dep't)*, app. denied, *92 N.Y.2d 809, 678 N.Y.S.2d 594, 700 N.E.2d 1230, 1998 N.Y. LEXIS 2869 (N.Y. 1998)*.

Mother's parental rights were properly terminated on the basis of permanent neglect under *N.Y. Soc. Serv. Law § 384-b(7)* due to her failure to plan for her children's future based on her continued abuse of alcohol and drugs, her incarceration on two occasions, her lateness in her visits with the children, and her continued residence with the father, who had an ongoing history of substance abuse. *Matter of Gerald BB. v Sheila CC., 51 A.D.3d 1081, 857 N.Y.S.2d 314, 2008 N.Y. App. Div. LEXIS 3775 (N.Y. App. Div. 3d Dep't)*, app. denied, *11 N.Y.3d 703, 864 N.Y.S.2d 807, 894 N.E.2d 1198, 2008 N.Y. LEXIS 2522 (N.Y. 2008)*, app. denied, *11 N.Y.3d 703, 864 N.Y.S.2d 807, 894 N.E.2d 1198, 2008 N.Y. LEXIS 2537 (N.Y. 2008)*.

123. — —Drug addiction

Evidence established permanent neglect and fact that agency made diligent efforts to strengthen parent-child relationship where (1) child was born with positive toxicology for cocaine and was remanded to custody of Commissioner of Social Services, (2) mother only visited child 4 times in 6 months following child's birth, and did not visit child at all in next year, (3) mother attended drug treatment program, but failed to complete it, (4) she failed to attend parenting skills program, and (5) she failed to inform agency of her whereabouts for 6 months. *In re Marcel F., 212 A.D.2d 705, 622 N.Y.S.2d 603, 1995 N.Y. App. Div. LEXIS 1659 (N.Y. App. Div. 1st Dep't 1995)*.

Mother's repeated failure to complete drug rehabilitation program over course of several years evidenced her failure to plan for her child's discharge to her custody; thus, social services agency met its burden of establishing that mother had permanently neglected child. *In re Natanya Sharay G., 232 A.D.2d 487, 648 N.Y.S.2d 932, 1996 N.Y. App. Div. LEXIS 10137 (N.Y. App. Div. 2d Dep't 1996)*.

In proceeding under CLS *Soc Serv § 384-b* to adjudicate child as permanently neglected and to terminate father's parental rights, evidence supported finding of permanent neglect where father continued to deny that he had drug problem despite his daily use of crack cocaine and marihuana, he refused to participate in any kind of counseling or to attend classes, he missed all but one of 12 scheduled meetings with caseworker, his attitude toward agency's services and his obligations ranged from defiant to disinterested, his visitation with child was inconsistent, he failed to see child for several months, his parenting skills did not improve, he continued to participate in, and to allow his residence to be used for, drug use and trafficking, and he refused to exert even modicum of effort toward planning for child's future. *In re Jeremy KK., 251 A.D.2d 904, 674 N.Y.S.2d 842, 1998 N.Y. App. Div. LEXIS 7742 (N.Y. App. Div. 3d Dep't 1998)*.

In proceeding for termination of parental rights, evidence supported finding of permanent neglect where mother failed to plan for her child's future for one year before filing of petition in that, inter alia, she never completed drug rehabilitation program despite her repeated incarceration on drug charges and agency's encouragement to avail herself of and complete program. *In re Tanya Alexis G., 273 A.D.2d 19, 708 N.Y.S.2d 394, 2000 N.Y. App. Div. LEXIS 6109 (N.Y. App. Div. 1st Dep't 2000)*.

Nonhearsay evidence adduced at a fact-finding hearing, including the father's own testimony, established by more than the requisite clear and convincing standard of proof that the father permanently neglected his children by continuing to abuse illegal drugs for three years following the filing of the original neglect petition and the removal of the children; based on such evidence, the father's failure to cooperate with rehabilitation efforts, and the children's best interests, the father's parental rights were properly terminated. *In re Sarah Jean R. (Anonymous), 290 A.D.2d 511, 736 N.Y.S.2d 410, 2002 N.Y. App. Div. LEXIS 620 (N.Y. App. Div. 2d Dep't 2002)*.

Evidence supported trial court's judgment that a mother failed to plan for daughter's future by not successfully addressing the mother's own drug problems, that the mother's daughter was neglected as a result, and that it was in the best interests of the daughter to terminate the mother's parental rights. *Otsego County Dep't of Soc. Servs. v Vickie V. (In re Karina U.), 299 A.D.2d 772, 751 N.Y.S.2d 114, 2002 N.Y. App. Div. LEXIS 11388 (N.Y. App. Div. 3d Dep't 2002)*, app. denied, *100 N.Y.2d 501, 760 N.Y.S.2d 764, 790 N.E.2d 1193, 2003 N.Y. LEXIS 955 (N.Y. 2003)*.

Mother's parental rights to her two children were properly terminated under N.Y. Soc. Serv. Law § 384-b on the ground of permanent neglect because despite the agency's diligent efforts to strengthen the parent-child relationship, the mother failed to complete a drug treatment plan within one year after the children were placed with the agency and, thus, failed to plan for their future. *Matter of Deajah Shabri T. v Charee Adia T., 44 A.D.3d 1060, 844 N.Y.S.2d 410, 2007 N.Y. App. Div. LEXIS 11045 (N.Y. App. Div. 2d Dep't 2007)*.

Mother's parental rights were properly terminated on the basis of permanent neglect under N.Y. Soc. Serv. Law § 384-b as the mother failed to plan for the future of her child based on her failure to complete a drug rehabilitation program and to obtain suitable housing. *Matter of Angel A. v Jasmine N., 48 A.D.3d 800, 853 N.Y.S.2d 147, 2008 N.Y. App. Div. LEXIS 1740 (N.Y. App. Div. 2d Dep't 2008)*.

Mother's parental rights were terminated under N.Y. Soc. Serv. Law § 384-b on the basis of permanent neglect as the mother continued to abuse illegal drugs for two years following the children's removal from her custody, failed to consistently visit with them, and failed to plan for their future. *Matter of Laura F. v Doreen F., 48 A.D.3d 812, 852 N.Y.S.2d 388, 2008 N.Y. App. Div. LEXIS 1691 (N.Y. App. Div. 2d Dep't 2008)*.

Family Court properly determined that mother permanently neglected subject child because Department of Social Services met its initial burden of establishing, by clear and convincing evidence, that it made diligent efforts to encourage and strengthen parental relationship between mother and child. These efforts included making multiple referrals to mandated substance abuse and mental health programs and following up with those programs. Matter of Mateo M. Q. (Jessica Q.), 185 A.D.3d 1037, 127 N.Y.S.3d 593, 2020 N.Y. App. Div. LEXIS 4390 (N.Y. App. Div. 2d Dep't), app. denied, *35 N.Y.3d 917, 158 N.E.3d 561, 133 N.Y.S.3d 544, 2020 N.Y. LEXIS 2559 (N.Y. 2020)*.

124. — —Alcohol abuse

Parents' refusal to co-operate in agency plans, primarily by failing to keep scheduled appointments for counseling and meetings, and father's failure to co-operate with attempt to arrange counseling for alcohol problem, notwithstanding agency's diligent effort to strengthen parent-child relationship, and parent's failure to plan for future of children by co-operating with agency's offer of assistance in teaching parents to budget resources support finding of permanent neglect regardless of maintenance of contact with children. In re Lisa L., 117 A.D.2d 931, 499 N.Y.S.2d 237, 1986 N.Y. App. Div. LEXIS 53183 (N.Y. App. Div. 3d Dep't 1986).

In proceeding under CLS Soc Serv § 384-b to terminate parental rights, allegations in petition were sufficient to charge respondent with permanent neglect where petition alleged that petitioner arranged for and encouraged respondent to engage in alcohol rehabilitation and counseling but that he failed to follow such plan or to follow through with petitioner's recommendations for more than one year following child's placement with petitioner. In re Jennie EE, 187 A.D.2d 877, 590 N.Y.S.2d 549, 1992 N.Y. App. Div. LEXIS 13362 (N.Y. App. Div. 3d Dep't 1992), app. denied, *81 N.Y.2d 706, 597 N.Y.S.2d 936, 613 N.E.2d 968, 1993 N.Y. LEXIS 672 (N.Y. 1993)*.

Child was properly determined to be permanently neglected under CLS Soc Serv § 384-b where parties implemented plan whereby mother was to have regained custody of her child on her successful completion of alcohol abuse treatment program and parenting skills program, she was to have regular visitation with child, and she was to secure adequate housing and stable source of income, but she had recurring bouts of alcoholism and her visitation was, at best, sporadic. St. Vincent's Servs. ex rel. Joseph Bernard H. v Jean H., 211 A.D.2d 799, 621 N.Y.S.2d 664, 1995 N.Y. App. Div. LEXIS 728 (N.Y. App. Div. 2d Dep't), app. denied, *85 N.Y.2d 811, 631 N.Y.S.2d 287, 655 N.E.2d 400, 1995 N.Y. LEXIS 2121 (N.Y. 1995)*.

Finding of neglect was supported by evidence that (1) county social services department made repeated efforts to help mother overcome problems preventing return of children by providing alcoholism treatment, marital counseling, mental health evaluation and parenting classes, and (2) mother failed to utilize those services for more than one year prior to filing of neglect petition, she continued to abuse alcohol, and she made no progress toward accomplishing realistic plan for children's future. In re Tiffany D., 217 A.D.2d 968, 629 N.Y.S.2d 599, 1995 N.Y.

App. Div. LEXIS 8400 (N.Y. App. Div. 4th Dep't), app. denied, *87 N.Y.2d 804, 639 N.Y.S.2d 311, 662 N.E.2d 792, 1995 N.Y. LEXIS 4871 (N.Y. 1995)*.

Father failed to show that either the department or the foster family sought to undermine the father's relationship with the children, *Social Services Law § 384-b(7)(a)*. His rights were properly terminated due to his untreated alcoholism, unresolved anger management issues, and uncooperative attitude. *Matter of Michael JJ. (Gerald JJ.), 101 A.D.3d 1288, 956 N.Y.S.2d 620, 2012 N.Y. App. Div. LEXIS 8561 (N.Y. App. Div. 3d Dep't 2012)*, app. denied, *20 N.Y.3d 860, 961 N.Y.S.2d 834, 985 N.E.2d 430, 2013 N.Y. LEXIS 264 (N.Y. 2013)*.

Even though an order of protection precluding visitation was in effect, a finding of permanent neglect may nonetheless be made against respondent father based upon his failure to plan for the future of his child for a period in excess of one year because of his failure to utilize the rehabilitative services and resources available to him to control his alcoholism. *In re S., 98 Misc. 2d 650, 414 N.Y.S.2d 477, 1979 N.Y. Misc. LEXIS 2126 (N.Y. Fam. Ct. 1979)*.

125. — —Mental incapacity

In an action brought by a child care agency seeking to terminate a mother's parental rights, the child was "permanently neglected" and the mother's parental rights were therefore subject to termination where, although there was evidence that the mother was literally physically and financially able to care for her child, her continuing mental illness prevented her in fact from being able to do so. *In re Y., 81 A.D.2d 313, 440 N.Y.S.2d 635, 1981 N.Y. App. Div. LEXIS 10531 (N.Y. App. Div. 1st Dep't)*, aff'd, *54 N.Y.2d 282, 445 N.Y.S.2d 114, 429 N.E.2d 792, 1981 N.Y. LEXIS 3130 (N.Y. 1981)*.

Pursuant to Family Court Act Article 6, child will be adjudicated as permanently neglected child, and custody of child will be committed pursuant to *Social Services Law § 384-b* to custody and guardianship of Department of Social Services, where (1) natural mother is presently, and will be for foreseeable future, unable by reason of both mental illness and mental retardation to provide proper and adequate care for child, (2) child has been in care of DSS for over one year immediately prior to date on which petition for guardianship was filed, and (3) since child has been in care of DSS, mother has failed to plan for child's future. *In re Lori Jean S., 114 A.D.2d 462, 494 N.Y.S.2d 373, 1985 N.Y. App. Div. LEXIS 53151 (N.Y. App. Div. 2d Dep't 1985)*.

In proceeding to terminate mother's parental rights on ground of permanent neglect, evidence was sufficient to show that mother failed to parent children safely where (1) it was demonstrated that she allowed them to eat candy found in garbage and decided to treat them herself for head lice because she purportedly lacked funds to pay for medicine, and (2) expert psychologist opined that she was emotionally dependent on children and testified that she expressed no guilt or remorse that her brother-in-law had allegedly sexually abused children. *In re Christina Q., 156 A.D.2d 770, 549 N.Y.S.2d 195, 1989 N.Y. App. Div. LEXIS 15595 (N.Y. App. Div. 3d Dep't 1989)*, app. denied, *75 N.Y.2d 708, 554 N.Y.S.2d 833, 553 N.E.2d 1343, 1990 N.Y. LEXIS 2016 (N.Y. 1990)*.

Order which granted petition to adjudicate child permanently neglected affirmed–respondent, mentally retarded adult, gave birth to daughter, who was placed with petitioner within two days of birth because of respondent's demonstrated inability to care for her; following petitioner's unsuccessful efforts to assist respondent to develop parenting skills, respondent signed surrender form consenting to child's adoption; respondent's subsequent petition to revoke her surrender was granted; child continued to reside with proposed adoptive parents on foster care basis and petitioner reinstituted efforts to help respondent develop necessary parenting skills; respondent missed five of 15 scheduled visitation periods and arrived on time and stayed for full hour on only five occasions; she then moved to North Carolina, eliminating all contact with child; during course of Family Court hearing on petition, respondent signed irrevocable consent to adoption of child by respondent's brother and his wife–petitioner established that respondent failed to maintain substantial contact with child for more than one year and to plan for child's future; contacts with child were insubstantial and respondent failed to adhere to petitioner's plan to enable her to establish bonds with child and to work toward providing secure and stable home environment for her; there was no compelling justification for respondent's move, and residence in North Carolina which respondent shared with her

mother and siblings was not suitable home for child–proposed adoption of child by respondent's brother did not constitute plan for child's future within purview of Social Services Law § 384-b (7) (a); arrangement to keep child in another's home will not satisfy statute's purpose. In re Anna F., 171 A.D.2d 967, 567 N.Y.S.2d 561, 1991 N.Y. App. Div. LEXIS 3847 (N.Y. App. Div. 3d Dep't 1991).

Evidence supported finding that children were permanently neglected where, inter alia, mother suffered from paranoid personality disorder which rendered her unable to provide adequate physical and emotional care for children, and she failed to recognize and address their special needs; one child was diagnosed with overanxious disorder of childhood caused by tremendous turmoil and lack of predictability in her early years, and another child was diagnosed with attention deficit disorder, adjustment disorder, physical and emotional impairment, and developmental deprivation with regard to motor skills, warranting placement in special foster care. In re Elizabeth "Q", 216 A.D.2d 628, 627 N.Y.S.2d 827, 1995 N.Y. App. Div. LEXIS 6169 (N.Y. App. Div. 3d Dep't), app. denied, *86 N.Y.2d 706, 632 N.Y.S.2d 500, 656 N.E.2d 599 (N.Y. 1995)*, app. denied, *86 N.Y.2d 706, 632 N.Y.S.2d 500, 656 N.E.2d 599, 1995 N.Y. LEXIS 3476 (N.Y. 1995)*.

Family Court did not abuse its discretion in basing its finding of neglect on high probability that children would be harmed if respondent did not seek treatment for her mental illness, in that her refusal to seek such treatment constituted clear threat to children's welfare, and no showing of past or present harm to children is necessary to support finding of neglect. In re Jesse DD., 223 A.D.2d 929, 636 N.Y.S.2d 925, 1996 N.Y. App. Div. LEXIS 592 (N.Y. App. Div. 3d Dep't), app. denied, *88 N.Y.2d 803, 645 N.Y.S.2d 445, 668 N.E.2d 416, 1996 N.Y. LEXIS 786 (N.Y. 1996)*.

Termination of mother's parental rights based on permanent neglect of subject child was supported by psychiatrist's testimony that mother suffered from "severe borderline personality disorder" and "serious major depression recurrent," that her disorder was long-standing, and that she had history of poor judgment and poor impulse control, as well as tendency to stop taking requisite medication. In re Laura D., 270 A.D.2d 260, 703 N.Y.S.2d 537, 2000 N.Y. App. Div. LEXIS 2471 (N.Y. App. Div. 2d Dep't 2000).

Trial court's adjudication that a mother's children were permanently neglected, pursuant to N.Y. Soc. Serv. Law § 384-b(7)(a), was supported by the evidence where the mother failed to improver her mental well-being and her overall ability to care for her children, which were the reasons for the initial separation of the mother from her children; a narrowly-tailored case plan had been crafted by the county social services department, but the mother failed to take advantage of many services offered to her, and she failed to take the steps necessary to provide a stable home and parental care within a reasonable period of time under the financial circumstances available, pursuant to § 384-b(7)(c). In re Thomas JJ., 20 A.D.3d 708, 798 N.Y.S.2d 237, 2005 N.Y. App. Div. LEXIS 7792 (N.Y. App. Div. 3d Dep't 2005).

Respondent natural parents permanently neglected their minor child by having failed for a period of more than one year, following the date that their child came into the care and custody of petitioner social services agency, to substantially, continuously and repeatedly plan for the future of their child, although financially able to do so (Social Services Law, § 384-b, subd 7, par [c]) in that they failed to obtain the intensive psychiatric treatment necessary to treat their serious mental illnesses. In re Spiegelman, 97 Misc. 2d 363, 411 N.Y.S.2d 512, 1978 N.Y. Misc. LEXIS 2804 (N.Y. Fam. Ct. 1978).

126. — —Abuse

Children were properly adjudged to be permanently neglected with parental rights terminated where, for more than one year after children came into care of county department of social services, mother (1) did not attend counseling sessions to learn how to care for special needs of her autistic child, (2) was not concerned about reported sexual abuse of her daughter, (3) did not attempt to find suitable housing for herself and children, (4) rarely attended psychological counseling sessions, (5) refused medical examinations despite serious health problem, and (6) refused any assistance in seeking employment. *In re Gloria J., 131 A.D.2d 673, 516 N.Y.S.2d 752, 1987 N.Y. App. Div. LEXIS 48133 (N.Y. App. Div. 2d Dep't 1987)*.

Preponderance of evidence supported determination that respondent had neglected child by failing to feed her a nutritionally adequate diet where medical testimony showed that child was anemic, alarmingly underweight under either African or white mid-western American standards, and not thriving or functioning normally for child of her age, and that child's functional skills and weight improved dramatically while she was in hospital. *In re Commissioner of Social Services, Child Welfare Admin. on behalf of Female W., 182 A.D.2d 589, 583 N.Y.S.2d 363, 1992 N.Y. App. Div. LEXIS 6469 (N.Y. App. Div. 1st Dep't 1992)*.

There was no error in the family court's preclusion of evidence relating to the validity of the underlying abuse findings because the abuse of a child by the father and the grandfather had already been determined by the family court and affirmed on appeal, and the family court properly took judicial notice of those findings; the mother failed to acknowledge not only that the children stated that they were abused, but also that they were abused. *Matter of Makayla I. (Sheena K.), 201 A.D.3d 1145, 160 N.Y.S.3d 476, 2022 N.Y. App. Div. LEXIS 230 (N.Y. App. Div. 3d Dep't 2022)*.

Family Court would declare 5-year-old child to be permanently neglected due to his parents' adamant, long-standing and repeated refusal to admit, during rehabilitative counseling, that they committed any incestuous acts, despite unappealed findings of 2 separate courts that they in fact sexually abused their son's half siblings, since (1) there could be no meaningful treatment of parents, and thus no therapeutic progress with them, without their admission as to prior sexually abusive acts, and (2) without meaningful treatment, parents could not be trusted with their son's safety, and hence could not and had not adequately planned for their son's future; thus, court would terminate parents' right to child, and would unconditionally commit guardianship and custody of child to county department of social services. *Dutchess County Dep't of Social Services on behalf of T.G. v Mr. G., 141 Misc. 2d 641, 534 N.Y.S.2d 64, 1988 N.Y. Misc. LEXIS 664 (N.Y. Fam. Ct. 1988)*, aff'd, *169 A.D.2d 769, 565 N.Y.S.2d 136, 1991 N.Y. App. Div. LEXIS 1017 (N.Y. App. Div. 2d Dep't 1991)*.

127. — —Incarceration

Father who was serving prison sentence of 25 years to life would be adjudged to have permanently neglected his children, and his parental rights would be terminated where (1) agency's diligent efforts to strengthen parent and child relationship were unavailing, (2) father failed to adequately plan for children's future, and (3) termination of father's parental rights would further legislative intent that children grow up in normal family setting in permanent home. *Delores B. Cardinal McCloskey Children's & Family Services v Willie B., 141 A.D.2d 100, 533 N.Y.S.2d 706, 1988 N.Y. App. Div. LEXIS 10225 (N.Y. App. Div. 1st Dep't 1988)*, aff'd, *74 N.Y.2d 77, 544 N.Y.S.2d 535, 542 N.E.2d 1052, 1989 N.Y. LEXIS 876 (N.Y. 1989)*.

Permanent neglect finding was properly based on failure to plan for child's future where no suitable relatives were willing to assume custody of child during father's remaining time in prison after filing of petition, which would have been period of at least 4 years. *In re Joseph Jerome H., 224 A.D.2d 224, 637 N.Y.S.2d 401, 1996 N.Y. App. Div. LEXIS 970 (N.Y. App. Div. 1st Dep't 1996)*.

Permanent neglect petition under CLS *Soc Serv § 384-b(4)(d)* should have been granted where mother wanted to give child up for adoption, respondent father was incarcerated and, although agency exercised diligent efforts to assist father, he did not offer any plan for child besides continued foster care. *In re Custody & Guardianship of Sasha R., 246 A.D.2d 1, 675 N.Y.S.2d 605, 1998 N.Y. App. Div. LEXIS 8425 (N.Y. App. Div. 1st Dep't 1998)*.

Court properly found that child was permanently neglected where father's parole release date was some 9 years away, agency encouraged him to plan for child's future, but he was unable to identify any relative who was able to care for child, and his only plan was to suggest temporary adoptive placement pending his release from prison, option unacceptable to potential adoptive parents. *In re Paige M.J., 256 A.D.2d 1150, 684 N.Y.S.2d 123, 1998 N.Y. App. Div. LEXIS 14270 (N.Y. App. Div. 4th Dep't 1998)*, app. dismissed, *93 N.Y.2d 904, 690 N.Y.S.2d 177, 712 N.E.2d 115, 1999 N.Y. LEXIS 1197 (N.Y. 1999)*.

In proceeding for termination of parental rights, father permanently neglected his daughters where he failed to plan for their future, provide agency with names of potential resources who could care for girls while he was incarcerated, prove that he had completed drug rehabilitation program and parenting skills class in prison, and follow through with plan that agency had specifically made for him. *In re Barbara Luisa A., 266 A.D.2d 156, 699 N.Y.S.2d 38, 1999 N.Y. App. Div. LEXIS 12339 (N.Y. App. Div. 1st Dep't 1999)*.

Father's parental rights were properly terminated for permanent neglect where (1) he visited his son sporadically for first 2 years of son's life but not at all thereafter because of father's incarceration, which did not eliminate his responsibility to maintain contact with his son, (2) he failed to complete several requirements of service plan to which he had agreed, including finding suitable housing, completing parenting classes, and following recommendations of substance abuse evaluation, (3) son had been in foster home since birth, and his foster parents wanted to adopt him, and (4) court's assessment that father was not likely to change his behavior was entitled to great deference. *In re Philip D., 266 A.D.2d 909, 698 N.Y.S.2d 139, 1999 N.Y. App. Div. LEXIS 11759 (N.Y. App. Div. 4th Dep't 1999)*.

Finding of permanent neglect was supported by clear and convincing evidence that the father, who was incarcerated, failed to plan for the children's future pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(c)*; the father was unable to provide any realistic and feasible alternative to having the children remain in foster care until the father's release from prison. *Matter of "Female" V., 21 A.D.3d 1118, 803 N.Y.S.2d 636, 2005 N.Y. App. Div. LEXIS 9493 (N.Y. App. Div. 2d Dep't 2005)*, app. denied, *6 N.Y.3d 708, 813 N.Y.S.2d 44, 846 N.E.2d 475, 2006 N.Y. LEXIS 520 (N.Y. 2006)*.

Termination of father's rights to his minor child was appropriate where permanent neglect was established by the fact that due to infractions the father committed while incarcerated, the father was ineligible to participate in rehabilitation programs recommended by a county department of social services, and therefore, the father had not planned for the child's future during the incarceration. *Matter of Ty'Keith R., 45 A.D.3d 1397, 846 N.Y.S.2d 489, 2007 N.Y. App. Div. LEXIS 11431 (N.Y. App. Div. 4th Dep't 2007)*, app. denied, *10 N.Y.3d 701, 853 N.Y.S.2d 543, 883 N.E.2d 370, 2008 N.Y. LEXIS 162 (N.Y. 2008)*.

Incarcerated father was found to have permanently neglected his 2 sons, despite numerous visits with them at prison, where (1) he was serving sentence of 10 to 20 years and would not become eligible for parole until sons were 10 and 11 years old, and (2) he could offer no viable future plans for them given length of his incarceration, sons' special medical and educational needs, and determination in separate hearing that relative with whom he planned to entrust them was unsuitable for assuming permanent responsibility. *In re Kareem B., 135 Misc. 2d 324, 515 N.Y.S.2d 179, 1987 N.Y. Misc. LEXIS 2218 (N.Y. Fam. Ct. 1987)*, aff'd, *143 A.D.2d 548, 532 N.Y.S.2d 460, 1988 N.Y. App. Div. LEXIS 9581 (N.Y. App. Div. 1st Dep't 1988)*.

128. — —Multiple reasons

In an action to determine whether the child of a 17-year-old unmarried woman, who herself was in foster care, was a permanently neglected child, the child was properly determined to be permanently neglected where the woman frustrated every attempt to establish her own residence away from her parents, where she moved to a foreign state with a boyfriend who subsequently was sentenced to jail, where she failed to make realistic plans for the child's future, and where her only contacts with the child for more than one year were a few letters and cards that were sent to the state social services department. *In re "Y", 92 A.D.2d 696, 460 N.Y.S.2d 403, 1983 N.Y. App. Div. LEXIS 16975 (N.Y. App. Div. 3d Dep't 1983)*.

In an action brought pursuant to Family Ct Act Art 6, the trial court's finding that permanent neglect had been established by a fair preponderance of the evidence would be affirmed where respondent visited the child only ten occasions during approximately 29 months, was not gainfully employed, made little or no effort to comply with a Department of Social Services plan to provide for the child's future with respondent or to formulate a realistic plan for the return of the child. *In re Kimberly Marie "DD", 93 A.D.2d 919, 462 N.Y.S.2d 337, 1983 N.Y. App. Div. LEXIS 17811 (N.Y. App. Div. 3d Dep't)*, app. denied, *60 N.Y.2d 556, 1983 N.Y. LEXIS 5635 (N.Y. 1983)*.

Family Court properly found that mother permanently neglected her children where she abruptly terminated counselling and refused to attend parenting classes arranged by agency to foster parental relationship, her infrequent and erratic contacts with children were not meaningful, and she failed to plan realistically for their future. *In re Charles R., 127 A.D.2d 975, 512 N.Y.S.2d 936, 1987 N.Y. App. Div. LEXIS 43460 (N.Y. App. Div. 4th Dep't 1987)*.

Finding of permanent neglect under CLS *Soc Serv § 384-b(7)* was proper where mother chose not to avail herself of drug treatment program, she made only infrequent attempts to visit her child, and only plan she had for child's future was for her to be turned over to great-grandmother, who declined to be discharge resource. *In re Guardianship of Fatima Canisha K., 183 A.D.2d 499, 583 N.Y.S.2d 435, 1992 N.Y. App. Div. LEXIS 6884 (N.Y. App. Div. 1st Dep't)*, app. denied, *80 N.Y.2d 756, 588 N.Y.S.2d 824, 602 N.E.2d 232, 1992 N.Y. LEXIS 3191 (N.Y. 1992)*.

Family Court should have granted petition to adjudicate child permanently neglected where (1) mother had no contact with child for several years after he entered foster care, (2) thereafter, visitation was minimal and sporadic, (3) agency referred mother to several counseling and parenting skills programs that she failed to complete, and arranged visitation that she failed to attend, (4) foster parents had formed strong bond with child, and (5) mother conceded that she was unable to care for child. *Nassau County Dep't of Social Servs. ex rel. James M. v Diana T., 207 A.D.2d 399, 615 N.Y.S.2d 721, 1994 N.Y. App. Div. LEXIS 8234 (N.Y. App. Div. 2d Dep't 1994)*.

Petitioner established permanent neglect of child, who was born with positive toxicology for cocaine and placed in foster care, where mother had no meaningful contact with child in ensuing years, she failed to maintain scheduled visitation and failed to keep petitioner advised of her whereabouts, and she failed to explain her failure to maintain contact. *In re Barbara M., 250 A.D.2d 683, 672 N.Y.S.2d 759, 1998 N.Y. App. Div. LEXIS 5583 (N.Y. App. Div. 2d Dep't 1998)*.

Father's parental rights were properly terminated for permanent neglect under CLS *Soc Serv § 384-b(7)* where, despite agency's diligent effort to strengthen his relationship with his children, he failed to maintain sufficient and regular contact with them, visited them only 8 times in 15 months, failed to take measures necessary to plan for their future, and consistently refused to provide agency with proof of his completion of drug treatment program, parenting skills program, and domestic violence counseling program. *In re Darlene I., 251 A.D.2d 16, 674 N.Y.S.2d 12, 1998 N.Y. App. Div. LEXIS 6403 (N.Y. App. Div. 1st Dep't)*, app. denied, *92 N.Y.2d 815, 683 N.Y.S.2d 759, 706 N.E.2d 747, 1998 N.Y. LEXIS 4119 (N.Y. 1998)*.

Evidence supported finding of permanent child neglect warranting termination of mother's parental rights where, despite agency's diligent efforts, she failed to maintain regular contact with her children and consistently refused to attend any of therapy or counseling programs that agency deemed necessary to any viable plan for children's future. *In re S.T.M.D., 251 A.D.2d 131, 674 N.Y.S.2d 327, 1998 N.Y. App. Div. LEXIS 6950 (N.Y. App. Div. 1st Dep't)*, app. denied, *92 N.Y.2d 812, 680 N.Y.S.2d 905, 703 N.E.2d 763, 1998 N.Y. LEXIS 3236 (N.Y. 1998)*.

Clear and convincing evidence supported the family court's finding of permanent neglect based on the failure of respondents, a mother and a father, to plan for their children's future where the evidence showed that, despite petitioner agency's diligent efforts to encourage the parent-child relationship by regularly scheduling visitation between respondents and their children and by urging respondents to attend drug treatment and parenting programs and to obtain mental health evaluations, respondents failed meaningfully to avail themselves of these services. *Ida S. v Angel Guardian Children & Family Servs. (In re Guardianship of Joei R.), 302 A.D.2d 334, 756 N.Y.S.2d 516, 2003 N.Y. App. Div. LEXIS 1800 (N.Y. App. Div. 1st Dep't)*, app. denied, *100 N.Y.2d 575, 764 N.Y.S.2d 383, 796 N.E.2d 474, 2003 N.Y. LEXIS 1752 (N.Y. 2003)*.

Finding of permanent neglect was supported by clear and convincing evidence as was required under *N.Y. Fam. Ct. Act § 622*, where the record established that the father, pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)*, failed to substantially and continuously maintain contact with or plan for the future of the child for a period of more than one year following the child's placement; in five years, the father failed to regularly visit the child, the father was incarcerated intermittently, the father failed to complete drug rehabilitation, and the father did not secure a job.

Niagara County Dep't of Soc. Servs. v Terry P. (In re Shanequia P.), 302 A.D.2d 890, 754 N.Y.S.2d 501, 2003 N.Y. App. Div. LEXIS 1158 (N.Y. App. Div. 4th Dep't 2003).

Given the mother's failure to meaningfully benefit from the services offered to her and to correct the conditions that led to the child's removal, the family court properly found that the mother permanently neglected her daughter, and termination of her parental rights was proper and in the child's best interests. *Matter of Arianna BB. (Tracy DD.), 110 A.D.3d 1194, 974 N.Y.S.2d 586, 2013 N.Y. App. Div. LEXIS 6741 (N.Y. App. Div. 3d Dep't 2013)*, app. denied, *22 N.Y.3d 858, 981 N.Y.S.2d 368, 4 N.E.3d 380, 2014 N.Y. LEXIS 11 (N.Y. 2014)*, app. denied, *22 N.Y.3d 858, 981 N.Y.S.2d 369, 4 N.E.3d 381, 2014 N.Y. LEXIS 14 (N.Y. 2014)*.

Because the father failed to take meaningful steps to correct the conditions that led to the child's removal, and he offered no plan for the child's future, the father permanently neglected the child, and termination of his parental rights was proper and in the child's best interests. *Matter of Arianna BB. (Tracy DD.), 110 A.D.3d 1194, 974 N.Y.S.2d 586, 2013 N.Y. App. Div. LEXIS 6741 (N.Y. App. Div. 3d Dep't 2013)*, app. denied, *22 N.Y.3d 858, 981 N.Y.S.2d 368, 4 N.E.3d 380, 2014 N.Y. LEXIS 11 (N.Y. 2014)*, app. denied, *22 N.Y.3d 858, 981 N.Y.S.2d 369, 4 N.E.3d 381, 2014 N.Y. LEXIS 14 (N.Y. 2014)*.

Agency established that the child was permanently neglected because the agency created a service plan for the father that, inter alia, required him to engage in chemical dependency treatment and mental health therapy, obtain a stable source of income, and find stable housing, but the father failed to comply with the plan, missed several appointments to review the plan with his caseworkers, missed medical and therapeutic visits for the child, and his visits with the child were sporadic, at best. *Matter of Carl B., Jr. (Carl B., Sr.), 181 A.D.3d 1161, 120 N.Y.S.3d 662, 2020 N.Y. App. Div. LEXIS 1887 (N.Y. App. Div. 4th Dep't)*, app. denied, *35 N.Y.3d 910, 151 N.E.3d 942, 128 N.Y.S.3d 168, 2020 N.Y. LEXIS 1687 (N.Y. 2020)*.

Mother was found to have permanently neglected her 2 sons where she placed them in foster care within 2 years of their birth, her visits with them became sporadic despite placement agency's best efforts, she substituted first her mother and then son's paternal grandmother as "discharge resource," and her whereabouts were often unknown to agency, but she made time to have relationships with men, to travel to other jurisdictions in order to maintain those relationships, and to have another child. *In re Kareem B., 135 Misc. 2d 324, 515 N.Y.S.2d 179, 1987 N.Y. Misc. LEXIS 2218 (N.Y. Fam. Ct. 1987)*, aff'd, *143 A.D.2d 548, 532 N.Y.S.2d 460, 1988 N.Y. App. Div. LEXIS 9581 (N.Y. App. Div. 1st Dep't 1988)*.

129. —Permanent neglect not shown

Mother's parental rights would not be terminated on ground of permanent neglect where (1) she fulfilled her duties to maintain contact with and plan for future of her children, (2) she attended and successfully completed course in parenting, (3) she attended substance abuse clinic, (4) she visited or maintained telephone contact with caseworker on regular basis, (5) she visited, or had acceptable reason for not visiting, her children on 54 of 55 scheduled visits, (6) she made appropriate efforts to find housing, (7) she maintained regular employment, (7) supervisor of foster care testified that mother was very concerned about her children and that she loved them, and (8) department caseworker testified that mother was loving to children. *In re Dutchess County Dep't of Social Services, 181 A.D.2d 824, 581 N.Y.S.2d 379, 1992 N.Y. App. Div. LEXIS 3886 (N.Y. App. Div. 2d Dep't 1992)*.

In proceeding pursuant to CLS *Soc Serv § 384-b* to terminate parental rights of mother, agency failed to establish that mother permanently neglected child where (1) it was established that mother understood and could adequately provide for physical needs of child, but that child could not be returned to her because she was mentally ill, and (2) caseworker testified that mother was recalcitrant and always claimed that there was nothing wrong with her, but caseworker did not bring recalcitrance to attention of mother's psychiatrist or make definite appointment for mother to meet with psychiatrist; agency's efforts fell short of reasonable efforts necessary to alleviate mother's mental illness and fulfill its obligation to strengthen parental tie between mother and child. *In re Shantelle W., 185 A.D.2d 935, 587 N.Y.S.2d 393, 1992 N.Y. App. Div. LEXIS 10064 (N.Y. App. Div. 2d Dep't 1992)*.

Continued foster care was preferable alternative to parental termination where social services department failed to establish that mildly retarded mother permanently neglected her moderately retarded 17-year-old son. *In re Michael E., 241 A.D.2d 635, 659 N.Y.S.2d 578, 1997 N.Y. App. Div. LEXIS 7325 (N.Y. App. Div. 3d Dep't 1997)*.

Social services department did not establish that mildly retarded mother permanently neglected her moderately retarded 17—year-old son where evidence revealed that she made sincere efforts to plan for son's future to best of her ability, obtained suitable apartment for herself and son, attended son's 6-month review sessions, completed parenting classes, maintained regular contact with son through visitation, and displayed affection during their visits. *In re Michael E., 241 A.D.2d 635, 659 N.Y.S.2d 578, 1997 N.Y. App. Div. LEXIS 7325 (N.Y. App. Div. 3d Dep't 1997)*.

Family Court properly dismissed permanent neglect proceeding where caseworker had little or no independent recollection of relevant events and relied heavily on her notes and agency's records, but notes and records (some of which were generated months after subject event had occurred) proved inaccurate and incomplete. *Hymes W. v Selena Maria W. (In re Little Flower Children's Servs. ex rel. John Edward M.), 253 A.D.2d 556, 677 N.Y.S.2d 169, 1998 N.Y. App. Div. LEXIS 9211 (N.Y. App. Div. 2d Dep't 1998)*.

Agency failed to prove that mother permanently neglected her children under CLS *Soc Serv § 384-b(7)(a)* where mother was, for most part, physically unable to meet her parental obligations because of her medical problems. *In re B. Children, 255 A.D.2d 578, 681 N.Y.S.2d 89, 1998 N.Y. App. Div. LEXIS 12886 (N.Y. App. Div. 2d Dep't 1998)*.

Petitioner failed to make prima facie showing that child, who was removed from her home based on respondent mother's acts of domestic violence against her then boyfriend, was permanently neglected where (1) acts of domestic violence ceased with departure of mother's boyfriend shortly after removal of child and did not recur, (2) there was no evidence that mother's occasional angry outbursts were ever directed at child, (3) petitioner's plan did not address mother's anger problem other than to advise her that she had to curb her outbursts, (4) mother completed parenting class assigned by petitioner after child's removal, and (5) with few exceptions, she visited child whenever allowed to do so. *In re Shiann "RR", 285 A.D.2d 762, 726 N.Y.S.2d 816, 2001 N.Y. App. Div. LEXIS 7384 (N.Y. App. Div. 3d Dep't 2001)*.

Although a Law Guardian presented proof that a mother allowed her child to sit too close to the television set, routinely fed him "Happy Meals" from McDonald's and at times selected age-inappropriate videos for him to watch, such conduct, while perhaps reflecting poor parental judgment, did not rise to the level of permanent neglect. *Matter of Joseph G., 24 A.D.3d 900, 807 N.Y.S.2d 149, 2005 N.Y. App. Div. LEXIS 13905 (N.Y. App. Div. 3d Dep't 2005)*.

Clear and convincing evidence did not support finding that a mother permanently neglected her child because the mother, inter alia, maintained meaningful contact with the child, successfully completed an inpatient drug rehabilitation program and outpatient substance abuse services, and maintained her sobriety; the mother permitting the father to have contact with the child in violation of a court order, without more, was not a sound and substantial basis for a permanent neglect finding. *Matter of Marcus BB. (Donna AA.), 130 A.D.3d 1211, 13 N.Y.S.3d 626, 2015 N.Y. App. Div. LEXIS 5857 (N.Y. App. Div. 3d Dep't 2015)*.

Denial of the petition to declare the child permanently neglected was upheld because the petitioning agency did not specify the one-year period during which the parents allegedly failed to plan for the child's future and it did not prove the parents' mental health issues as the basis for finding permanent neglect. Moreover it was not possible to determine on record why the child was removed from the parents' care in the first place. *Matter of Legend S. (Tawana T.), 156 A.D.3d 438, 66 N.Y.S.3d 2, 2017 N.Y. App. Div. LEXIS 8686 (N.Y. App. Div. 1st Dep't 2017)*.

130. Dismissal proper

Permanent neglect proceeding was properly dismissed since petitioning agency failed to show that it exercised diligent efforts to encourage and strengthen parental relationship where it imposed plan which included counseling and arranging child visitation and transportation, but such plan did not address particular problem that separated

parents from child. *In re Jessica UU., 174 A.D.2d 98, 578 N.Y.S.2d 925, 1992 N.Y. App. Div. LEXIS 551 (N.Y. App. Div. 3d Dep't 1992)*.

Court properly dismissed agency's petition to terminate mother's parental rights where she was not provided with services directed towards or appropriate to goal of family reunification. *In re Fatima Danet F., 233 A.D.2d 504, 650 N.Y.S.2d 984, 1996 N.Y. App. Div. LEXIS 12673 (N.Y. App. Div. 2d Dep't 1996)*.

Family Court properly dismissed proceeding seeking to terminate mother's parental rights where evidence showed that she had overcome her drug dependency through her participation in drug treatment programs, she had completed parenting skills program, and she had obtained public assistance and certificate to obtain subsidized housing; further, mother had regularly visited child at agency's office and had sought additional, unsupervised visitation. *In re Marielene T. R., 253 A.D.2d 882, 678 N.Y.S.2d 338, 1998 N.Y. App. Div. LEXIS 9808 (N.Y. App. Div. 2d Dep't 1998)*.

Trial court properly dismissed a county social service agency's application to terminate a mother's parental rights over her children, based on permanent neglect under *N.Y. Soc. Serv. Law § 384-b*, although the agency had made diligent efforts to fulfill its statutory obligations, as the mother had attempted to comply with her service plan by finding suitable housing, securing appropriate employment, improving her ability to care for her children, and ending a relationship with an abusive paramour. *In re Alexis X., 19 A.D.3d 759, 798 N.Y.S.2d 148, 2005 N.Y. App. Div. LEXIS 6171 (N.Y. App. Div. 3d Dep't 2005)*.

Trial court properly dismissed an agency's petition pursuant to *N.Y. Fam. Ct. Act § 631*, N.Y. Fam. Ct. Act. art. 10, and *N.Y. Soc. Serv. Law § 384-b*, to terminate the parental rights of a mother, and granted guardianship of a child to a relative rather than to the agency, as the record supported the trial court's determination that it was in the child's best interests to be placed in the custody of the relative. *Matter of Gordon B.B. v Tiffany J., 30 A.D.3d 1005, 818 N.Y.S.2d 692, 2006 N.Y. App. Div. LEXIS 7649 (N.Y. App. Div. 4th Dep't 2006)*.

Dismissal of grandmother's custody petitions in N.Y. Fam. Ct. Act Art. 6 and *N.Y. Soc. Serv. Law § 384-b* proceeding was proper because where, as in this case, there was a permanent neglect finding, a disposition was to have been made solely on the best interests of the child, and there was no presumption that such interests were promoted by any particular disposition; the trial court properly considered the grandmother's fitness, the fitness of the foster parent, the length of time spent in foster care, and the child's special needs and his adjustment to foster care. Among other things, the grandmother did not even seek visitation with the child for more than six months after he was removed from her home and had minimal contact with him thereafter and there was evidence that the grandmother had trouble controlling the mother, both as a child and as an adult, and that the grandmother intended to allow the mother to have unsupervised access to the child, despite the mother's history of violent outbursts, including striking the child. *Matter of Deborah F. v Matika G., 50 A.D.3d 1213, 855 N.Y.S.2d 299, 2008 N.Y. App. Div. LEXIS 2875 (N.Y. App. Div. 3d Dep't 2008)*.

Family Court properly dismissed that branch of the petition which was to terminate the mother's parental rights on the ground of permanent neglect because petitioner did not establish, by clear and convincing evidence, that mother failed substantially and consistently to maintain contact with child or to plan for child's future during relevant period of time. Mother substantially complied with the terms set forth by petitioner by completing domestic violence and anger management programing. *Matter of Geddiah S. R. (seljeana P.), 195 A.D.3d 725, 149 N.Y.S.3d 531, 2021 N.Y. App. Div. LEXIS 3678 (N.Y. App. Div. 2d Dep't)*, app. denied, *37 N.Y.3d 913, 177 N.E.3d 214, 155 N.Y.S.3d 151, 2021 N.Y. LEXIS 2394 (N.Y. 2021)*.

A proceeding to terminate the parental rights of the parents of a retarded and autistic child who had been institutionalized in foster care for over six years, on the asserted grounds of abandonment and permanent neglect, would be dismissed where the child's maternal grandmother, who stood in loco parentis to the child, had been primarily responsible for his care prior to the child's placement and had exhibited a continuing concern for the child's health and welfare, where the petitioner child care agency failed to substantiate its claim that the child was no longer in need of foster care in the residential treatment center and was therefore an appropriate candidate for adoption, which would require the severance of parental ties, in that the child could not function in a "normal" family

home, and his family was unable to provide him with the extraordinary care he needed, and where the termination of parental rights and adoption of a child who needed continuing foster care in order to receive essential treatment and services did not accord with the policy underlying *Soc Serv Law § 384-b*, especially in light of the fact that the transfer of custody as a condition precedent to the placement of children in residential treatment facilities had earlier been held unconstitutional. *In re Jamal B., 119 Misc. 2d 808, 465 N.Y.S.2d 115, 1983 N.Y. Misc. LEXIS 3599 (N.Y. Fam. Ct. 1983)*.

131. Dismissal improper

An order of the Family Court dismissing a petition seeking termination of parental rights is reversed, the petition reinstated, and the proceeding remanded to the Family Court for further proceedings, premised upon a finding of permanent neglect, where for a period of more than one year the mother failed to maintain contact or to plan for the return of her child or for his care. *In re B., 73 A.D.2d 359, 427 N.Y.S.2d 3, 1980 N.Y. App. Div. LEXIS 10058 (N.Y. App. Div. 1st Dep't 1980)*.

Family Court erred in dismissing the petitions in proceedings to terminate the parental rights of respondents due to permanent neglect (*Soc Serv Law § 384-b(4)(d)*) on the asserted ground that respondent father was unable to attend the fact-finding hearing in person on account of a physical disability stemming from several heart attacks, since the children had a strong interest in a prompt determination of their status, and since any risk to the father of an erroneous decision in his absence could be reduced or eliminated by permitting him to give testimony by deposition, if possible, and by his representation at trial by his attorney. *In re Dean L., 109 A.D.2d 87, 490 N.Y.S.2d 75, 1985 N.Y. App. Div. LEXIS 47930 (N.Y. App. Div. 4th Dep't 1985)*.

Court erred in dismissing petition to terminate parental rights of father for neglect where, despite diligent efforts of agency, father failed to maintain regular contact with child, failed to obtain suitable and adequate housing in preparation for her return, and consistently failed to cooperate with or pursue various constructive avenues suggested by agency to provide suitable plan for child's future; accordingly, petition would be granted and dispositional hearing ordered. *In re Guardianship of Gilbert, 127 A.D.2d 452, 511 N.Y.S.2d 243, 1987 N.Y. App. Div. LEXIS 42955 (N.Y. App. Div. 1st Dep't 1987)*.

Family Court erroneously dismissed petition to terminate father's parental rights on ground that agency failed to establish prima facie case of neglect since (1) father had admitted during family conference that he had drinking problem, (2) there were recorded observations by agency caseworkers that father had consumed alcohol prior to scheduled appointments, (3) during 30 months that children were in agency's care, father resisted all efforts by agency to recognize his drinking problem and take steps to resolve it, (4) father's plan, developed after mother relinquished her rights, to have his mother assume primary care of children was completely unrealistic, and (5) father had opposed medical therapy provided by agency to children; since petition was dismissed at close of agency's case and father had not had opportunity to be heard, matter would be remanded for new hearing. *In re Guardianship of Miguel S., 140 A.D.2d 202, 528 N.Y.S.2d 55, 1988 N.Y. App. Div. LEXIS 5022 (N.Y. App. Div. 1st Dep't 1988)*.

Family Court erred in dismissing petition to terminate parental rights on ground of permanent neglect at close of agency's case since (1) proof offered by agency, showing that father (who had problems with alcoholism and domestic violence) failed to follow through on agency's treatment recommendations until child had been in foster care for 20 months, established prima facie case, (2) it was irrelevant that agency delayed 18 months before bringing termination proceeding or that father had made some progress in that time, and (3) it was not necessarily inappropriate for agency to have simultaneously considered adoption and worked with parent. *In re Maryann Ellen F., 154 A.D.2d 167, 552 N.Y.S.2d 740, 1990 N.Y. App. Div. LEXIS 3199 (N.Y. App. Div. 4th Dep't)*, app. dismissed, *76 N.Y.2d 773, 559 N.Y.S.2d 986, 559 N.E.2d 680, 1990 N.Y. LEXIS 1399 (N.Y. 1990)*.

Family Court improperly dismissed neglect proceeding where there was uncontroverted evidence that mother did not contact child for more than one year. *In re Ian II, 173 A.D.2d 898, 569 N.Y.S.2d 760, 1991 N.Y. App. Div. LEXIS 5228 (N.Y. App. Div. 3d Dep't 1991)*.

Family court erred in dismissing the petitioner agency's request for a finding of permanent neglect under N.Y. Soc. Serv. Law § 384-b(4)(d) based on an erroneous finding that the agency did not use diligent efforts to encourage the parental relationship between respondent father and his daughter; the agency's diligent efforts to help the father were frustrated by the father's uncooperative conduct and the agency's failure to assign a new caseworker after the father had a dispute with the assigned caseworker was not sufficient to support the finding that the agency failed to make diligent efforts. *In re June D. S., 288 A.D.2d 904, 732 N.Y.S.2d 324, 2001 N.Y. App. Div. LEXIS 10606 (N.Y. App. Div. 4th Dep't 2001)*.

132. Suspended judgment

Trial court properly terminated a mother's parental rights as the Orange County Department of Social Services showed that the mother failed to comply with court-ordered drug, alcohol, and mental health counseling; a law guardian's recommendation that the judgment of neglect be suspended was not determinative as the trial court's evaluation of the law guardian's position was entitled to deference. *In re Arnold M., 12 A.D.3d 677, 785 N.Y.S.2d 504, 2004 N.Y. App. Div. LEXIS 14481 (N.Y. App. Div. 2d Dep't 2004)*.

Because a father planned on living at a shelter where children were not allowed after his release from prison, and was likely to be classified as a risk level III sex offender, which prohibited contact with children, there were no exceptional circumstances warranting extension of a N.Y. Soc. Serv. Law § 384-b judgment that suspended termination of the father's parental rights. *Matter of Jonathan J., 47 A.D.3d 992, 849 N.Y.S.2d 330, 2008 N.Y. App. Div. LEXIS 46 (N.Y. App. Div. 3d Dep't)*, app. denied, *10 N.Y.3d 706, 857 N.Y.S.2d 39, 886 N.E.2d 804, 2008 N.Y. LEXIS 790 (N.Y. 2008)*.

133. —Granted

Trial court properly terminated a mother's parental rights to her daughter, because the finding that the mother failed to plan for the child, and that the child was permanently neglected pursuant to N.Y. Soc. Serv. Law § 384-b(7)(a), was supported by clear and convincing evidence based on the mother's failure to complete therapy arranged by an agency, and the finding that it was in the child's best interest to be freed for adoption was supported by the record; the termination of the mother's parental rights to a second daughter was suspended for six months, as the second daughter had no near prospect of permanent adoption, and the mother obviously wanted to be reunited with the child, and had made substantial efforts toward that end. *Matter of Emma L. v Rosalie L., 35 A.D.3d 250, 826 N.Y.S.2d 52, 2006 N.Y. App. Div. LEXIS 14862 (N.Y. App. Div. 1st Dep't 2006)*, app. dismissed, app. denied, *8 N.Y.3d 904, 834 N.Y.S.2d 76, 865 N.E.2d 1242, 2007 N.Y. LEXIS 549 (N.Y. 2007)*.

Although a father failed to successfully complete the recommended services, pursuant to N.Y. Soc. Serv. Law § 384-b(7)(c), he planned for the children's future by making the necessary repairs to his home; therefore, a suspended judgment in accordance with N.Y. Fam. Ct. Act §§ 631(b), 633 would more appropriately serve the children's best interests. *Matter of Eric G. v Michael G., 59 A.D.3d 785, 872 N.Y.S.2d 739, 2009 N.Y. App. Div. LEXIS 1046 (N.Y. App. Div. 3d Dep't 2009)*.

134. —Denied

Mother's request for suspended judgment with regard to termination of her parental rights was properly denied on evidence showing that, despite agency's diligent efforts to help her overcome her long-term drug addiction, she failed to complete several drug rehabilitation programs, she admitted to using cocaine several months prior to hearing even though she was pregnant, she had continuing relationship with abusive partner on whom she partly blamed her addiction, and her other children were in foster care. *In re Nyasia Shawnta F., 232 A.D.2d 334, 648 N.Y.S.2d 604, 1996 N.Y. App. Div. LEXIS 11224 (N.Y. App. Div. 1st Dep't 1996)*.

In permanent neglect proceeding involving child who was in foster care since shortly after his birth, court properly refused to enter suspended judgment where child had no relationship with respondent, and respondent failed to visit child during 2-month period between fact-finding hearing and dispositional hearing. *In re Jason J., 283 A.D.2d 982, 723 N.Y.S.2d 922, 2001 N.Y. App. Div. LEXIS 4653 (N.Y. App. Div. 4th Dep't 2001)*.

Trial court did not abuse its discretion by terminating a mother's parental rights rather than granting her a suspended judgment under *N.Y. Fam. Ct. Act § 631* because, despite progress made by the mother in the areas of maintaining a steady employment and completing parenting classes during the time period between the fact-finding and dispositional hearings, the mother admittedly was not attending substance abuse or mental health counseling and had not applied for public assistance or obtained stable housing for the children. Moreover, the children had bonded with their foster family and were thriving under the foster parents' care. *Matter of Jayde M. v Kimberly N., 36 A.D.3d 1168, 827 N.Y.S.2d 786, 2007 N.Y. App. Div. LEXIS 693 (N.Y. App. Div. 3d Dep't)*, app. denied, *8 N.Y.3d 809, 834 N.Y.S.2d 507, 866 N.E.2d 453, 2007 N.Y. LEXIS 837 (N.Y. 2007)*.

Termination of a father's rights to his minor child, rather than the entry of a suspended judgment, was in the child's best interests where the record showed that the child had no relationship with the father, that the child had bonded with his foster parents, and that the child was in need of a stable, permanent solution. *Matter of Ty'Keith R., 45 A.D.3d 1397, 846 N.Y.S.2d 489, 2007 N.Y. App. Div. LEXIS 11431 (N.Y. App. Div. 4th Dep't 2007)*, app. denied, *10 N.Y.3d 701, 853 N.Y.S.2d 543, 883 N.E.2d 370, 2008 N.Y. LEXIS 162 (N.Y. 2008)*.

Termination of a mother's parental rights in a *N.Y. Soc. Serv. Law § 384-b* proceeding, rather than a suspended judgment under *N.Y. Fam. Ct. Act § 631*, was proper because, inter alia, the mother had numerous chances to redeem herself in the more than four years while her child was removed from her care, but each time she progressed to supervised and unsupervised visitation, she relapsed by consuming alcohol while she was caring for the child; further, she violated conditions of a drug court more than once, resulting in her incarceration. Meanwhile, the child was thriving in foster care and freeing the child for adoption provided him with prospects for permanency and stability. *Matter of Raine QQ. v Marika QQ., 51 A.D.3d 1106, 857 N.Y.S.2d 333, 2008 N.Y. App. Div. LEXIS 3803 (N.Y. App. Div. 3d Dep't)*, app. denied, *10 N.Y.3d 717, 862 N.Y.S.2d 469, 892 N.E.2d 863, 2008 N.Y. LEXIS 2155 (N.Y. 2008)*.

In proceedings pursuant to *N.Y. Soc. Serv. Law § 384-b*, a mother's parental rights were properly terminated on the basis of permanent neglect as while the mother had made some progress, it was not sufficient to warrant any further prolongation of one child's unsettled familial status; thus, a suspended judgment as to that child was properly refused. *Matter of Kaseem J. v Joy M., 52 A.D.3d 1321, 860 N.Y.S.2d 369, 2008 N.Y. App. Div. LEXIS 5377 (N.Y. App. Div. 4th Dep't 2008)*.

Pursuant to *N.Y. Soc. Serv. Law § 384-b*, a mother who did not have a stable home or employment, and who was no longer eligible for public assistance for housing and other services due to her failure to attend substance abuse and mental health counseling properly had her parental rights over two of her children terminated, as the evidence did not support a suspension of the judgment in order to give her a second chance to demonstrate the ability to be a fit parent pursuant to *N.Y. Fam. Ct. Act §§ 631(b)* and *633*; such a suspension would not have been in the children's best interests. *Matter of Isaiah F. v Virginia. F., 55 A.D.3d 1004, 871 N.Y.S.2d 390, 2008 N.Y. App. Div. LEXIS 7768 (N.Y. App. Div. 3d Dep't 2008)*, app. denied, *11 N.Y.3d 716, 874 N.Y.S.2d 5, 2009 N.Y. LEXIS 156 (N.Y. 2009)*, app. denied, *11 N.Y.3d 716, 874 N.Y.S.2d 5, 2009 N.Y. LEXIS 550 (N.Y. 2009)*.

Mother was not entitled to a suspended judgment of the termination of her parental rights to her child because, as of the time of the dispositional hearing, the mother was only six weeks into a seven-month drug rehabilitation program after her release from jail; the senior caseworker testified that the mother failed to complete the family treatment court and made virtually no efforts toward reunification with the child. There was testimony that the child had not been in the mother's custody since he was two months old and that the child's foster parents were willing to adopt him along with his half-siblings, thereby providing reasonable assurance that the child would be provided with a stable and permanent home. *Matter of Carlos R., 63 A.D.3d 1243, 879 N.Y.S.2d 829, 2009 N.Y. App. Div. LEXIS 4157 (N.Y. App. Div. 3d Dep't)*, app. denied, *13 N.Y.3d 704, 887 N.Y.S.2d 1, 915 N.E.2d 1179, 2009 N.Y. LEXIS 3469 (N.Y. 2009)*.

Termination of an incarcerated father's parental rights was in the child's best interest, rather than entry of a suspended judgment, because the child was in a positive living situation with a foster family, the child lacked a significant relationship with the father or his family, and there was uncertainty surrounding both when the father would be released from prison and where he would reside. *Matter of Jazmyne II. (Frank MM.), 144 A.D.3d 1459, 41 N.Y.S.3d 179, 2016 N.Y. App. Div. LEXIS 7750 (N.Y. App. Div. 3d Dep't 2016)*, app. denied, *29 N.Y.3d 901, 80 N.E.3d 397, 57 N.Y.S.3d 704, 2017 N.Y. LEXIS 469 (N.Y. 2017)*.

Family court did not abuse its discretion by terminating a father's parental rights rather than issuing a suspended judgment because the children had been in foster care with the same foster parents for nearly their entire lives, where they resided with one of their older siblings, and the children had developed a strong and loving bond with their foster family, who expressed the intention of wanting to adopt the children and their sibling. *Matter of Alexander Z. (Jimmy Z.), 149 A.D.3d 1177, 51 N.Y.S.3d 231, 2017 N.Y. App. Div. LEXIS 2639 (N.Y. App. Div. 3d Dep't 2017)*.

Terminating an incarcerated mother's parental rights rather than granting her a suspended judgment was not an abuse of discretion because mother had not pursued any job opportunities, did not evince a sincere understanding of why her children were removed or a desire to improve her ability to parent the children, and the order of protection remained in effect; the children's significant needs were being met by their foster families. *Matter of Kaylee JJ. (Jennifer KK.), 159 A.D.3d 1077, 71 N.Y.S.3d 220, 2018 N.Y. App. Div. LEXIS 1373 (N.Y. App. Div. 3d Dep't 2018)*.

135. —Failure to comply with conditions

Evidence sustained Family Court's finding that father failed to comply with conditions of suspended judgment in permanent neglect proceeding, supporting termination of his parental rights, where (1) he failed to deal effectively with his explosive temper and angry outbursts through available mental health counseling, and continued to blame children, caseworkers, or anyone else who did not agree with him, (2) he admitted that because of events in his own childhood he was unable to express affection to his children, and that he had no confidence in caseworkers or mental health professionals, (3) children (who suffered from attention deficit disorder, depression, and low self-esteem) regressed in their behaviors after extended visits with him, and (4) he failed to contact children or their caregivers during interim period when supervised visitation was imposed. *In re Kenneth A., 206 A.D.2d 602, 614 N.Y.S.2d 472, 1994 N.Y. App. Div. LEXIS 7348 (N.Y. App. Div. 3d Dep't 1994)*.

Termination of mother's parental rights was proper where, in violation of suspended judgment, she failed to follow rules and regulations of Phoenix House, failed to complete drug rehabilitation program, and failed to attend individual psychotherapy. *In re Vanessa R., 249 A.D.2d 27, 671 N.Y.S.2d 232, 1998 N.Y. App. Div. LEXIS 3803 (N.Y. App. Div. 1st Dep't 1998)*.

Mother's parental rights to her 5 children were properly terminated for neglect under CLS *Soc Serv § 384-b* where she failed to comply with certain conditions of 5 suspended dispositional judgments (one relating to each child), and termination was in best interests of children. *In re A. Children, 255 A.D.2d 510, 679 N.Y.S.2d 908, 1998 N.Y. App. Div. LEXIS 12622 (N.Y. App. Div. 2d Dep't 1998)*.

Mother's parental rights were properly terminated for neglect under CLS *Soc Serv § 384-b* where she failed to comply with certain conditions of dispositional judgment, and termination was in best interests of child. *In re Sabrieal A., 255 A.D.2d 511, 679 N.Y.S.2d 910, 1998 N.Y. App. Div. LEXIS 12620 (N.Y. App. Div. 2d Dep't 1998)*.

After mother admitted allegations of permanent neglect of her son and acknowledged that her parental rights would be terminated if she did not prove her compliance with 8 conditions of suspended judgment within 6 months, she failed to prove her compliance with 2 of those conditions where she made no progress in required service programs and denied any need for parenting education. *Wendy F. v Onondaga County Dep't of Soc. Servs., 273 A.D.2d 927, 708 N.Y.S.2d 793, 2000 N.Y. App. Div. LEXIS 6939 (N.Y. App. Div. 4th Dep't 2000)*.

Record supported trial court's findings that mother who agreed to adjudication and disposition of permanent neglect subject to stipulation that court's judgment would be suspended for 12 months and who subsequently was charged with prostitution, refused to take two drug tests, failed one drug test, and repeatedly missed visits with her children had not complied with the terms of the suspended judgment and that the trial court's decision to terminate her parental rights was in her children's best interests. *In re Shawna "DD", 289 A.D.2d 892, 734 N.Y.S.2d 724, 2001 N.Y. App. Div. LEXIS 12613 (N.Y. App. Div. 3d Dep't 2001)*.

Family court did not deprive a father of due process by continuing to hear a petition filed by a county social services agency under *N.Y. Soc. Serv. Law § 384-b* to revoke a suspended judgment and to terminate the father's parental rights where: (1) the father repeatedly failed to appear for hearings, (2) the family court granted an adjournment when the father appeared and provided the father with a written reminder of the next court date, the notices that had been returned as undeliverable, and a temporary order of protection, which the father threw in the courthouse trash can, (3) the family court informed the father that the matter would proceed if he failed to appear, (4) the father did not generally receive mailed notices of court dates because he supplied the court with fictitious addresses or failed to provide current addresses, and (5) by willfully failing to appear on dates for which the family court provided adequate notice, the father forfeited any right he had to be present at the hearing under *N.Y. Fam. Ct. Act § 1042*. *In re Elizabeth T., 3 A.D.3d 751, 770 N.Y.S.2d 804, 2004 N.Y. App. Div. LEXIS 649 (N.Y. App. Div. 3d Dep't 2004)*.

In a *N.Y. Soc. Serv. Law § 384-b* proceeding, the family court's termination of parents' parental rights and revocations of a permanent child neglect judgments that had been suspended under *N.Y. Fam. Ct. Act §§ 631(b)*, *633* and *N.Y. Comp. Codes R. & Regs. tit. 22, § 205.50* were proper. The parents failed to participate in mental health counseling and to obtain safe and adequate housing that was required in order for the suspension to be lifted. *Matter of Frederick MM., 23 A.D.3d 951, 805 N.Y.S.2d 160, 2005 N.Y. App. Div. LEXIS 13256 (N.Y. App. Div. 3d Dep't 2005)*.

Because a mother did not substantially comply with the terms and conditions of a suspended judgment and did not make any progress to overcome the problems that led to the removal of her children, and because a father raised no meritorious issues on appeal, the family court properly terminated their parental rights under *N.Y. Soc. Serv. Law § 384-b* on the ground of permanent neglect and/or failure to comply with the terms of a suspended judgment. *Matter of Christyn Ann D., 26 A.D.3d 491, 811 N.Y.S.2d 94, 2006 N.Y. App. Div. LEXIS 2358 (N.Y. App. Div. 2d Dep't 2006)*.

Because a mother willfully failed to comply with the terms of a suspended judgment, and because her previous admissions resulted in a finding of permanent neglect, the Family Court properly terminated her parental rights and freed the children for adoption pursuant to *N.Y. Soc. Serv. Law § 384-b* and *N.Y. Comp. Codes R. & Regs. tit. 22, § 205.50(b)*. *Matter of Jessica J. v Elise J., 44 A.D.3d 1132, 843 N.Y.S.2d 708, 2007 N.Y. App. Div. LEXIS 10690 (N.Y. App. Div. 3d Dep't 2007)*.

Because a mother failed to substantially comply with the terms and conditions of a suspended judgment, it was in the best interests of her two minor children to terminate her parental rights due to neglect under *N.Y. Soc. Serv. Law § 384-b* and free them for adoption. *Matter of Gordon Lee R. v Linda F., 49 A.D.3d 882, 853 N.Y.S.2d 911, 2008 N.Y. App. Div. LEXIS 2756 (N.Y. App. Div. 2d Dep't)*, app. denied, *11 N.Y.3d 702, 864 N.Y.S.2d 390, 894 N.E.2d 654, 2008 N.Y. LEXIS 2554 (N.Y. 2008)*.

Because a mother made little effort to reunite with her children and violated the terms and conditions of her suspended judgment, the family court did not err in terminating the mother's parental rights under *N.Y. Soc. Serv. Law § 384-b*. *Matter of Elias QQ. v Stephanie QQ., 72 A.D.3d 1165, 897 N.Y.S.2d 762, 2010 N.Y. App. Div. LEXIS 2630 (N.Y. App. Div. 3d Dep't 2010)*.

Mother violated the terms of two suspended judgments, resulting in the termination of her parental rights, because the mother, inter alia, did not actively participate in psychotherapy treatment, refused to acknowledge her underlying problems, would not meaningfully discuss issues that led to the children's removal, never progressed beyond supervised visitation with the children, and had continued association with sex offenders. *Matter of Hazel*

OO. (Roseanne OO.), 133 A.D.3d 1126, 21 N.Y.S.3d 404, 2015 N.Y. App. Div. LEXIS 8755 (N.Y. App. Div. 3d Dep't 2015).

Termination of the father's parental rights was in the children's best interest because after the father was found to have had permanently neglected the children, he failed to comply with the conditions during the term of the suspended judgments. *Matter of Naturel W. E. (Andre C.), 176 A.D.3d 1055, 111 N.Y.S.3d 397, 2019 N.Y. App. Div. LEXIS 7641 (N.Y. App. Div. 2d Dep't 2019)*, app. denied, *34 N.Y.3d 911, 145 N.E.3d 961, 123 N.Y.S.3d 78, 2020 N.Y. LEXIS 427 (N.Y. 2020)*.

Family court properly determined that the child services agency failed to prove that the father violated the terms of the suspended judgment because, inter alia, the agency permitted the father's visits and contacts to be rescheduled and permitted the father to reschedule drug tests on the few occasions that he was unable to provide a sample, the father was never provided a telephone number to contact the child, and the father had provided an email address for communication. *Matter of Collin Q. (James R.), 178 A.D.3d 1208, 114 N.Y.S.3d 142, 2019 N.Y. App. Div. LEXIS 8945 (N.Y. App. Div. 3d Dep't 2019)*.

Father substantially complied with the terms of the suspended judgment because, inter alia, the father attended all required mental health and drug and alcohol evaluations and parenting classes as directed, and was engaging and appropriate with the child, who was happy and excited to be with the father and the two were bonded and shared a positive relationship. *Matter of Collin Q. (James R.), 178 A.D.3d 1208, 114 N.Y.S.3d 142, 2019 N.Y. App. Div. LEXIS 8945 (N.Y. App. Div. 3d Dep't 2019)*.

136. —Revocation

Family Court properly refused to revoke suspended judgment finding respondent's children to be permanently neglected, and committed children's custody and guardianship to department of social services, where respondent, during period judgment was suspended, missed visitations with children, failed to have significant interactions with them, maintained unsanitary home, failed to pay bills, and otherwise failed to comply with conditions of suspended judgment. *In re Jennifer VV., 241 A.D.2d 622, 659 N.Y.S.2d 940, 1997 N.Y. App. Div. LEXIS 7342 (N.Y. App. Div. 3d Dep't 1997)*.

Trial court properly revoked a suspended judgment and terminated a mother's parental rights where, contrary to the condition in the suspended judgment, the mother did not establish stable housing from the outset but, rather, moved three times, did not acquire stable housing until less than two months prior to the hearing, and the fact that she eventually did secure stable housing did not constitute compliance with the terms of the suspended judgment; moreover, the mother became pregnant again during the period of the suspended judgment, admitted to smoking marihuana on one occasion during the pregnancy, and the trial court did not find the mother credible or sincere. *Terry L.G. v Rachel W., 6 A.D.3d 1144, 776 N.Y.S.2d 429, 2004 N.Y. App. Div. LEXIS 6144 (N.Y. App. Div. 4th Dep't 2004)*.

Family court properly revoked a suspended judgment upon a finding of permanent neglect and terminated the mother's parental rights with respect to both children where (1) assuming, arguendo, that the mother complied with the literal terms and conditions of the suspended judgment, such compliance did not necessarily lead to dismissal of the petition seeking to revoke the suspended judgment, (2) rather, the mother was required to show that progress had been made to overcome the specific problems which led to the removal of the child, which the mother failed to do, and (3) the termination of the mother's parental rights was in the children's best interests because (a) the mother continued to become involved in relationships with men with a history of domestic violence, one of the problems that led to the removal of the children, (b) the mother continued to be deceptive about those relationships, (c) the children, who had lived with their foster family for more than two years, expressed a desire to remain with their foster family, and (d) the foster family indicated a desire to adopt both children. *In re Mercedes L., 12 A.D.3d 1184, 785 N.Y.S.2d 267, 2004 N.Y. App. Div. LEXIS 13890 (N.Y. App. Div. 4th Dep't 2004)*.

Judgment revoking a suspended judgment and terminating a mother's parental rights was affirmed as: (1) the mother failed to maintain employment, (2) the mother demonstrated poor money management skills despite repeated efforts to counsel her in the area, (3) when the police were called to the mother's home in response to an emergency call, the house was in a deplorable and filthy condition, (4) the mother failed to obtain prior approval for pets in the house, including an iguana and a dog, and (5) the mother pleaded guilty to harassment after an altercation with another woman. *Matter of Gracie YY. v Amy YY., 34 A.D.3d 1053, 825 N.Y.S.2d 303, 2006 N.Y. App. Div. LEXIS 13804 (N.Y. App. Div. 3d Dep't 2006)*.

In a proceeding pursuant to *Social Services Law § 384-b*, the court affirmed an order revoking a suspended judgment and terminating a mother's parental rights because, notwithstanding the mother's efforts at maintaining sobriety, termination of her rights so as to facilitate the children's adoption by foster parents was in their best interests. *Matter of Dessa F. v Patricia F., 35 A.D.3d 1096, 826 N.Y.S.2d 502, 2006 N.Y. App. Div. LEXIS 15725 (N.Y. App. Div. 3d Dep't 2006)*.

Parental rights to three minor children were properly terminated on the basis of permanent neglect under *N.Y. Soc. Serv. Law § 384-b* after suspended judgments were revoked because granting the parents additional time to rehabilitate was not in the children's best interests as a county agency had attempted to provide services for four years; the parents failed to abandon their lifestyles of substance abuse, criminal activity, and domestic violence. *Matter of Brittney U. v Edwin V., 44 A.D.3d 1124, 843 N.Y.S.2d 700, 2007 N.Y. App. Div. LEXIS 10703 (N.Y. App. Div. 3d Dep't)*, app. denied, *9 N.Y.3d 816, 849 N.Y.S.2d 32, 879 N.E.2d 172, 2007 N.Y. LEXIS 3797 (N.Y. 2007)*.

Because a father failed to comply with the terms and conditions set forth in a suspended judgment, the family court properly revoked the suspended judgment in accordance with *N.Y. Fam. Ct. Act §§ 631* and *633* and terminated the father's parental rights under *N.Y. Soc. Serv. Law § 384-b*. *Matter of Davona L., 45 A.D.3d 1392, 845 N.Y.S.2d 887, 2007 N.Y. App. Div. LEXIS 11400 (N.Y. App. Div. 4th Dep't 2007)*, app. denied, *48 A.D.3d 1213, 849 N.Y.S.2d 870, 2008 N.Y. App. Div. LEXIS 820 (N.Y. App. Div. 4th Dep't 2008)*, app. denied, *10 N.Y.3d 707, 858 N.Y.S.2d 654, 888 N.E.2d 396, 2008 N.Y. LEXIS 1024 (N.Y. 2008)*.

Revocation of a suspended judgment in a termination proceeding pursuant to *N.Y. Soc. Serv. Law § 384-b* and N.Y. Fam. Ct. Act art. 6, and termination of parental rights was proper because, although the mother and the father made efforts to comply with the suspended judgment, they failed to show the required progress in certain areas; specifically, they failed to attend four of six possible visits during a six-week period, which violated a term requiring them to attend 90 percent of scheduled visitation during the period of the suspended judgment, failed to attend the majority of school and doctor appointments pertaining to the subject children, and failed to demonstrate that progress had been made to overcome a specific problem which led to the removal of the subject children, their failure to maintain contact with the children so as to demonstrate their ability to take full responsibility as primary caretakers. A separate dispositional hearing was not required. *Matter of Darren V., 61 A.D.3d 986, 878 N.Y.S.2d 171, 2009 N.Y. App. Div. LEXIS 3371 (N.Y. App. Div. 2d Dep't)*, app. denied, *12 N.Y.3d 715, 884 N.Y.S.2d 690, 912 N.E.2d 1071, 2009 N.Y. LEXIS 2511 (N.Y. 2009)*.

Trial court correctly revoked a suspended judgment and terminated a mother's parental rights because evidence showed that the mother failed, among other things, to maintain a 95 percent attendance rate at her treatment program as required by the suspended judgment and had been discharged; the mother also violated the terms of the suspended judgment by failing to participate in the Family Support Program. While the mother made some efforts to comply with the conditions of the suspended judgment, the mother failed to show that progress had been made to overcome one of the specific problems which led to the children's removal by consistently attending substance abuse treatment sessions. *Matter of Carmen C. (Margarita N.), 95 A.D.3d 1006, 944 N.Y.S.2d 214, 2012 N.Y. App. Div. LEXIS 3552 (N.Y. App. Div. 2d Dep't 2012)*.

Order revoking a suspended judgment and terminating a mother's parental rights in an *N.Y. Soc. Serv. Law § 384-b* proceeding was proper because, inter alia, the record established that the mother failed to take her prescribed medications and tested positive for drugs during the period of time that the suspended judgment was in effect; with respect to the decision to terminate the mother's parental rights, the children had been in foster care for nearly four

years, and, despite numerous opportunities, the mother had failed to overcome her substance abuse issues. Termination of the mother's parental rights was in the children's best interests. *Matter of Abbigail EE. (Elizabeth EE.), 106 A.D.3d 1205, 965 N.Y.S.2d 213, 2013 N.Y. App. Div. LEXIS 3284 (N.Y. App. Div. 3d Dep't 2013)*.

Family court's revocation of the suspended judgment and termination of the mother's parental rights lacked a sound and substantial basis in the record because the agency failed to show by preponderance of the evidence that the mother violated the terms and conditions of the suspended judgment during the applicable grace period. *Matter of Nahlaya MM. (Britian MM.), 172 A.D.3d 1482, 100 N.Y.S.3d 119, 2019 N.Y. App. Div. LEXIS 3425 (N.Y. App. Div. 3d Dep't 2019)*.

137. Termination of parental rights

In terminating mother's parental rights, court properly rejected mother's offer of paternal grandmother and 2 aunts as temporary resources pending her rehabilitation, where these relatives never visited or communicated with children during 8 years they were in foster care, did not avail themselves of opportunities to develop relationship with children even after they were put forth as possible resources, and were not capable of caring for children's special behavioral and educational needs. *In re Ishmael A., 264 A.D.2d 647, 694 N.Y.S.2d 658, 1999 N.Y. App. Div. LEXIS 9302 (N.Y. App. Div. 1st Dep't 1999)*.

County department of health and human services made a sufficient showing to justify a disposition that children were permanently neglected under *N.Y. Soc. Serv. Law § 384-b(7)(a)* where the department showed that it made diligent efforts to strengthen the relationship between the parents and the children by providing services and assistance to resolve the problems that had prevented the children's return to the parents' care, where it showed that each parent substantially and repeatedly failed to plan for their children's future for more than a year after the children were placed with the department despite being physically and financially able to do so, and where it showed that the parents failed to overcome the problems that caused the children to initially be placed with the department. Moreover, a family court's dispositional orders terminating parental rights, transferring guardianship and custody to the department, and allowing the department to consent to the children's adoption were supported by admissible evidence in the record; an argument on appeal that the family court relied on documents that were not in evidence was not supported by the record and, regardless, alleged a harmless error since admissible evidence existed in the record to support the family court's dispositional orders. *Matter of Nathaniel W., 24 A.D.3d 1240, 806 N.Y.S.2d 838, 2005 N.Y. App. Div. LEXIS 14587 (N.Y. App. Div. 4th Dep't 2005)*, app. denied, *6 N.Y.3d 711, 814 N.Y.S.2d 600, 847 N.E.2d 1173, 2006 N.Y. LEXIS 665 (N.Y. 2006)*.

Family court properly terminated a mother's parental rights to his child, as the agency adduced clear and convincing evidence that the father failed to plan for the child's future for at least one year, as required by *N.Y. Soc. Serv. Law § 384-b(7)(a)*, (3)(g), and the agency made diligent efforts to reunite the mother with her child. *Matter of Anna Marie G., 29 A.D.3d 992, 818 N.Y.S.2d 104, 2006 N.Y. App. Div. LEXIS 7067 (N.Y. App. Div. 2d Dep't 2006)*.

Requirement that a parent support a child's emotional needs does not justify a termination of parental rights solely on a showing that the parent failed to win over a child whose strong preference is to remain with the foster mother to whom the child is tightly bound. *Matter of Albert Milton K., 47 A.D.3d 261, 848 N.Y.S.2d 97, 2007 N.Y. App. Div. LEXIS 12782 (N.Y. App. Div. 1st Dep't 2007)*.

Termination of an incarcerated father's parental rights in a *N.Y. Soc. Serv. Law § 384-b* proceeding was proper because, inter alia, although the father was not present at the hearing, his attorney vigorously represented his interests at the hearing and father was not prejudiced by his absence. *Matter of Eric L. II. v Eric L. Sr., 51 A.D.3d 1400, 857 N.Y.S.2d 851, 2008 N.Y. App. Div. LEXIS 3930 (N.Y. App. Div. 4th Dep't)*, app. denied, *10 N.Y.3d 716, 862 N.Y.S.2d 468, 892 N.E.2d 862, 2008 N.Y. LEXIS 2175 (N.Y. 2008)*.

Although an incarcerated father's only plan for the parties' child was continued foster care for the duration of his incarceration, the mother expressed her intent to be reunited with the child and cooperated with scheduled visits;

consequently, the agency failed to support its N.Y. Soc. Serv. Law § 384-b(7)(a) neglect petition against the mother. Matter of Alicia G., 908 N.Y.S.2d 810, 29 Misc. 3d 267, 2010 N.Y. Misc. LEXIS 3131 (N.Y. Fam. Ct. 2010).

138. —Termination proper

Family Court properly adjudicated respondent's children to be neglected on basis of testimony of respondent establishing that she allowed children's unsupervised visitation with their father and his paramour after she became aware that paramour's children had been removed from household based upon allegations of sexual abuse. In re Daniel DD, 142 A.D.2d 750, 530 N.Y.S.2d 314, 1988 N.Y. App. Div. LEXIS 7250 (N.Y. App. Div. 3d Dep't 1988).

Order granting petition in action pursuant to CLS Soc Serv § 384-b(4)(c) and (d) to terminate parental rights of natural parents of child and to award custody and guardianship to commissioner of social services would be affirmed since petitioning agency had met burden of proving by clear and convincing evidence that, despite its diligent efforts, parents failed to plan for future of their child where (1) 11-year-old child had been in continuous custody of department of social services since she was less than 2 months old, and (2) parents failed to attend recommended counseling sessions to address problems that prevented return of child to them—namely, mother's history of mental illness and lack of parenting skills and father's alcoholism. In re Kathleen B., 144 A.D.2d 357, 533 N.Y.S.2d 921, 1988 N.Y. App. Div. LEXIS 11179 (N.Y. App. Div. 2d Dep't 1988).

Mother's parental rights were properly terminated, since she failed for more than one year to plan for child's future, despite agency's diligent efforts to encourage parent-child relationship, where (1) she was asked to leave 2 drug treatment programs because of improper behavior, (2) while in prison, she never completed drug program or parenting skills program, (3) after her release from prison, she failed to follow through on agency's offer to help her obtain public assistance or to arrange regular visits with child, and (4) she had no contact with child for over one year; moreover, foster parents had established close links with child and had provided for child's educational and physical needs. *In re Domonique Bernice Nicole H., 203 A.D.2d 76, 610 N.Y.S.2d 479, 1994 N.Y. App. Div. LEXIS 3617 (N.Y. App. Div. 1st Dep't)*, app. denied, *84 N.Y.2d 801, 617 N.Y.S.2d 135, 641 N.E.2d 156, 1994 N.Y. LEXIS 2664 (N.Y. 1994)*.

Termination of mother's parental rights was proper, even though she maintained regular contact with child and generally cooperated with agency's caseworkers, where mother's progress was minimal and superficial, and she failed to avail herself of continuing opportunities to allow her to reunite with child. *In re Tanya P., 219 A.D.2d 849, 631 N.Y.S.2d 950, 1995 N.Y. App. Div. LEXIS 10939 (N.Y. App. Div. 4th Dep't 1995)*.

Court properly terminated parental rights where parenting problems that existed when children were removed were still present and had not substantially improved; prolonged foster care is not in child's best interest. In re Michael RR, 222 A.D.2d 890, 635 N.Y.S.2d 736, 1995 N.Y. App. Div. LEXIS 13361 (N.Y. App. Div. 3d Dep't 1995).

Mother's parental rights were properly terminated for permanent neglect where she failed to plan for children's future even though she was physically and financially able to do so, she failed to submit to random drug and alcohol testing, and she did not avail herself of counseling, to which agency had repeatedly referred her. *In re Rosie G., 266 A.D.2d 58, 698 N.Y.S.2d 637, 1999 N.Y. App. Div. LEXIS 11637 (N.Y. App. Div. 1st Dep't 1999)*.

Father's parental rights were properly terminated for permanent neglect where (1) agency exerted diligent efforts to strengthen parental relationship, (2) agency's plan addressed primary obstacles to family reunification, including alcoholism, domestic violence, and sexual abuse, (3) father did not follow through on agency's treatment recommendations and thus failed to plan for child's future, and (4) termination of parental rights for purpose of adoption was in child's best interests. *In re Kayesha Eugena Elaine McL., 273 A.D.2d 65, 708 N.Y.S.2d 870, 2000 N.Y. App. Div. LEXIS 6333 (N.Y. App. Div. 1st Dep't 2000)*.

Father's parental rights were properly terminated on evidence that he had sent his son to live with son's mother although he knew of her alcohol and drug abuse, that he had no residence of his own, that he had dropped out of drug and alcohol treatment programs, and that son's mental problems had greatly improved in foster care. In re

Michael "V", 279 A.D.2d 668, 717 N.Y.S.2d 805, 2001 N.Y. App. Div. LEXIS 67 (N.Y. App. Div. 3d Dep't), app. denied, *96 N.Y.2d 709, 725 N.Y.S.2d 639, 749 N.E.2d 208, 2001 N.Y. LEXIS 687 (N.Y. 2001)*.

Termination of mother's parental rights was warranted by evidence that she failed to complete training and schooling, did not cooperate with counseling and parenting classes, did not attend visits with children, remained in physically abusive marital relationship, and did not arrange for suitable housing. *In re Anthony "S", 282 A.D.2d 778, 723 N.Y.S.2d 251, 2001 N.Y. App. Div. LEXIS 3443 (N.Y. App. Div. 3d Dep't 2001)*.

Where a father failed to credibly explain his nonappearance at fact-finding and dispositional hearings, and also failed to show a meritorious defense to claims that his visits with his children were neither regular nor punctual and that he refused to commit to any realistic plan for the children's return, the trial court properly denied the father's motion to vacate an order terminating his parental rights. *In re Raymond Anthony S., 309 A.D.2d 520, 765 N.Y.S.2d 36, 2003 N.Y. App. Div. LEXIS 10340 (N.Y. App. Div. 1st Dep't 2003)*.

Trial court properly terminated a mother's parental rights to her child pursuant to *N.Y. Soc. Serv. Law § 384-b*, because the trial court's finding that the mother had permanently neglected the child pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)* was supported by the clear and convincing evidence in the record, and because the mother was not deprived of her right to the effective assistance of counsel, *N.Y. Fam. Ct. Act § 262(a)(iv)*. *In re Christopher S., 2 A.D.3d 450, 767 N.Y.S.2d 812, 2003 N.Y. App. Div. LEXIS 12830 (N.Y. App. Div. 2d Dep't 2003)*.

Mother's parental rights to her 16-year-old daughter were properly terminated on the ground of permanent neglect under *N.Y. Soc. Serv. Law § 384-b(7)(a)* as the mother failed to maintain regular contact with the child, failed to complete a parenting skills class, and failed to avail herself of mental health services to which she had been referred; the daughter also expressed a preference not to be reunited with the mother, *N.Y. Soc. Serv. Law § 384-b(3)(k)*, as she had bonded with her foster parents and was happy and thriving. *In re Dabari S., 29 A.D.3d 593, 818 N.Y.S.2d 91, 2006 N.Y. App. Div. LEXIS 5958 (N.Y. App. Div. 2d Dep't)*, app. denied, *7 N.Y.3d 706, 837 N.Y.S.2d 1, 868 N.E.2d 662, 2006 N.Y. LEXIS 2084 (N.Y. 2006)*.

Because a mother permanently neglected her children and failed to meet any of her service plan goals, the trial court properly found that it was in the children's best interests to terminate the mother's parental rights under *N.Y. Soc. Serv. Law § 384-b(7)(a)*, and to free the children for adoption by their respective foster mothers. *Matter of Simon J., 40 A.D.3d 317, 836 N.Y.S.2d 63, 2007 N.Y. App. Div. LEXIS 5863 (N.Y. App. Div. 1st Dep't 2007)*.

Decision terminating a parent's parental rights to a child was proper, as the parent lacked insight into the reasons why the child was removed, preventing the parent from correcting problems, and the child has a strong emotional bond with foster parents. *Matter of Dariana K.C. (Katherine M.), 99 A.D.3d 899, 952 N.Y.S.2d 589, 2012 N.Y. App. Div. LEXIS 6921 (N.Y. App. Div. 2d Dep't 2012)*.

Family court properly adjudicated a child to be permanently neglected and terminated the parents' parental rights pursuant to *Social Services Law § 384-b* because the mother failed to complete a mandated sexual abuse treatment program, violated the program's rules, and had a lengthy history of child protective proceedings relating to her 10 older children, and the father did not demonstrate an ability to serve as a protective ally for the child where he acknowledged the mother's status as a sex offender, yet resisted repeated directions to establish a separate residence from her, allowed the mother and her son to have unsupervised contact with his other children, and did not complete a mandated anger management course. *Matter of Merinda MM. (Sirena NN.), 143 A.D.3d 1095, 39 N.Y.S.3d 275, 2016 N.Y. App. Div. LEXIS 6773 (N.Y. App. Div. 3d Dep't)*, app. denied, *28 N.Y.3d 910, 69 N.E.3d 1021, 47 N.Y.S.3d 225, 2016 N.Y. LEXIS 3779 (N.Y. 2016)*.

Family court properly terminated a father's parental rights to his three children because he failed to comply with the material terms of the suspended judgment where he refused to attend drug screens, missed scheduled visits with the children despite being given bus passes to alleviate transportation issues, the father did not maintain adequate housing for the children and did not have a realistic plan to care for them, and the children had developed a strong bond and relationship with their foster mother and thrived in her care. *Matter of Jerhia EE. (Benjamin EE.), 157 A.D.3d 1017, 68 N.Y.S.3d 219, 2018 N.Y. App. Div. LEXIS 47 (N.Y. App. Div. 3d Dep't 2018)*.

Record supported the family court's termination of the father's parental rights to the older child due to abandonment because the father failed to visit or communicate with the older child during the six-month period prior to the filing of the abandonment petition. *Matter of Derick L. (Michael L.), 166 A.D.3d 1325, 89 N.Y.S.3d 354, 2018 N.Y. App. Div. LEXIS 7917 (N.Y. App. Div. 3d Dep't 2018)*, app. denied, *32 N.Y.3d 915, 122 N.E.3d 566, 98 N.Y.S.3d 768, 2019 N.Y. LEXIS 186 (N.Y. 2019)*.

139. — —Failure to take responsibility for problems

In proceeding to terminate parental rights of parents of children allegedly neglected, given nature of conditions that led to removal of children from their natural parents (e.g., excessive filth and corporal punishment, inadequate supervision, locking children in their rooms), central issue was whether parents genuinely took steps toward recognizing their problems and changing their attitudes and behavior, and review of record leads to conclusion that findings of Family Court, which had best vantage point, that in spite of petitioner agency's diligent efforts to reunite family, parents took no effective steps to correct offensive conditions and advanced no realistic plan for childrens' future, one merely comported with weight of evidence, such that disposition other than termination of parental rights would be reversible error. *In re Nathaniel T., 67 N.Y.2d 838, 501 N.Y.S.2d 647, 492 N.E.2d 775, 1986 N.Y. LEXIS 17587 (N.Y. 1986)*.

Parental rights of mother were properly terminated on basis that mother failed to plan for future of child where (1) after mother was found to have sexually molested her 4 ½ -year-old twins, son was removed from her house, and (2) although mother regularly and continuously attended group therapy sessions and actively participated in group, cause of abuse was never explored and she was unable to gain any insight into her behavior as she would not acknowledge her guilt. *In re Travis Lee G., 169 A.D.2d 769, 565 N.Y.S.2d 136, 1991 N.Y. App. Div. LEXIS 1017 (N.Y. App. Div. 2d Dep't 1991)*.

Parental rights were properly terminated on basis of permanent neglect where, despite diligent efforts of agency, parents did not plan for return of their children, in that they failed to acknowledge and address problem which resulted in placement of children in foster care after 2 findings of excessive corporal punishment. *In re S. Children, 210 A.D.2d 175, 620 N.Y.S.2d 369, 1994 N.Y. App. Div. LEXIS 13220 (N.Y. App. Div. 1st Dep't 1994)*, app. denied, *85 N.Y.2d 807, 628 N.Y.S.2d 50, 651 N.E.2d 918, 1995 N.Y. LEXIS 1177 (N.Y. 1995)*.

Family court properly terminated a mother's parental rights to a child pursuant to *N.Y. Soc. Serv. Law § 384-b* on grounds of permanent neglect, because the mother failed to address the parenting deficiencies that led to the child's placement with an agency, and therefore the termination was in the best interests of the child. *Roniqua A. v Children's Aid Soc'y (In re Etajawa A.), 304 A.D.2d 477, 759 N.Y.S.2d 35, 2003 N.Y. App. Div. LEXIS 4253 (N.Y. App. Div. 1st Dep't 2003)*.

An order of termination of parental rights pursuant to *N.Y. Soc. Serv. Law § 384-b* was affirmed, as the children had been in foster care for almost five years and had developed a close relationship with a caring foster family, and the parents could not presently ameliorate the conditions that led to the children's placement. The parents had never changed their position from the beginning of neglect proceedings that they never neglected their children, that there was no domestic violence in the home, and that the original neglect petition was based on a fabrication by the older children. *Matter of Jennifer R., 29 A.D.3d 1005, 817 N.Y.S.2d 309, 2006 N.Y. App. Div. LEXIS 7167 (N.Y. App. Div. 2d Dep't)*, app. denied, *7 N.Y.3d 717, 827 N.Y.S.2d 688, 860 N.E.2d 990, 2006 N.Y. LEXIS 3722 (N.Y. 2006)*.

Even though a mother had successfully completed a substance abuse program, therapy, and parenting classes, her parental rights to her five children were properly terminated on the basis of permanent neglect because the mother failed to acknowledge the problem that led to her children's placement in foster care in the first place. *Matter of Alpacheta C., 41 A.D.3d 285, 839 N.Y.S.2d 43, 2007 N.Y. App. Div. LEXIS 7658 (N.Y. App. Div. 1st Dep't)*, app. denied, *9 N.Y.3d 812, 846 N.Y.S.2d 602, 877 N.E.2d 652, 2007 N.Y. LEXIS 3210 (N.Y. 2007)*.

Mother's parental rights were properly terminated on the basis of permanent neglect under *N.Y. Soc. Serv. Law § 384-b* because while the mother complied with the service plan and regular visitation, the mother failed to

acknowledge or gain adequate insight into the domestic violence problem that led to the foster care placement in the first place. *Matter of Myles N. v Denise N.N., 49 A.D.3d 381, 854 N.Y.S.2d 353, 2008 N.Y. App. Div. LEXIS 2080 (N.Y. App. Div. 1st Dep't)*, app. denied, *11 N.Y.3d 709, 868 N.Y.S.2d 601, 897 N.E.2d 1085, 2008 N.Y. LEXIS 3312 (N.Y. 2008)*.

Even though the parents participated in programs offered by the department of social services, they failed to address and overcome the specific personal and familial problems of neglect that initially endangered or proved harmful to their children; accordingly, pursuant to *N.Y. Soc. Serv. Law § 384-b*, their parental rights were properly terminated. *Matter of Bert M., 50 A.D.3d 1509, 856 N.Y.S.2d 758, 2008 N.Y. App. Div. LEXIS 4742 (N.Y. App. Div. 4th Dep't 2008)*, app. denied, *11 N.Y.3d 704, 864 N.Y.S.2d 807, 894 N.E.2d 1198, 2008 N.Y. LEXIS 2660 (N.Y. 2008)*, abrogated, *Matter of Hailey ZZ. (Ricky ZZ.), 19 N.Y.3d 422, 948 N.Y.S.2d 846, 972 N.E.2d 87, 2012 N.Y. LEXIS 1319 (N.Y. 2012)*.

Evidence that a child was injured or lost a significant amount of weight each time he was placed in the parents' care for short time period, and that they failed to acknowledge responsibility for this, established that they failed to plan for the child's future under *N.Y. Soc. Serv. Law § 384-b(7)(c)*; thus, their parental rights were properly terminated. *Matter of Abraham C. v Rosa C., 55 A.D.3d 1442, 865 N.Y.S.2d 820, 2008 N.Y. App. Div. LEXIS 7569 (N.Y. App. Div. 4th Dep't 2008)*, app. denied, *12 N.Y.3d 701, 876 N.Y.S.2d 348, 904 N.E.2d 503, 2009 N.Y. LEXIS 110 (N.Y. 2009)*.

140. — —Failure to attend or complete programs

In a Family Court proceeding involving three children, the children were properly adjudged to be permanently neglected and parental rights properly terminated, where there was clear and convincing proof that all relevant services within the county social services department's authority were made available in order to strengthen the parental relationship, that the parents failed to project a future course of action for the children, and that the parents refused counseling services. *In re John AA, 89 A.D.2d 738, 453 N.Y.S.2d 942, 1982 N.Y. App. Div. LEXIS 17865 (N.Y. App. Div. 3d Dep't 1982)*, app. denied, *58 N.Y.2d 605, 459 N.Y.S.2d 1029, 445 N.E.2d 656, 1983 N.Y. LEXIS 3708 (N.Y. 1983)*.

Clear and convincing evidence supported finding of permanent neglect and termination of parental rights in proceeding under CLS *Soc Serv § 384-b*, where it was shown (1) that respondent mother did not attend counselling for parental skills, chronic alcoholism, mental health, educational opportunities or employment services, (2) that she did not secure adequate housing, (3) that she maintained hostile attitude toward persons who sought to aid her and willfully refused to utilize services and resources of petitioner social services department despite Family Court orders to cooperate and participate, and (4) that petitioner's efforts to strengthen parental relationship and help respondent plan and provide for future of children were diligent and comprehensive. *In re Kevin PP., 154 A.D.2d 739, 545 N.Y.S.2d 950, 1989 N.Y. App. Div. LEXIS 12416 (N.Y. App. Div. 3d Dep't 1989)*.

Court properly terminated mother's parental rights based on permanent neglect of children where agency scheduled, attended and aided visitations and referred mother for parenting training, psychological evaluation, counseling and housing, but quality of mother's visitation was poor and she failed to take advantage of other services provided. *In re Tasha Monica B., 156 A.D.2d 247, 548 N.Y.S.2d 508, 1989 N.Y. App. Div. LEXIS 15497 (N.Y. App. Div. 1st Dep't 1989)*.

Mother's parental rights to her 2 infant daughters were properly terminated on ground of permanent neglect under CLS *Soc Serv § 384-b*, because she failed to plan for her children's future, where agency established goals for her and directed her to programs necessary to meet those goals, but mother refused to attend required drug and alcohol program, attended only 15 of required 33 parenting classes and 7 of 12 scheduled appointments with her parent aide, and thus did not take steps necessary to correct problems that led to removal of her children. *In re Josephine O., 245 A.D.2d 900, 666 N.Y.S.2d 812, 1997 N.Y. App. Div. LEXIS 13610 (N.Y. App. Div. 3d Dep't 1997)*, app. denied, *91 N.Y.2d 814, 676 N.Y.S.2d 127, 698 N.E.2d 956, 1998 N.Y. LEXIS 1373 (N.Y. 1998)*.

It was proper to terminate father's parental rights where, inter alia, he refused to participate in sex-offender program despite participating in assessment, having been offered 3 alternative programs and being apprised of ramifications of his failure to participate. *In re Sadie K., 249 A.D.2d 640, 671 N.Y.S.2d 175, 1998 N.Y. App. Div. LEXIS 3850 (N.Y. App. Div. 3d Dep't 1998)*.

Termination of mother's parental rights for permanent neglect was supported by finding that agency referred her to drug treatment programs that she failed to complete, and by agency's unsuccessful efforts to help mother meet her needs for housing and income. *In re Guardianship & Custody of Kamel Kevin J., 265 A.D.2d 189, 696 N.Y.S.2d 44, 1999 N.Y. App. Div. LEXIS 10156 (N.Y. App. Div. 1st Dep't)*, app. denied, *94 N.Y.2d 756, 703 N.Y.S.2d 73, 724 N.E.2d 769, 1999 N.Y. LEXIS 4000 (N.Y. 1999)*.

Mother's parental rights were properly terminated for permanent neglect, even though she maintained some contact with her child, where she failed to obtain employment or permanent housing, missed scheduled agency visits and home visits, rarely contacted agency, refused to disclose her location to agency, denied agency access to apartment that she finally disclosed, removed child from foster home without permission, and remained generally uncooperative. *In re Committment of Denaysia Shantel C., 266 A.D.2d 109, 698 N.Y.S.2d 664, 1999 N.Y. App. Div. LEXIS 12066 (N.Y. App. Div. 1st Dep't 1999)*.

Mother's parental rights were properly terminated for permanent neglect of her 2 sons where (1) agency referred her to substance abuse counselor who in turn referred her to inpatient program, but she left program after only 3 days, (2) although caseworker advised mother of visitation and other services offered through Catholic Charities, mother never pursued those services, (3) although mother once inquired about procuring adequate housing, caseworker's attempt to assist her in that regard was thwarted when caseworker was unable to locate her for several months, and (4) thus, further efforts by agency to help mother overcome her parental inadequacies—especially her substance abuse problem—would have been futile. *In re Markus R. , 273 A.D.2d 919, 708 N.Y.S.2d 792, 2000 N.Y. App. Div. LEXIS 6981 (N.Y. App. Div. 4th Dep't 2000)*.

Parents' parental rights to their 8 children were properly terminated for neglect where, despite agency's diligent efforts to effect reunification of children with their parents, including directing parents to participate in specified programs, parents did not participate in any of those programs and made no efforts to correct conditions that had led to placement of children in agency's custody. *In re James H., 281 A.D.2d 920, 721 N.Y.S.2d 849, 2001 N.Y. App. Div. LEXIS 2859 (N.Y. App. Div. 4th Dep't)*, app. dismissed, *96 N.Y.2d 896, 730 N.Y.S.2d 792, 756 N.E.2d 80, 2001 N.Y. LEXIS 1992 (N.Y. 2001)*.

Order finding children neglected and terminating a mother's parental rights was proper under circumstances in which the record showed that the department consistently and repeatedly offered the mother a variety of services aimed at ameliorating the very problems preventing the return of her children to her, but the mother failed to avail herself of most of the services provided by the department; the record showed the mother's unwillingness or inability to provide a stable home for her children and, such proof, coupled with her documented failure to abide by the terms and conditions set for reunification, fully supported the termination of parental rights. *Matter of Aldin H., 39 A.D.3d 914, 833 N.Y.S.2d 709, 2007 N.Y. App. Div. LEXIS 4141 (N.Y. App. Div. 3d Dep't 2007)*.

Mother's parental rights were properly terminated under *N.Y. Soc. Serv. Law § 384-b* based on a finding of permanent neglect due to failure to plan for her children's future as the mother, who was advised of the requirements in 1996, did not complete a drug treatment program or take a parenting skills class until 2002. *Matter of Tyria W., 41 A.D.3d 859, 838 N.Y.S.2d 184, 2007 N.Y. App. Div. LEXIS 8124 (N.Y. App. Div. 2d Dep't)*, app. denied, *9 N.Y.3d 811, 844 N.Y.S.2d 787, 876 N.E.2d 516, 2007 N.Y. LEXIS 3111 (N.Y. 2007)*.

Parents' rights were properly terminated based on neglect. Despite social services' diligent efforts over a long time, with court orders dating from 2001, the parents had not resolved the problems that led to the children's removal; the mother had not sought recommended mental health treatment and the father had not arranged for domestic violence training despite a recent history of domestic disturbances in the home; and providing a grace period as a final chance for reunification would have jeopardized the chances of permanency for the children, who had special needs. *Matter of Melissa DD., 45 A.D.3d 1219, 846 N.Y.S.2d 475, 2007 N.Y. App. Div. LEXIS 12203 (N.Y. App.*

Div. 3d Dep't 2007), app. denied, *10 N.Y.3d 701, 853 N.Y.S.2d 542, 883 N.E.2d 369, 2008 N.Y. LEXIS 148 (N.Y. 2008)*.

There was clear and convincing evidence of the parents' permanent neglect of their child because both parents failed to successfully complete parenting skills programs or gain insight into their previous behavior and the need for services and refused to take random drug tests. *Matter of Christopher S. (Elizabeth S.), 155 A.D.3d 630, 63 N.Y.S.3d 490, 2017 N.Y. App. Div. LEXIS 7650 (N.Y. App. Div. 2d Dep't 2017)*.

141. — —Failure to plan for future

Parents who took no effective steps to correct the conditions leading to removal or to advance a realistic, feasible plan and who continuously found fault with or no need for various programs and personnel, properly had parental rights terminated. *In re Nathaniel T., 67 N.Y.2d 838, 501 N.Y.S.2d 647, 492 N.E.2d 775, 1986 N.Y. LEXIS 17587 (N.Y. 1986)*.

In an action to terminate parental rights, the father's rights were properly terminated on the ground that he had permanently neglected his daughter where he failed, over a long period of time, to formulate any meaningful plan to facilitate the daughter's return to a stable home life, despite the fact that the father visited with the daughter regularly. *In re Sherryl, 92 A.D.2d 613, 460 N.Y.S.2d 63, 1983 N.Y. App. Div. LEXIS 16879 (N.Y. App. Div. 2d Dep't 1983)*.

The Family Court properly adjudicated a minor to be a permanently neglected child and properly terminated the natural mother's parental rights where the finding that the mother had failed to plan for the future of her child despite being physically and financially able to do so within the meaning of *Soc Serv Law §§ 384-b(7)(a)*, *384-b(7)(c)* was supported by evidence, inter alia, that, after a prolonged period of separation during which the mother's contacts with her child had been limited to occasional cards, letters, telephone calls, and infrequent visits, the mother had been unable, despite advice and encouragement from the local social services agency, to cope with, or even to recognize, the problems that had been created by the absence of a true parent-child relationship, that, as a result, the visits between mother and child had often been stressful for the child and the agency had been required to place certain restrictions on the visits in order to protect the child, and that the mother had made numerous and frequent changes of residence, which evidenced her inability to establish a stable home, and where the social services agency's diligent efforts to encourage and strengthen the parental relationship, as required by *Soc Serv Law § 384-b(7)(a)*, were sufficiently established in light of the fact that the mother had hampered such efforts by being absent from the State for substantial portions of the pertinent time period, and by taking up residence in neighboring counties despite the agency's repeated advice that she return to the county in which her child lived so as to be closer to her child, and so as to qualify for the various services offered by the agency. *In re Charlotte "II", 98 A.D.2d 859, 471 N.Y.S.2d 156, 1983 N.Y. App. Div. LEXIS 21175 (N.Y. App. Div. 3d Dep't 1983)*.

Family Court properly terminated parental rights where agency's efforts to encourage and strengthen parental relationship failed because respondent refused to cooperate with reasonable attempts that were made to assist and accommodate her, and was indifferent to need to plan for future of child. *In re Guardianship & Custody of Baby Boy G., 219 A.D.2d 549, 632 N.Y.S.2d 461, 1995 N.Y. App. Div. LEXIS 9597 (N.Y. App. Div. 1st Dep't 1995)*.

Termination of parental rights was appropriate where parents failed to plan for children's future, and children had made positive strides in their recovery process absent parents' neglectful behavior. *In re John F., 221 A.D.2d 858, 634 N.Y.S.2d 256, 1995 N.Y. App. Div. LEXIS 12344 (N.Y. App. Div. 3d Dep't 1995)*, app. denied, *88 N.Y.2d 811, 649 N.Y.S.2d 378, 672 N.E.2d 604, 1996 N.Y. LEXIS 3009 (N.Y. 1996)*.

Evidence warranted termination of father's parental rights on basis that he failed to plan for children's future, where he moved from agency-approved housing back into his trailer which was decrepit and lacked running water and other utilities, water supply (once connected) was contaminated, he failed to make any improvements to property, he was terminated from counseling because of his aggressive behavior toward counselor, and he showed no affection toward children during visits and failed to control their behavior. *In re Merle C.C., 222 A.D.2d 1061, 636*

N.Y.S.2d 519, 1995 N.Y. App. Div. LEXIS 14120 (N.Y. App. Div. 4th Dep't 1995), app. denied, *88 N.Y.2d 802, 644 N.Y.S.2d 689, 667 N.E.2d 339, 1996 N.Y. LEXIS 725 (N.Y. 1996)*.

Trial court properly granted an agency's application to terminate a mother's parental rights to a child pursuant to *N.Y. Soc. Serv. Law § 384-b*; the agency made diligent efforts to encourage and strengthen the parental relationship between her and her child pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)*, (f), and presented clear and convincing evidence of the mother's failure to plan for the child's future, and a suspended judgment would not have been in the best interests of the child, and therefore the trial court properly found that the termination of parental rights was in the best interest of the child. *In re Tabitha BB., 304 A.D.2d 875, 757 N.Y.S.2d 377, 2003 N.Y. App. Div. LEXIS 3510 (N.Y. App. Div. 3d Dep't 2003)*.

Trial court properly terminated a mother's parental rights to her child pursuant to *N.Y. Soc. Serv. Law § 384-b*; despite diligent efforts by an agency, the mother failed to adequately plan for her son's future and, therefore, the child was permanently neglected. *In re Ajuwon H., 18 A.D.3d 752, 796 N.Y.S.2d 108, 2005 N.Y. App. Div. LEXIS 5572 (N.Y. App. Div. 2d Dep't 2005)*.

Father's parental rights in his three children were terminated under *N.Y. Soc. Serv. Law § 384-b* where he permanently neglected them despite efforts by the county department of social services to strengthen his parent-children relationships, he failed to realistically plan for their future where his plans were changing, inconsistent, and unworkable, the foster parents had agreed to adopt the two younger children, and the oldest child was almost 18 years of age; accordingly, termination of his parental rights was in the children's best interests. *Matter of Antonio EE. v Schoharie County Dept. of Social Servs., 38 A.D.3d 944, 831 N.Y.S.2d 270, 2007 N.Y. App. Div. LEXIS 2236 (N.Y. App. Div. 3d Dep't 2007)*.

Because the Department of Social Services made diligent efforts to encourage and strengthen the mother's relationship with the children pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)*, the mother failed to realistically plan for the future of the children, and there were concerns about her parenting and about the safety of the children, the mother's parental rights were properly terminated based on the children being permanently neglected. *Matter of Nahia M., 39 A.D.3d 918, 833 N.Y.S.2d 711, 2007 N.Y. App. Div. LEXIS 4142 (N.Y. App. Div. 3d Dep't 2007)*.

Termination of a father's parental rights (*N.Y. Soc. Serv. Law § 384-b*) on the ground of permanent neglect was affirmed; despite an agency's efforts, the father failed to plan for the child's future, the paternal grandmother was not a viable custodial resource, and the father failed to provide any alternative plan for the child's return. The child had bonded with the foster family. *Matter of Jeremy D.R., 40 A.D.3d 764, 836 N.Y.S.2d 626, 2007 N.Y. App. Div. LEXIS 5873 (N.Y. App. Div. 2d Dep't 2007)*.

In a proceeding under *N.Y. Soc. Serv. Law § 384-b*, as the evidence established that a father had made little or no progress in planning for the children, and that the children were thriving in their care of their foster parent, who intended to adopt them, the order terminating his parental rights and freeing the children for adoption was in their best interests. Matter of *Matter of Jyashia RR. (John VV.), 92 A.D.3d 982, 938 N.Y.S.2d 645, 2012 N.Y. App. Div. LEXIS 734 (N.Y. App. Div. 3d Dep't 2012)*.

142. — —Failure to maintain contact or visit

The trial court properly terminated a mother's parental rights to her child based on permanent neglect under *Soc Serv Law § 384-b(4)(d)(7)* where, despite diligent efforts by the petitioning social services agency to strengthen the parental relationship, the mother failed to realistically plan for the future of herself and her child in that she maintained only infrequent contacts with the child, and failed to follow through on suggestions and efforts made by the agency staff to reunite her with her child; additionally, the agency had ceased its efforts at reunification, and commenced the termination proceeding, only after a trial period it had arranged, during which the child lived with the mother and her boyfriend, had failed, and the mother had returned the child to her foster parents and failed to return to care for her. *In re Guardianship of Star Leslie W., 63 N.Y.2d 136, 481 N.Y.S.2d 26, 470 N.E.2d 824, 1984 N.Y. LEXIS 4607 (N.Y. 1984)*.

Termination of parental rights on the ground of permanent neglect is proper where, for a period of over one year the natural mother did not maintain any contact with or plan for the future of her child although she was physically and financially able to, the child had previously been adjudged an abused child, and the agency in whose custody the child had been placed had diligently sought to encourage and foster the parental relationship and decided to discourage further visitation in the best interests of the child only after a significant expenditure of time and money to foster the parental relationship and after the agency received evidence that the natural mother abused all her children; the evidence supports the conclusion that continued contact by the child with her mother would have been highly detrimental to her physical, psychological and emotional well-being and development. *In re K., 68 A.D.2d 482, 417 N.Y.S.2d 696, 1979 N.Y. App. Div. LEXIS 10967 (N.Y. App. Div. 1st Dep't 1979)*.

The Family Court properly transferred guardianship and custody of a child to the county department of social services and permanently terminated custody of the natural mother over the child, where the record demonstrated by clear and convincing evidence that the mother had failed substantially and continuously to maintain contact with or plan for her son's future although she was physically and financially able to do so (*Soc Serv Law § 384-b(7)*), and where, despite the diligent effort by the department, the mother failed over a long period of time to facilitate her son's return to a stable home life. *In re Daniel C.R., 99 A.D.2d 813, 472 N.Y.S.2d 143, 1984 N.Y. App. Div. LEXIS 17204 (N.Y. App. Div. 2d Dep't 1984)*.

Parental rights of father were properly terminated on finding of permanent neglect where he had only sporadic contact with children, and no contact with child care agency caseworker during 4-year period prior to filing of petition, although he knew or should have known that children were in kinship foster care with maternal grandmother. *In re Crystal K., 204 A.D.2d 105, 611 N.Y.S.2d 528, 1994 N.Y. App. Div. LEXIS 4706 (N.Y. App. Div. 1st Dep't 1994)*.

Court properly terminated mother's parental rights where (1) for approximate 3-year period, mother visited child 4 to 6 times out of 454 scheduled visits, (2) her caseworker subsequently offered transportation and explained need for consistent and meaningful visitation, and (3) despite more consistent visitation, mother steadfastly refused to attend counseling or complete parenting course. *In re Rita VV., 209 A.D.2d 866, 619 N.Y.S.2d 218, 1994 N.Y. App. Div. LEXIS 11619 (N.Y. App. Div. 3d Dep't 1994)*, app. denied, *85 N.Y.2d 811, 631 N.Y.S.2d 287, 655 N.E.2d 400, 1995 N.Y. LEXIS 2125 (N.Y. 1995)*.

It was proper to terminate mother's parental rights where she only visited with child 4 times during 25-month period from time of child's placement in foster care, and mother failed, for over year from child's placement, to attend drug treatment program or parenting skills program, although agency repeatedly referred her to such programs. *In re Rondale L., 247 A.D.2d 617, 669 N.Y.S.2d 365, 1998 N.Y. App. Div. LEXIS 1722 (N.Y. App. Div. 2d Dep't 1998)*.

Termination of mother's parental rights was appropriate where she repeatedly failed to maintain contact with child, by arriving late or not at all for 85 percent of scheduled visits, despite agency's diligent efforts to arrange visitation and to impress upon her importance of punctuality and regularity. *In re Christeena Marie B., 249 A.D.2d 159, 671 N.Y.S.2d 252, 1998 N.Y. App. Div. LEXIS 4418 (N.Y. App. Div. 1st Dep't 1998)*.

Father's parental rights were properly terminated for permanent neglect under CLS *Soc Serv § 384-b(7)* where, despite agency's diligent effort to strengthen his relationship with his children, he failed to maintain sufficient and regular contact with them, visited them only 8 times in 15 months, failed to take measures necessary to plan for their future, and consistently refused to provide agency with proof of his completion of drug treatment program, parenting skills program, and domestic violence counseling program. *In re Darlene I., 251 A.D.2d 16, 674 N.Y.S.2d 12, 1998 N.Y. App. Div. LEXIS 6403 (N.Y. App. Div. 1st Dep't)*, app. denied, *92 N.Y.2d 815, 683 N.Y.S.2d 759, 706 N.E.2d 747, 1998 N.Y. LEXIS 4119 (N.Y. 1998)*.

Mother's parental rights were properly terminated where she failed to maintain contact with her children or with social service agency for well more than 6-month period preceding filing of petition, and her efforts at drug treatment were inadequate to warrant different result. *In re Olen Jackson H., 251 A.D.2d 136, 674 N.Y.S.2d 309, 1998 N.Y. App. Div. LEXIS 6926 (N.Y. App. Div. 1st Dep't)*, app. denied, *92 N.Y.2d 816, 683 N.Y.S.2d 759, 706 N.E.2d 747, 1998 N.Y. LEXIS 4061 (N.Y. 1998)*.

Court properly terminated mother's parental rights 12 months after child's original placement, where mother missed 22 of 35 scheduled visits for which transportation was either provided or offered, she failed to explain why she missed visits and did not notify petitioner that she would not keep scheduled appointments beyond explaining that she was in jail for 2 months, she refused to submit to drug or alcohol evaluation, she submitted to psychological evaluation but refused to follow treatment recommendations, she attended only one of 3 scheduled formal service plan reviews, and her hearing testimony offered no hint of any realistic plan or present capacity to care for her child. *In re Anthony "OO", 258 A.D.2d 788, 685 N.Y.S.2d 494, 1999 N.Y. App. Div. LEXIS 1380 (N.Y. App. Div. 3d Dep't 1999)*.

There was sufficient evidence to support termination of a mother's rights for failure to maintain contact with her children where the record showed that despite a child welfare agency's active encouragement and assistance, she had visited her children only a very few times in the preceding year. *In re Crystal Marie D. (Anonymous), 292 A.D.2d 382, 738 N.Y.S.2d 611, 2002 N.Y. App. Div. LEXIS 2184 (N.Y. App. Div. 2d Dep't 2002)*.

It was in the child's best interests for the father's parental rights to be terminated and the child freed for adoption because the child had been in the same foster home for nearly his entire life, and the father had seen the child in person only once or twice in the two years before the dispositional hearing; the father's failure to maintain substantial and frequent contact with the child for at least one year was sufficient to support the finding of permanent neglect *Matter of Dariuss M. D.-B., 2020 N.Y. App. Div. LEXIS 5923 (Darnell B. 2020)*.

143. — —Residing or associating with inappropriate person

Court would affirm order adjudicating 2 children permanently neglected and terminating mother's parental rights where (1) mother was offered plan drafted by department of social services that was well within her capabilities, requiring, inter alia, that she attend classes in parenting skills and divorce current husband, (2) she satisfied only one condition of plan by divorcing children's father, but thereafter remarried him, and (3) after children were removed from her, mother took no significant steps toward planning for their future or correcting conditions necessitating their removal. *In re Justin EE, 153 A.D.2d 772, 544 N.Y.S.2d 892, 1989 N.Y. App. Div. LEXIS 10991 (N.Y. App. Div. 3d Dep't 1989)*, app. denied, *75 N.Y.2d 704, 552 N.Y.S.2d 109, 551 N.E.2d 602, 1990 N.Y. LEXIS 92 (N.Y. 1990)*.

Mother's parental rights were properly terminated due to her failure to plan for children's future for 5-year period during which they were in custody of social services agency where mother was encouraged by agency to engage in parenting and counseling services, she attended some counseling sessions but failed to actually participate, she demonstrated complete unwillingness or inability to deal with "destructive tendencies" in her life (her husband's alcoholism and physical abuse), and when faced with choice between her marriage and her children she chose her marriage. *In re Michael BB., 206 A.D.2d 600, 614 N.Y.S.2d 470, 1994 N.Y. App. Div. LEXIS 7370 (N.Y. App. Div. 3d Dep't 1994)*.

Court properly terminated mother's parental rights where (1) she continued her relationship with her paramour, who was not permitted by court order to have any contact with child, (2) mother had, in fact, relocated to another city to be near paramour, (3) she failed to secure adequate housing for herself and her child, and her failure to pay rent and utilities caused her to lose variety of housing accommodations, (4) she aborted her counseling sessions for extensive period when she moved near her paramour, and (5) she was resistent to caseworker services. *In re Rachel WW., 208 A.D.2d 997, 617 N.Y.S.2d 214, 1994 N.Y. App. Div. LEXIS 9694 (N.Y. App. Div. 3d Dep't 1994)*.

Termination of father's parental rights was appropriate where agency made diligent efforts to encourage and strengthen parental relationship, but father nevertheless failed to plan for future of children for more than one year by continuing to associate with children's mother, despite her negative impact on children, and failing to avail himself of resources provided by agency. *In re Kimberly Rosemarie S., 211 A.D.2d 594, 621 N.Y.S.2d 614, 1995 N.Y. App. Div. LEXIS 834 (N.Y. App. Div. 1st Dep't)*, app. denied, *85 N.Y.2d 809, 628 N.Y.S.2d 52, 651 N.E.2d 920, 1995 N.Y. LEXIS 1507 (N.Y. 1995)*.

Termination of mother's parental rights was proper where she admitted that she made no effort to contact her children, who were in foster care, for 8-month period, she acknowledged that she failed to successfully complete prior drug rehabilitation program and recently had been convicted of, inter alia, possession of controlled substance, and she conceded that she had not terminated her abusive relationship with her boyfriend which, together with her substance abuse, were very obstacles preventing return of her children. *In re Semonae YY., 239 A.D.2d 716, 657 N.Y.S.2d 488, 1997 N.Y. App. Div. LEXIS 5256 (N.Y. App. Div. 3d Dep't 1997)*.

In permanent neglect proceeding, Family Court did not abuse its discretion in terminating respondent's parental rights based on her repeated refusal to forego relationship with her abusive boyfriend for benefit of her children. *In re Angela "LL", 287 A.D.2d 823, 731 N.Y.S.2d 288, 2001 N.Y. App. Div. LEXIS 9716 (N.Y. App. Div. 3d Dep't 2001)*.

Children's best interests required termination of mother's parental rights where (1) children's father had been convicted of second degree assault for injuries inflicted on 2 of their 3 children, but mother nevertheless hoped to reunite with him when he was released from prison, (2) she failed to address her total domination by children's father, his culpability in neglecting and abusing children, and her own obligation to protect and care for children, and (3) she refused to accept responsibility for her role in neglecting and abusing all 3 children. *In re Jamal "B.", 287 A.D.2d 898, 731 N.Y.S.2d 567, 2001 N.Y. App. Div. LEXIS 9975 (N.Y. App. Div. 3d Dep't 2001)*, app. denied, *97 N.Y.2d 609, 739 N.Y.S.2d 98, 765 N.E.2d 301, 2002 N.Y. LEXIS 77 (N.Y. 2002)*.

Mother who lived with a sex offender failed to develop a plan for her children, ages 4 and 5, as required by *Social Services Law § 384-b(7)(c)*. Although she contended she was moving, the new residence was not yet habitable, and she had not informed her proposed housemate, whose last name she did not know, of the children's special needs. *Matter of Michael JJ. (Gerald JJ.), 101 A.D.3d 1288, 956 N.Y.S.2d 620, 2012 N.Y. App. Div. LEXIS 8561 (N.Y. App. Div. 3d Dep't 2012)*, app. denied, *20 N.Y.3d 860, 961 N.Y.S.2d 834, 985 N.E.2d 430, 2013 N.Y. LEXIS 264 (N.Y. 2013)*.

144. — —Drug addiction

Evidence was sufficient to establish that child was permanently neglected, and to support termination of mother's parental rights, where (1) child was born addicted to cocaine and had resided with foster parents since birth, and (2) mother was uncooperative with agency and did not seriously address her drug problem or recognize her responsibility to visit child. *In re Michael M., 172 A.D.2d 152, 567 N.Y.S.2d 693, 1991 N.Y. App. Div. LEXIS 4047 (N.Y. App. Div. 1st Dep't 1991)*.

Parental rights of mother were properly terminated where agency referred mother to numerous drug rehabilitation programs and otherwise made diligent efforts to encourage her to overcome her drug addiction, but mother failed to complete any of programs because of her own lack of perseverance, rather than because of lack of Medicaid funds. *In re Paul H., 208 A.D.2d 402, 617 N.Y.S.2d 298, 1994 N.Y. App. Div. LEXIS 9649 (N.Y. App. Div. 1st Dep't 1994)*.

Family Court properly terminated mother's parental rights where (1) she had long history of admitted and discovered illegal drug use and many failed attempts at rehabilitation, (2) her attendance at various drug rehabilitation programs was generally sporadic, (3) her efforts to control her habit were marked by serious lapses, and (4) she tested positive for cocaine use 6 months after petition to terminate her parental rights was filed. *ERROR:0013**In re Alfred B., 212 A.D.2d 529, 622 N.Y.S.2d 297, 1995 N.Y. App. Div. LEXIS 1040 (N.Y. App. Div. 2d Dep't 1995)*.

In permanent neglect proceeding, court properly terminated father's parental rights although he was cooperative and made some progress, as he failed to overcome primary problem that led to child's removal where, during relevant time period, he tested positive for drugs twice and admitted to using cocaine. *In re Kelly G., 223 A.D.2d 878, 636 N.Y.S.2d 225, 1996 N.Y. App. Div. LEXIS 359 (N.Y. App. Div. 3d Dep't)*, app. denied, *88 N.Y.2d 801, 644 N.Y.S.2d 493, 666 N.E.2d 1366, 1996 N.Y. LEXIS 1094 (N.Y. 1996)*.

Permanent neglect finding, and termination of parental rights to pave way for adoption, was justified by evidence that Department of Social Services attempted to help father deal with his many problems by, inter alia, furnishing residential drug rehabilitation programs to him, but that he repeatedly relapsed into drug use, and that he finally began to show some interest in dealing with his addictions (after conclusion of fact-finding hearing) but still had done little to confront his tendency for domestic violence, unemployment and homelessness. *In re A. Children, 236 A.D.2d 271, 653 N.Y.S.2d 342, 1997 N.Y. App. Div. LEXIS 1289 (N.Y. App. Div. 1st Dep't 1997)*.

Child was permanently neglected, warranting termination of mother's parental rights, even though mother maintained contact with child, where mother failed to follow through with substance abuse counseling and treatment programs arranged for her and did not pursue necessary mental health counseling, she twice tested positive for cocaine during relevant period, child had tested positive for cocaine at birth, and mother's cocaine addiction was problem that led to child's removal in first instance. *In re Torrin G., 240 A.D.2d 820, 658 N.Y.S.2d 712, 1997 N.Y. App. Div. LEXIS 6530 (N.Y. App. Div. 3d Dep't 1997)*.

Mother's failure to complete drug rehabilitation program showed her failure to plan for her child's discharge to her custody, and thus her parental rights were properly terminated. *In re Vincent M., 255 A.D.2d 515, 680 N.Y.S.2d 629, 1998 N.Y. App. Div. LEXIS 12602 (N.Y. App. Div. 2d Dep't 1998)*, app. denied, *93 N.Y.2d 816, 697 N.Y.S.2d 563, 719 N.E.2d 924, 1999 N.Y. LEXIS 2798 (N.Y. 1999)*.

Court properly terminated mother's parental rights where her drug use, which had required child's placement in foster care from age of 3 weeks, had continued despite agency's diligent efforts to help her deal with it, and responsible foster sister was waiting to adopt child. *In re Guardianship of David J., 260 A.D.2d 279, 688 N.Y.S.2d 543, 1999 N.Y. App. Div. LEXIS 4178 (N.Y. App. Div. 1st Dep't 1999)*.

Although respondent mother apparently made some progress in her most recent drug program, evidence supported termination of her parental rights where (1) she had permanently neglected her children by repeated drug use, which required them to be placed in foster care from time they left hospital after their births, (2) she attended only 5 visits with them in 20-month period preceding fact-finding hearing, and (3) foster mother, who wanted to adopt children, provided quality care for their special needs. *Yadira W. v Leake & Watts Servs., Inc., 261 A.D.2d 346, 691 N.Y.S.2d 421, 1999 N.Y. App. Div. LEXIS 5801 (N.Y. App. Div. 1st Dep't 1999)*, review or reh'g denied, *In re Yadira W. (Norma Jean W. v Leake & Watts Servs.), 94 N.Y.2d 760, 706 N.Y.S.2d 80, 727 N.E.2d 577, 2000 N.Y. LEXIS 123 (N.Y. 2000)*.

Mother's parental rights were properly terminated, and child was properly freed for adoption, where mother's recent efforts at drug rehabilitation, viewed in context of long history of drug abuse and attendant child neglect, afforded little more than hope that she might eventually be able to care for child. *In re Committment of Guardianship of Joshua Ramon C., 266 A.D.2d 37, 698 N.Y.S.2d 28, 1999 N.Y. App. Div. LEXIS 11387 (N.Y. App. Div. 1st Dep't 1999)*.

Mother's parental rights were properly terminated for permanent neglect of her 2 sons where (1) agency referred her to substance abuse counselor who in turn referred her to inpatient program, but she left program after only 3 days, (2) although caseworker advised mother of visitation and other services offered through Catholic Charities, mother never pursued those services, (3) although mother once inquired about procuring adequate housing, caseworker's attempt to assist her in that regard was thwarted when caseworker was unable to locate her for several months, and (4) thus, further efforts by agency to help mother overcome her parental inadequacies—especially her substance abuse problem—would have been futile. *In re Markus R. , 273 A.D.2d 919, 708 N.Y.S.2d 792, 2000 N.Y. App. Div. LEXIS 6981 (N.Y. App. Div. 4th Dep't 2000)*.

Mother's failure to address continuing drug problems over an extended period and with sufficient agency support justified termination of parental rights on grounds of failure to plan for her children's future. *In re Crystal Marie D. (Anonymous), 292 A.D.2d 382, 738 N.Y.S.2d 611, 2002 N.Y. App. Div. LEXIS 2184 (N.Y. App. Div. 2d Dep't 2002)*.

Where father did not address his substance abuse problems or maintain regular contact with his children during four years of proceedings on neglect and termination of parental rights (TPR), the family court did not abuse its

discretion in refusing to suspend the TPR judgment based on the father's last minute efforts at drug abuse rehabilitation; moreover, though some evidence existed of a few positive interactions between the father and the children, ample recent evidence existed of a breakdown in the consistency of his visits with them. Ample evidence supported the family court's termination of parental rights decision where a permanent neglect finding had been made due to the father's history of substance abuse and his failures to adequately address that abuse, maintain a safe and appropriate home, complete classes and programs required by the family court, and maintain consistent contact with the children. *Matter of Joshua BB. v Daryl BB., 27 A.D.3d 867, 811 N.Y.S.2d 178, 2006 N.Y. App. Div. LEXIS 2679 (N.Y. App. Div. 3d Dep't 2006)*.

Orders adjudicating a mother's child permanently neglected and terminating the mother's parental rights were proper, as the mother did not make a meaningful effort to address the mother's addiction to illegal drugs and failed to adhere to a visitation schedule. Matter of *Matter of James WW. (Tara XX.), 100 A.D.3d 1276, 955 N.Y.S.2d 424, 2012 N.Y. App. Div. LEXIS 8144 (N.Y. App. Div. 3d Dep't 2012)*, app. denied, *20 N.Y.3d 1057, 961 N.Y.S.2d 831, 985 N.E.2d 427, 2013 N.Y. LEXIS 250 (N.Y. 2013)*.

145. — —Alcohol abuse

Family Court properly terminated mother's parental rights where she had been unable or unwilling to overcome or confront her problems with alcohol, thus preventing her from establishing stable home environment which was critically important to children's developmental needs. *In re Grace Q., 208 A.D.2d 976, 617 N.Y.S.2d 392, 1994 N.Y. App. Div. LEXIS 9697 (N.Y. App. Div. 3d Dep't 1994)*.

Court properly terminated father's parental rights where he was unable to take custody of child due to his admitted alcohol abuse, he was provided with alcohol rehabilitation (which included in-patient treatment, transportation, counseling, and other services), and he continued to abuse alcohol and failed to cooperate with treatment, and even appeared at court on several occasions smelling strongly of alcohol. *In re Jessica FF., 211 A.D.2d 948, 621 N.Y.S.2d 722, 1995 N.Y. App. Div. LEXIS 404 (N.Y. App. Div. 3d Dep't 1995)*.

Court properly terminated mother's parental rights where she failed to complete alcohol rehabilitation programs, failed to attend court-ordered counseling sessions, missed ½ of her scheduled visitations with her children, and failed to make plans for her children's return, despite agency's diligent efforts. *In re Joy H, 219 A.D.2d 761, 631 N.Y.S.2d 200, 1995 N.Y. App. Div. LEXIS 9259 (N.Y. App. Div. 3d Dep't 1995)*.

Father's parental rights were properly terminated for permanent neglect where (1) agency exerted diligent efforts to strengthen parental relationship, (2) agency's plan addressed primary obstacles to family reunification, including alcoholism, domestic violence, and sexual abuse, (3) father did not follow through on agency's treatment recommendations and thus failed to plan for child's future, and (4) termination of parental rights for purpose of adoption was in child's best interests. *In re Kayesha Eugena Elaine McL., 273 A.D.2d 65, 708 N.Y.S.2d 870, 2000 N.Y. App. Div. LEXIS 6333 (N.Y. App. Div. 1st Dep't 2000)*.

Based on evidence of children's bonding with their foster parents, strong possibility of permanent adoptive relationship, and father's refusal to come to terms with his alcoholism and parenting inadequacies, Family Court did not err in terminating parental relationship. *In re Michael "F", 285 A.D.2d 694, 726 N.Y.S.2d 810, 2001 N.Y. App. Div. LEXIS 7038 (N.Y. App. Div. 3d Dep't)*, app. denied, *96 N.Y.2d 722, 733 N.Y.S.2d 374, 759 N.E.2d 373, 2001 N.Y. LEXIS 3177 (N.Y. 2001)*.

Family court properly terminated a mother's parental rights to her five oldest children pursuant to *N.Y. Soc. Serv. Law § 384-b* on the basis of neglect, because the mother had failed to complete court-ordered programs, including substance abuse treatment, for over two years after the programs were imposed, and more than a year would pass before all the children could be returned to the mother even if she maintained her sobriety, and therefore a suspended judgment pursuant to *N.Y. Fam. Ct. Act § 633* would not have been in the best interests of the children. *In re Ada M.R., 306 A.D.2d 920, 760 N.Y.S.2d 802, 2003 N.Y. App. Div. LEXIS 6834 (N.Y. App. Div. 4th Dep't)*, app. denied, *100 N.Y.2d 509, 766 N.Y.S.2d 162, 798 N.E.2d 346, 2003 N.Y. LEXIS 2247 (N.Y. 2003)*.

146. — —Mental incapacity

A mother's and a father's parental rights would be terminated pursuant to *Soc Serv Law § 384-b*, where the record established by clear and convincing evidence that the mother, by reason of her mental illness, was, and for the foreseeable future would be, unable to provide proper and adequate care for her child, and that the mother permanently neglected the child by failing to plan for its future for a period of more than one year, and where uncontradicted testimony established abandonment by the father within the statutory standard. *In re Susan F., 106 A.D.2d 282, 482 N.Y.S.2d 489, 1984 N.Y. App. Div. LEXIS 21348 (N.Y. App. Div. 1st Dep't 1984)*.

Determination terminating mother's parental rights due to permanent neglect resulting from mental illness was not supported by clear and convincing proof that mother, for foreseeable future, would be unable to provide proper and adequate care for children, even though court-appointed psychiatrist testified that mother suffered from chronic undifferentiated schizophrenia manifested by visual and auditory hallucinations, that he did not believe she was presently able to care for children, and that her prognosis was "very guarded," since he could not say with any degree of medical certainty whether her condition could improve to such extent that she could care for children; moreover, mother's treating psychiatrist and psychologist rejected diagnosis of schizophrenia, diagnosed mother as suffering from major depression with psychotic features, and expressed opinion that with proper treatment and support from family she would likely be improved enough to care for children within one to 2 years. *In re Christina C., 185 A.D.2d 843, 586 N.Y.S.2d 990, 1992 N.Y. App. Div. LEXIS 9883 (N.Y. App. Div. 2d Dep't 1992)*.

Termination of mother's parental rights under CLS *Soc Serv § 384-b(7)(a)* was justified where she was mentally retarded with IQ of 58, county social services department established appropriate service plan that included homemaker services, caseworker counseling, Broome Developmental services, and programs for retarded citizens; although mother was willing to participate in many of those programs, her unwillingness to acknowledge that she was mentally retarded or that she sexually abused her daughter kept her from making any meaningful progress, she permitted threatening and abusive boyfriend to live with her despite department's contrary recommendation, she failed to plan for her children's future for more than one year, and she was either unable or unwilling to make meaningful lifestyle changes necessary for their safe return to her. *In re Heather E., 238 A.D.2d 678, 656 N.Y.S.2d 410, 1997 N.Y. App. Div. LEXIS 3745 (N.Y. App. Div. 3d Dep't 1997)*.

Finding of permanent neglect terminating mother's parental rights was supported by her failure to attend required programs, hostility toward caseworkers and neglect/foster care process, and poor visitation record, combined with uncontroverted expert testimony that she suffered from permanent mental illness and retardation and that child would be at risk if placed in her care. *In re April B., 242 A.D.2d 926, 663 N.Y.S.2d 458, 1997 N.Y. App. Div. LEXIS 10507 (N.Y. App. Div. 4th Dep't 1997)*.

Mother's parental rights were properly terminated where court-appointed psychiatrist, after conducting interviews and reviewing medical reports, diagnosed her as suffering from chronic schizophrenia and concluded that her prognosis for recovery was poor, and that children, if returned to her, would "most certainly be neglected." *In re Jessica N., 265 A.D.2d 800, 695 N.Y.S.2d 842, 1999 N.Y. App. Div. LEXIS 9821 (N.Y. App. Div. 4th Dep't 1999)*, app. denied, *94 N.Y.2d 758, 705 N.Y.S.2d 5, 726 N.E.2d 482, 2000 N.Y. LEXIS 28 (N.Y. 2000)*.

Mother's parental rights were properly terminated on ground that she was presently, and for foreseeable future would be, unable to care for her children by reason of mental retardation where (1) court-appointed psychologist testified that, based on her examinations of mother and review of mother's medical records, mother was suffering from mental retardation, and (2) mother's condition was long-standing and included history of poor judgment. *In re Tysheeka J., 281 A.D.2d 626, 722 N.Y.S.2d 258, 2001 N.Y. App. Div. LEXIS 3125 (N.Y. App. Div. 2d Dep't 2001)*.

Mildly retarded parents permanently neglected their 5-year-old child by their continuing failure to properly address her medical needs, and thus their parental rights were properly terminated, where (1) despite agency's diligent efforts, they failed to acquire necessary skills to competently deal with child's severe asthma, and (2) although transportation was provided, mother missed about $^{1}/_{3}$, and father about ⅔ , of scheduled visitation/medical training

sessions. *In re Charlene "E", 281 A.D.2d 659, 721 N.Y.S.2d 164, 2001 N.Y. App. Div. LEXIS 2033 (N.Y. App. Div. 3d Dep't 2001)*.

Orders finding that a mother permanently neglected her child and terminating her parental rights were affirmed; the evidence presented at a fact-finding hearing established that the Suffolk County Department of Social Services (DSS) made diligent efforts to assist her in planning for the future of her child (*N.Y. Soc. Serv. Law § 384-b*). The evidence established that the DSS provided the mother with various referrals, and although the mother testified that she completed a parenting skills course, she did not comply with the entirety of the court's order, which included, inter alia, undergoing psychotherapy, obtaining a mental health and forensic parenting evaluation, and completing a domestic violence course. *Matter of Starcy Marie G., 29 A.D.3d 581, 813 N.Y.S.2d 781, 2006 N.Y. App. Div. LEXIS 5997 (N.Y. App. Div. 2d Dep't 2006)*.

Father failed to plan for the future of his children (*N.Y. Soc. Serv. Law § 384-b(7)(a)*, (c)) and termination of his parental rights was appropriate, as the father did not engage in regular visitation with the children or satisfactorily complete mental health, domestic violence, and substance abuse counseling, despite an agency's repeated encouragement and support. He was dismissed from his mental health treatment program for lack of attendance, stopped taking medication for his mental illness, and refused to engage in sexual abuse counseling or drug screens. *Matter of Destiny CC. v Reberick CC., 40 A.D.3d 1167, 835 N.Y.S.2d 515, 2007 N.Y. App. Div. LEXIS 5469 (N.Y. App. Div. 3d Dep't 2007)*.

There was clear and convincing evidence to support a family court's determination that children were permanently neglected and that their parents' rights over them should be terminated pursuant to *N.Y. Soc. Serv. Law § 384-b(3)(g)*, (4)(d), and (7), as the county social service agency made diligent efforts to strengthen the parent-child relationship by offering various services, but the parents failed to show improvement with respect to substance abuse and mental health issues. *Matter of Laelani B. v Dawn C., 59 A.D.3d 880, 873 N.Y.S.2d 378, 2009 N.Y. App. Div. LEXIS 1409 (N.Y. App. Div. 3d Dep't 2009)*.

Evidence supported termination of mother's parental rights to her children because at the time of hearing, mother resided in a supportive facility for adults with mental-health challenges and was not employed, and that the expert psychiatrist testified that the children would be neglected if left in her care, for the foreseeable future. *Matter of Margaret K.K. (Alicia A.), 189 A.D.3d 834, 135 N.Y.S.3d 144, 2020 N.Y. App. Div. LEXIS 7382 (N.Y. App. Div. 2d Dep't 2020)*.

147. — —Abuse

Termination of parental rights is warranted where parent commits number of acts threatening life, health and safety of children, such as leaving small child unattended and leaving children in care of intoxicated person in tavern. *In re Kevin R., 112 A.D.2d 462, 490 N.Y.S.2d 875, 1985 N.Y. App. Div. LEXIS 55824 (N.Y. App. Div. 3d Dep't 1985)*, app. denied, *67 N.Y.2d 602, 499 N.Y.S.2d 1027, 490 N.E.2d 556, 1986 N.Y. LEXIS 16688 (N.Y. 1986)*.

Parental rights were properly terminated where parents failed to avail themselves of offered parenting classes, counseling, visits with child's foster mother, vocational programs, and literacy tutoring despite repeated letters and phone calls from caseworkers during period of approximately one year following child's hospital admission at 2 months of age for multiple rib fractures, pneumonia, and broken arm, and where testimony of clinical psychologist was that parents never admitted they had problem and ascribed infant's injuries to accidents inconsistent with trauma actually incurred. *In re Jessica MM., 122 A.D.2d 462, 504 N.Y.S.2d 850, 1986 N.Y. App. Div. LEXIS 59754 (N.Y. App. Div. 3d Dep't 1986)*.

Appellants' parental rights were properly terminated where, despite diligent efforts of agency, they failed to attend therapy and failed to participate in alcohol treatment program, and children, who were 12 and 13 at time of dispositional hearing, had been subjected to mental and physical abuse and expressed preference to avoid contact with appellants. *In re Victor James L., 208 A.D.2d 403, 618 N.Y.S.2d 213, 1994 N.Y. App. Div. LEXIS 9642 (N.Y. App. Div. 1st Dep't 1994)*.

Court properly terminated mother's parental rights for failure to plan for children's future where (1) children were removed from their home because of their father's acts of domestic violence, physical abuse and suspected sexual abuse, and (2) mother, rather than learning to act as protective parent, repeatedly "made up" with father and secretly permitted him (and other paramours) to reside with her and be present with children during periods of visitation. *In re Christopher II, 222 A.D.2d 900, 635 N.Y.S.2d 747, 1995 N.Y. App. Div. LEXIS 13318 (N.Y. App. Div. 3d Dep't 1995)*, app. denied, *87 N.Y.2d 812, 644 N.Y.S.2d 145, 666 N.E.2d 1059, 1996 N.Y. LEXIS 1124 (N.Y. 1996)*.

Family Court properly adjudicated children to be neglected and terminated parental rights where parents failed to cooperate in agency's efforts to strengthen parental relationship and had history of unstable lifestyle, including patterns of marital separation under violent and abusive circumstances. *In re Daniel AA., 241 A.D.2d 703, 659 N.Y.S.2d 960, 1997 N.Y. App. Div. LEXIS 7436 (N.Y. App. Div. 3d Dep't 1997)*.

Family Court properly terminated mother's parental rights under CLS *Soc Serv § 384-b* on ground of permanent neglect of her son where mother was charged with committing various sex offenses against son, she was serving Pennsylvania prison term of 5 to 10 years for first degree deviate sexual intercourse, and her only apparent plan for son was long-term foster care. *In re William EE., 245 A.D.2d 813, 666 N.Y.S.2d 783, 1997 N.Y. App. Div. LEXIS 13187 (N.Y. App. Div. 3d Dep't 1997)*.

Court properly adjudicated respondents' children to be permanently neglected and terminated their parental rights, where children had been removed from respondents' custody due to father's sexual abuse and mother's inability to protect abused child, drug and alcohol abuse were also present in home, few months after removal of children respondents unilaterally moved 3 hours driving time from children's foster home, they failed to complete required counseling for themselves or to participate in collateral counseling with children's therapist, they failed to maintain contact with children and demonstrated lack of insight into problems that led to children's removal, and they failed to testify at hearing, permitting court to draw strongest inference against them that opposing evidence would allow. *In re Shawna "U", 277 A.D.2d 731, 716 N.Y.S.2d 166, 2000 N.Y. App. Div. LEXIS 12200 (N.Y. App. Div. 3d Dep't 2000)*.

Father's refusal to undergo sexual offenders' therapy after having been ordered to do so on basis of finding in earlier proceeding that he sexually abused one of his children, and his failure to otherwise plan for children's return, supported termination of his parental rights. *In re Theone A.A., 282 A.D.2d 290, 723 N.Y.S.2d 357, 2001 N.Y. App. Div. LEXIS 3874 (N.Y. App. Div. 1st Dep't)*, app. denied, *96 N.Y.2d 718, 730 N.Y.S.2d 792, 756 N.E.2d 80, 2001 N.Y. LEXIS 2051 (N.Y. 2001)*, cert. dismissed, *534 U.S. 947, 122 S. Ct. 386, 151 L. Ed. 2d 256, 2001 U.S. LEXIS 9758 (U.S. 2001)*.

Where a social services agency provided detailed, appropriate, and ongoing services to a mother and in so doing, afforded the mother every opportunity to regain custody of her son, who had been removed from the mother's care due to allegations of sexual abuse, and where the mother's progress was deemed marginal at best, it was found that the child was permanently neglected by his mother; it was also found that it was in the child's best interests for the mother's parental rights to be terminated, as she had no realistic plan for the child's return. *In re Douglas H., 1 A.D.3d 824, 767 N.Y.S.2d 173, 2003 N.Y. App. Div. LEXIS 12631 (N.Y. App. Div. 3d Dep't 2003)*, app. denied, *2 N.Y.3d 701, 778 N.Y.S.2d 459, 810 N.E.2d 912, 2004 N.Y. LEXIS 520 (N.Y. 2004)*.

Child who was exposed to the parents' violence was removed from home and placed with an agency (DSS) that provided the mother with sufficient *N.Y. Soc. Serv. Law § 384-b(7)(a)*planning services. The court terminated her parental rights as the child was with DSS for more than one year and since mother's getting into a fight with the father showed that the anger management course did not benefit her. *In re Elijah NN., 20 A.D.3d 728, 798 N.Y.S.2d 252, 2005 N.Y. App. Div. LEXIS 7813 (N.Y. App. Div. 3d Dep't 2005)*.

Following a determination of permanent neglect based on allegations of sexual abuse, termination of parental rights under *N.Y. Soc. Serv. Law § 384-b* was proper because the parents failed to plan for their younger child's future as the father retracted his acknowledgment that he abused the older child and the mother ultimately denied any abuse

occurred. *Matter of Amy B. v Lee B., 37 A.D.3d 600, 830 N.Y.S.2d 294, 2007 N.Y. App. Div. LEXIS 1698 (N.Y. App. Div. 2d Dep't)*, app. denied, *9 N.Y.3d 808, 844 N.Y.S.2d 174, 875 N.E.2d 893, 2007 N.Y. LEXIS 2699 (N.Y. 2007)*.

148. — —Incarceration

Termination of parental rights was proper and supported by clear and convincing evidence of permanent neglect, and children were properly freed for adoption, where children had been placed in foster care following their respective fathers' felony incarceration, fathers might not be released until after children reached age of majority, social service agencies made efforts to foster parent-child relationship by providing visits between fathers and children, and fathers' only viable plans were to have children remain in foster care until fathers' release. *In re Gregory B., 74 N.Y.2d 77, 544 N.Y.S.2d 535, 542 N.E.2d 1052, 1989 N.Y. LEXIS 876 (N.Y.)*, reh'g denied, *74 N.Y.2d 880, 547 N.Y.S.2d 841, 547 N.E.2d 96, 1989 N.Y. LEXIS 3101 (N.Y. 1989)*.

Record supported the family court's decision to terminate an incarcerated father's parental rights, as 1) the department of social services established that it arranged visitation for him, communicated with him regarding service plans, and investigated relatives proposed as resources for placement; and 2) his "plan" for his child was to let the county care for her in foster care until he got out of prison, at which time he would try to get her back. *Matter of Hailey ZZ. (Ricky ZZ.), 19 N.Y.3d 422, 948 N.Y.S.2d 846, 972 N.E.2d 87, 2012 N.Y. LEXIS 1319 (N.Y. 2012)*.

Court should have granted agency's petition to terminate mother's parental rights on ground of permanent neglect where mother was incarcerated on conviction of first degree sodomy and endangering welfare of child arising from her sexual and physical abuse of child, agency scheduled regular visitation and advised her that her parental rights might be terminated if she did not get psychological counseling, she took no steps toward recognizing her problem or changing her pattern of behavior, and no relatives contacted by agency were willing to assume responsibility for child. *In re Guardianship of Charles M., 171 A.D.2d 343, 577 N.Y.S.2d 253, 1991 N.Y. App. Div. LEXIS 18021 (N.Y. App. Div. 1st Dep't 1991)*, app. dismissed, *79 N.Y.2d 977, 583 N.Y.S.2d 194, 592 N.E.2d 802, 1992 N.Y. LEXIS 1071 (N.Y. 1992)*.

Court properly terminated parental rights of father who was incarcerated and would not become eligible for parole until year 2000, even though father made diligent efforts to maintain contact with child, since his only plan for care of child was that child remain in foster care until his release from prison, and he never suggested to agency that he had relatives who were ready, willing and able to care for child. *Jewish Child Care Ass'n v Fernando G., 198 A.D.2d 149, 603 N.Y.S.2d 860, 1993 N.Y. App. Div. LEXIS 10818 (N.Y. App. Div. 1st Dep't 1993)*, app. denied, *83 N.Y.2d 753, 612 N.Y.S.2d 107, 634 N.E.2d 603, 1994 N.Y. LEXIS 315 (N.Y. 1994)*.

Father's parental rights were properly terminated for permanent neglect where he failed to (1) ameliorate any of problems that led to children's placement, (2) offer viable resource for children while he was incarcerated, and (3) act appropriately during his visits with children. *In re Custody of Lonnie P., 286 A.D.2d 628, 730 N.Y.S.2d 111, 2001 N.Y. App. Div. LEXIS 8582 (N.Y. App. Div. 1st Dep't 2001)*.

Father's parental rights were properly terminated for permanent neglect, and child was properly committed to agency for purposes of adoption, where (1) despite agency's diligent efforts to encourage and strengthen parental relationship, father's contacts with child were sporadic at best during year before filing of petition, (2) he failed to plan for child's future by completing drug treatment program, and (3) his incarceration for 6 months of relevant year did not warrant different result, because his visits with child began to become sporadic 3 months before his incarceration, he delayed in advising agency of his incarceration, he misled agency as to nature of charges against him and expected release date, and he was rearrested for parole violation within 3 weeks after his release on parole. *In re Nijeah Kilene G., 286 A.D.2d 646, 730 N.Y.S.2d 500, 2001 N.Y. App. Div. LEXIS 8832 (N.Y. App. Div. 1st Dep't 2001)*.

An incarcerated father who had no means of providing care for his children, and could not provide alternative resources for their care, was unable to plan for their care before they reached majority; his parental rights were properly terminated and the children were properly placed for adoption. The father's sisters were not viable

resources and leaving the children in foster care until he was released was not a viable alternative. *In re Love Russell J., 7 A.D.3d 799, 776 N.Y.S.2d 859, 2004 N.Y. App. Div. LEXIS 7279 (N.Y. App. Div. 2d Dep't 2004)*.

Application to adjudicate a child permanently neglected, and termination of a father's parental rights were proper in an *N.Y. Soc. Serv. Law § 384-b* proceeding because, inter alia, the father was incarcerated, the individuals proposed by the father as caretakers for the child were unsuitable and the department established the lack of a realistic plan by the father for the child; the father was informed of the child's health and progress, and, in light of the child's age and special needs, as well as the distance to the father's places of incarceration, visitation was not required. While the department could have been more diligent in providing phone contact, the caseworker stated that the child was essentially nonverbal and, in any event, phone calls were arranged. *Matter of Lawrence KK. v Lawrence LL., 72 A.D.3d 1233, 898 N.Y.S.2d 339, 2010 N.Y. App. Div. LEXIS 2827 (N.Y. App. Div. 3d Dep't)*, app. denied, *14 N.Y.3d 713, 904 N.Y.S.2d 695, 930 N.E.2d 769, 2010 N.Y. LEXIS 1333 (N.Y. 2010)*.

149. — —In spite of diligent efforts by agency

The trial court properly terminated a mother's parental rights to her child based on permanent neglect under *Soc Serv Law § 384-b(4)(d)(7)* where, despite diligent efforts by the petitioning social services agency to strengthen the parental relationship, the mother failed to realistically plan for the future of herself and her child in that she maintained only infrequent contacts with the child, and failed to follow through on suggestions and efforts made by the agency staff to reunite her with her child; additionally, the agency had ceased its efforts at reunification, and commenced the termination proceeding, only after a trial period it had arranged, during which the child lived with the mother and her boyfriend, had failed, and the mother had returned the child to her foster parents and failed to return to care for her. *In re Guardianship of Star Leslie W., 63 N.Y.2d 136, 481 N.Y.S.2d 26, 470 N.E.2d 824, 1984 N.Y. LEXIS 4607 (N.Y. 1984)*.

The Family Court properly adjudicated a minor to be a permanently neglected child and properly terminated the natural mother's parental rights where the finding that the mother had failed to plan for the future of her child despite being physically and financially able to do so within the meaning of *Soc Serv Law §§ 384-b(7)(a)*, *384-b(7)(c)* was supported by evidence, inter alia, that, after a prolonged period of separation during which the mother's contacts with her child had been limited to occasional cards, letters, telephone calls, and infrequent visits, the mother had been unable, despite advice and encouragement from the local social services agency, to cope with, or even to recognize, the problems that had been created by the absence of a true parent-child relationship, that, as a result, the visits between mother and child had often been stressful for the child and the agency had been required to place certain restrictions on the visits in order to protect the child, and that the mother had made numerous and frequent changes of residence, which evidenced her inability to establish a stable home, and where the social services agency's diligent efforts to encourage and strengthen the parental relationship, as required by *Soc Serv Law § 384-b(7)(a)*, were sufficiently established in light of the fact that the mother had hampered such efforts by being absent from the State for substantial portions of the pertinent time period, and by taking up residence in neighboring counties despite the agency's repeated advice that she return to the county in which her child lived so as to be closer to her child, and so as to qualify for the various services offered by the agency. *In re Charlotte "II", 98 A.D.2d 859, 471 N.Y.S.2d 156, 1983 N.Y. App. Div. LEXIS 21175 (N.Y. App. Div. 3d Dep't 1983)*.

Children were properly found to be permanently neglected, and natural parents' rights were properly terminated, where Department of Social Services, during one-year period it had temporary custody, made repeated attempts to involve parents in programs to improve their homemaking and parental skills, but parents' participation was, at best, minimal, and where during such period parents failed to substantially plan for their children's future by failing to make any notable attempt to remedy problems of unemployment and inadequate housing; parents non-cooperation with repeated efforts by Department of Social Services provided clear and convincing evidence of permanent neglect. *In re Richard VV., 122 A.D.2d 431, 504 N.Y.S.2d 827, 1986 N.Y. App. Div. LEXIS 59738 (N.Y. App. Div. 3d Dep't 1986)*.

Evidence supported finding of permanent neglect and termination of parental rights in proceeding under CLS Soc Serv § 384-b, where it was shown that petitioner social services department made diligent efforts to encourage parental relationship, including offering counseling with caseworker and at mental health clinic, referral to parenting aid services, offer of head start facilities for children, transportation to facilitate visitation and day care for respondent mother when working, but that respondent nevertheless continued her nomadic existence, moving constantly, failing to maintain job, failing to attend counseling and canceling visits with children. *In re Laytana YY., 154 A.D.2d 741, 546 N.Y.S.2d 186, 1989 N.Y. App. Div. LEXIS 12426 (N.Y. App. Div. 3d Dep't 1989)*.

Father's parental rights were properly terminated where he continuously resisted diligent efforts to develop and encourage parent-child relationship, including numerous attempts to obtain housing and psychological treatment, and he failed to maintain contact with children and plan for their future. *In re Ali Khalil B., 204 A.D.2d 213, 612 N.Y.S.2d 36, 1994 N.Y. App. Div. LEXIS 5566 (N.Y. App. Div. 1st Dep't 1994)*.

Termination of mother's parental rights was warranted on ground of neglect where, despite social service agency's exertion of diligent efforts to encourage and strengthen parental relationship by providing persistent casework counseling and referrals, mother failed to understand and respond to child's problems, did not sufficiently overcome problems that led to child's initial placement in foster care, failed to plan for return of child, failed to recognize that child was traumatized by climate of violence in household during first 6 years of her life, failed to recognize child's needs, fears, and anxieties, failed to heed advice of mental health professionals, blamed child for situation, and repeatedly placed her own needs above those of child. *In re Juanita H., 245 A.D.2d 89, 665 N.Y.S.2d 650, 1997 N.Y. App. Div. LEXIS 12908 (N.Y. App. Div. 1st Dep't 1997)*, app. denied, *91 N.Y.2d 811, 671 N.Y.S.2d 714, 694 N.E.2d 883, 1998 N.Y. LEXIS 940 (N.Y. 1998)*.

The trial court properly terminated a father's parental rights to his children, because an agency met its burden of establishing, by clear and convincing evidence, that despite its diligent efforts to encourage and strengthen the parental relationship, the father permanently neglected his children, N.Y. Soc. Serv. Law § 384-b(7)(a). *In re Iris R. (Anonymous), 295 A.D.2d 521, 744 N.Y.S.2d 685, 2002 N.Y. App. Div. LEXIS 6470 (N.Y. App. Div. 2d Dep't)*, app. denied, *99 N.Y.2d 530, 752 N.Y.S.2d 587, 782 N.E.2d 564, 2002 N.Y. LEXIS 3563 (N.Y. 2002)*.

Order terminating a mother's parental rights based on permanent neglect was properly entered where, despite an agency's diligent efforts to help the mother, the mother failed to take advantage of the services provided to her and failed to plan for her children's future, and where the record supported the family court's finding that it was in the children's best interests to be freed for adoption. *In re Nancy O. (Anonymous), 295 A.D.2d 616, 744 N.Y.S.2d 699, 2002 N.Y. App. Div. LEXIS 6778 (N.Y. App. Div. 2d Dep't 2002)*.

In the termination of parental rights case, it was established by clear and convincing evidence under N.Y. Soc. Serv. Law § 384-b(7)(a) that the agency made diligent attempts to strengthen the relationship between the father and the child; despite these efforts, the father remained indifferent or uncooperative to correcting the conditions that led to the child's retention in foster care, and it was, therefore, in the child's best interests to free the child for adoption by the child's foster parents. *In re Craig Robert B., 21 A.D.3d 412, 799 N.Y.S.2d 803, 2005 N.Y. App. Div. LEXIS 8426 (N.Y. App. Div. 2d Dep't 2005)*.

Termination of a father's parental rights was appropriate; although the father attended anger management counseling and completed a parenting skills course, the evidence demonstrated that he failed to gain insight into the issues leading to the removal of the subject child from his home. Despite an agency's efforts to assist the father to improve his deficient parenting skills and to remediate his propensity for domestic violence, the father's aggressive and threatening behavior continued unabated. *Matter of Joquan Jomaine-Anthony V., 39 A.D.3d 868, 835 N.Y.S.2d 320, 2007 N.Y. App. Div. LEXIS 5188 (N.Y. App. Div. 2d Dep't 2007)*.

Because a lack of cooperation by the mother, rather than a lack of diligence by the agency, supported a finding of permanent neglect under N.Y. Soc. Serv. Law § 384-b(7)(a), the mother's parental rights were properly terminated and the child's custody and guardianship were properly committed to the agency for the purpose of adoption. *Matter of Lady Justice I., 50 A.D.3d 425, 856 N.Y.S.2d 64, 2008 N.Y. App. Div. LEXIS 3271 (N.Y. App. Div. 1st Dep't 2008)*.

Finding that a child's mother had permanently neglected the subject child, and termination of her parental rights, were proper because a family services organization established, by clear and convincing evidence, that during the relevant time period, it had fulfilled its duty to exercise diligent efforts to strengthen and encourage the relationship between the mother and the child and that, despite these efforts, the mother failed to plan for the child's future; following the finding of permanent neglect, and a dispositional hearing, the trial court also properly determined that the termination of the mother's parental rights was in the child's best interests, and thus, the trial court properly freed the child for adoption. *Matter of "Female" M., 50 A.D.3d 1040, 856 N.Y.S.2d 488, 2008 N.Y. App. Div. LEXIS 3558 (N.Y. App. Div. 2d Dep't 2008)*.

150. — —Multiple reasons

Termination of a mother's parental rights was proper where the mother failed for a period of more than one year following the date the child came into the care of an authorized agency to substantially and continuously or repeatedly maintain a contact with or plan for the future of the child, where the mother not only refused to provide details on the issue of her financial ability to plan for the child, but also testified that she always supported herself, where, although she clearly had the physical ability to plan for her child, she failed to do so, and where she demonstrated hostility to all of the caseworkers assigned to the child's case and refused to furnish information concerning her treatment for mental illness or her employment despite the fact that it bore on her rights to the return of the child. *In re Y, 54 N.Y.2d 282, 445 N.Y.S.2d 114, 429 N.E.2d 792, 1981 N.Y. LEXIS 3130 (N.Y. 1981)*.

Adequate grounds existed for terminating parental rights where both parents failed to take necessary steps to plan for their 5 children, to keep substantial contact with them, to establish proper and adequate accommodations, and to utilize agency services and recommendations, despite diligent efforts by agency including attempt (though unsuccessful) to have parents undergo psychological evaluation and testing; in addition, independent ground for terminating father's rights existed where he failed to keep agency informed of his whereabouts for over 6 months. *In re O. Children, 128 A.D.2d 460, 513 N.Y.S.2d 153, 1987 N.Y. App. Div. LEXIS 44164 (N.Y. App. Div. 1st Dep't 1987)*.

Family Court order declaring child permanently neglected and terminating mother's parental rights was proper where, despite diligent efforts by social services department to encourage and strengthen parental relationship pursuant to CLS *Soc Serv § 384-b(7)(a)*, mother changed her residence several times during time child was in foster care, failed to obtain her graduate equivalency diploma, failed to incorporate counseling regarding child's behavioral disorders attributable to previous abuse into her approach toward parenting, and failed to take threshold step of providing child with secure and stable home environment. *In re Scotty C., 154 A.D.2d 784, 546 N.Y.S.2d 461, 1989 N.Y. App. Div. LEXIS 12695 (N.Y. App. Div. 3d Dep't 1989)*, app. denied, *75 N.Y.2d 707, 554 N.Y.S.2d 476, 553 N.E.2d 1024, 1990 N.Y. LEXIS 592 (N.Y. 1990)*.

Evidence was sufficient to support determination that child was permanently neglected so as to terminate father's parental rights where (1) father moved with 3-year-old child to his sister's house, thereafter moved with child to various hotels, and subsequently moved with her back to his sister's house, (2) when arrangement with sister proved unsatisfactory, father left child with sister and began sleeping in bus garage, where he found some work, (3) when father failed to return for child, neglect petition was filed and order was entered which adjudicated child to be neglected, placed child with department of social services (DSS), and directed father to submit to therapy and to seek suitable housing, (4) over next 10 months, child was placed in 2 foster homes where she exhibited "temper tantrums" and "sexual acting out" behavior, and (5) father failed to cooperate with DSS, failed to seek counseling, failed to find suitable housing, failed to advise DSS of his address and failed to provide financial support for child. *In re Mary S., 182 A.D.2d 1026, 582 N.Y.S.2d 837, 1992 N.Y. App. Div. LEXIS 6429 (N.Y. App. Div. 3d Dep't 1992)*.

Termination of parental rights was proper where agency engaged in meaningful efforts to assist parents in obtaining counseling and in planning for return of children, agency engaged in diligent efforts to encourage, strengthen, and nurture parent-child relationship, parents refused to avail themselves of rehabilitative counseling offered, and parents had not learned to accept responsibility or to modify their behavior to correct conditions that led to need

foster care. *In re Raymond B., 219 A.D.2d 800, 631 N.Y.S.2d 792, 1995 N.Y. App. Div. LEXIS 10802 (N.Y. App. Div. 4th Dep't 1995)*, app. denied, *88 N.Y.2d 814, 651 N.Y.S.2d 15, 673 N.E.2d 1242, 1996 N.Y. LEXIS 3182 (N.Y. 1996)*.

It was proper to terminate mother's parental rights based on her excessive use of alcohol and drugs, her meager visitation record, her failure to utilize various programs offered to her for rehabilitation and counseling, and her failure to part with father and violence of relationship. *In re Samantha ZZ., 221 A.D.2d 865, 634 N.Y.S.2d 253, 1995 N.Y. App. Div. LEXIS 12346 (N.Y. App. Div. 3d Dep't 1995)*.

Mother permanently neglected her children, and termination of her parental rights was supported by evidence that, inter alia, she failed to comply with petitioner's plan to reunite family, she allowed various persons to live with her in small apartment despite repeated orders to desist, she tolerated married man who abused her children and tolerated his abuse of her which traumatized children, she failed to cope with her son's serious asthmatic condition and allowed smoking in her apartment when he was there, she failed to have enough food for children during visits despite being given food vouchers in amount of $50 per child per visit, and her attendance at alcoholism counseling was sporadic and incomplete. *In re Amoretta V., 227 A.D.2d 879, 643 N.Y.S.2d 694, 1996 N.Y. App. Div. LEXIS 6172 (N.Y. App. Div. 3d Dep't 1996)*, app. dismissed, *89 N.Y.2d 935, 654 N.Y.S.2d 713, 677 N.E.2d 284, 1997 N.Y. LEXIS 79 (N.Y. 1997)*.

Family Court properly terminated mother's parental rights, freeing child for adoption by foster mother, where agency's efforts to strengthen parent-child relationship failed because of mother's continued drug use, her sporadic contact with agency, and her generally uncooperative and indifferent attitude, mother made only 2 out of at least 10 scheduled visits over 1 ½ years, mother made no viable plan for child's future, and child had strongly bonded with foster mother. *Commissioner of Soc. Servs. v Debra S., 241 A.D.2d 453, 660 N.Y.S.2d 52, 1997 N.Y. App. Div. LEXIS 7255 (N.Y. App. Div. 2d Dep't 1997)*.

Evidence supported finding of permanent child neglect warranting termination of mother's parental rights where, despite agency's diligent efforts, she failed to maintain regular contact with her children and consistently refused to attend any of therapy or counseling programs that agency deemed necessary to any viable plan for children's future. *In re S.T.M.D., 251 A.D.2d 131, 674 N.Y.S.2d 327, 1998 N.Y. App. Div. LEXIS 6950 (N.Y. App. Div. 1st Dep't)*, app. denied, *92 N.Y.2d 812, 680 N.Y.S.2d 905, 703 N.E.2d 763, 1998 N.Y. LEXIS 3236 (N.Y. 1998)*.

It was proper to permanently terminate mother's parental rights where, inter alia, she was no longer employed, no longer attending individual or domestic violence counseling, and was still in contact with her physically abusive husband, whose parental rights as to 3 of children were previously terminated, and children, several of whom had special needs, required stability and permanency afforded by adoptive homes. *In re Princess "C", 286 A.D.2d 563, 729 N.Y.S.2d 557, 2001 N.Y. App. Div. LEXIS 8321 (N.Y. App. Div. 3d Dep't)*, app. denied, *97 N.Y.2d 606, 738 N.Y.S.2d 289, 764 N.E.2d 393, 2001 N.Y. LEXIS 3769 (N.Y. 2001)*.

A family court properly determined that a mother permanently neglected her children within the meaning of *N.Y. Soc. Serv. Law § 384-b(7)* and terminated the mother's parental rights, because during the one-year period between December 1995 and December 1996, the mother only visited her children approximately 17 times out of 42 scheduled visits, failed to cooperate with drug screenings, failed to complete her drug rehabilitation program, and failed to take advantage of the housing services offered to her by the agency. *In re Ronell Dashawn P. (Anonymous), 296 A.D.2d 502, 745 N.Y.S.2d 484, 2002 N.Y. App. Div. LEXIS 7515 (N.Y. App. Div. 2d Dep't 2002)*.

Finding that child was permanently neglected pursuant to *N.Y. Soc. Serv. Law § 384-b(7)* and termination of a mother's rights were proper because, inter alia, despite classes and weekly assistance, the mother continued to have difficulty with basic parenting tasks and supervision of the child, got angry when corrected, did not maintain a suitable living environment or steady employment after more than two years of appropriate services offered by the department, and failed to adequately plan for her child's future; further, in the 10 months between the fact-finding hearing and the conclusion of the dispositional hearing, the mother lived in four different locations, two of which the mother conceded were unsuitable even for visitation with the child, and did not show any progress in her parenting abilities during that time. On the other hand, the child had bonded with her foster parents, who were willing to adopt

her. *Matter of Maelee N. v Shannon O., 48 A.D.3d 929, 851 N.Y.S.2d 701, 2008 N.Y. App. Div. LEXIS 1423 (N.Y. App. Div. 3d Dep't)*, app. denied, *10 N.Y.3d 709, 859 N.Y.S.2d 394, 889 N.E.2d 81, 2008 N.Y. LEXIS 1413 (N.Y. 2008)*.

There was clear and convincing evidence to support a determination of children as permanently neglected, and the termination of their parents' rights pursuant to *N.Y. Soc. Serv. Law § 384-b(7)(a)* and (f), as a county social service agency made diligent efforts to provide the parents with services for purposes of reunification with the children; further, the parents failed to realistically plan for their children's future where they moved continuously, the father refused to admit his alcohol abuse problem and associated with sex offenders, and the mother had very minimal contact with the children after she moved away from them. *Matter of Alaina E. v Melinda E., 59 A.D.3d 882, 875 N.Y.S.2d 287, 2009 N.Y. App. Div. LEXIS 1396 (N.Y. App. Div. 3d Dep't)*, app. denied, *12 N.Y.3d 710, 881 N.Y.S.2d 660, 909 N.E.2d 583, 2009 N.Y. LEXIS 964 (N.Y. 2009)*.

151. —Not proper

The determination of the Family Court awarding custody of the child to the Commissioner of the Department of Social Services and denying a writ of habeas corpus would be vacated and the matter remitted to the Family Court for a new dispositional hearing where, although the record amply supported the finding that for several periods of more than one year the mother had failed to maintain contact with the child or plan for her future despite being physically and financially able to do so, at the time of the hearing the mother had indicated, by her conduct and words, great efforts to stabilize her life so as to plan for the eventual return of the child, had maintained visitation with the child on an almost weekly basis for a period of approximately a year, and had indicated that she would be willing to enter therapy together with the child. *In re K., 81 A.D.2d 919, 439 N.Y.S.2d 185, 1981 N.Y. App. Div. LEXIS 11643 (N.Y. App. Div. 2d Dep't 1981)*.

A county was not entitled to terminate a mother's parental rights on the grounds that for over a year she permanently neglected her child in foster care where the agency failed to give the mother information on available aid programs, did not consider her psychological and social problems, placed the child in inaccessible homes, attempted to prevent the mother from seeing her child at Christmas, and set unrealistically high standards for the mother's plan to care for the child. *In re Amber "W", 105 A.D.2d 888, 481 N.Y.S.2d 886, 1984 N.Y. App. Div. LEXIS 21013 (N.Y. App. Div. 3d Dep't 1984)*.

After withdrawing petition to terminate mother's parental rights based on mental retardation, court erred in terminating parental rights on ground of permanent neglect, where petition alleging permanent neglect did not refer to mental retardation, and she availed herself of every opportunity to visit her children and did all that might reasonably be expected of her in preparing for their return *In re Christina H., 227 A.D.2d 898, 643 N.Y.S.2d 287, 1996 N.Y. App. Div. LEXIS 6792 (N.Y. App. Div. 4th Dep't 1996)*.

Despite mother's permanent neglect of her 2 children, termination of her parental rights was not proper disposition where (1) termination would serve no useful purpose for boy, who was over 14 years old and would have to consent to any adoption, which he adamantly opposed, and (2) in view of girl's special needs and current placement in nonadoptive foster home, further hearing might shed light on whether mother's recent limited progress shown at disposition had continued and whether she was presently able to meet her daughter's substantial needs. *In re Angel, 263 A.D.2d 354, 692 N.Y.S.2d 376, 1999 N.Y. App. Div. LEXIS 7732 (N.Y. App. Div. 1st Dep't 1999)*.

Mother's parental rights were improperly terminated under *N.Y. Soc. Serv. Law § 384-b* on the grounds of permanent neglect because she attended all but one of the scheduled visits with her minor child and completed every court-ordered program required of her as well as obtained employment and maintained regular contact with department of social services caseworkers; the mother also admitted a domestic violence problem existed and took steps to correct it. *Lopez v Bovis Lend Lease LMB, Inc., 26 A.D.3d 192, 807 N.Y.S.2d 873, 2006 N.Y. App. Div. LEXIS 1619 (N.Y. App. Div. 1st Dep't 2006)*.

Family court erred in terminating a father's parental rights to his child, as the agency failed to adduce clear and convincing evidence that the father failed to plan for the child's future for at least one year, as required by N.Y. Soc. Serv. Law § 384-b(7)(a), (3)(g). Matter of Anna Marie G., 29 A.D.3d 992, 818 N.Y.S.2d 104, 2006 N.Y. App. Div. LEXIS 7067 (N.Y. App. Div. 2d Dep't 2006).

As to two children, an alternative disposition to termination of parental rights on the ground of permanent neglect was appropriate. One child was in a residential home and apparently was very troubled, lessening the child's chances of ever being adopted, and the other child had expressed a very strong desire to be with the mother, seemed to be quite attached to the other child, and could be the only sibling with whom the other child could have any significant interaction. Matter of Alanda Helen M. v Tamara M., 39 A.D.3d 859, 835 N.Y.S.2d 619, 2007 N.Y. App. Div. LEXIS 5251 (N.Y. App. Div. 2d Dep't 2007).

As the State's first interest under N.Y. Soc. Serv. Law § 384-b was to help families stay together, a family court erred when it terminated a mother's parental rights to two children based on her failure to avail herself of of the efforts made by the State to keep the mother and children together; the testimony presented to the family court showed that the mother had made great strides in strengthening her parent-child relationships as she had completed a service plan, she had successfully completed a 22-week parenting course, and she had obtained suitable housing for herself and her children. Matter of Shaquill Dywon M., 44 A.D.3d 1047, 844 N.Y.S.2d 419, 2007 N.Y. App. Div. LEXIS 11071 (N.Y. App. Div. 2d Dep't 2007).

Family court improperly granted two petitions to terminate a father's parental rights, one on the basis of mental illness under N.Y. Soc. Serv. Law § 384-b(4)(c) and one on the basis of permanent neglect under N.Y. Soc. Serv. Law § 384-b(7)(a), as it was logically inconsistent to grant both petitions. Matter of Kyle K. v Harry K., 49 A.D.3d 1333, 854 N.Y.S.2d 270, 2008 N.Y. App. Div. LEXIS 2624 (N.Y. App. Div. 4th Dep't), app. denied, *10 N.Y.3d 715, 862 N.Y.S.2d 335, 892 N.E.2d 401, 2008 N.Y. LEXIS 1862 (N.Y. 2008)*.

Order terminating a mother's parental rights under N.Y. Soc. Serv. Law § 384-b was error because the mother complied with an agency-formulated service plan for much of the designated period of neglect, successfully completed a parenting skills program, was generally cooperative with the caseworker, and provided proof of suitable housing for her and the children. Matter of Shaquill Dywon M., 50 A.D.3d 1142, 856 N.Y.S.2d 670, 2008 N.Y. App. Div. LEXIS 3892 (N.Y. App. Div. 2d Dep't 2008).

Termination of a mother's parental rights in an N.Y. Soc. Serv. Law § 384-b proceeding, upon a finding that the mother violated some of the terms of a suspended judgment, was error because, inter alia, the hearing testimony established that the mother was making progress in a residential drug treatment program, that she continued to visit with the child and to have nightly phone calls with him, that she and the child had a loving relationship, and that the child did not want to be adopted. *Matter of Shdell Shakell L. v Sandra S., 51 A.D.3d 1027, 858 N.Y.S.2d 779, 2008 N.Y. App. Div. LEXIS 4624 (N.Y. App. Div. 2d Dep't 2008)*.

In a neglect and termination of parental rights proceeding regarding three children, there was sufficient evidence to terminate the father/stepfather's rights since he failed to acknowledge or take responsibility for the problems that led to the children's removal from his custody, failed to satisfactorily complete the recommended counseling services to overcome his significant anger management issues, he continued to harbor significant animosity toward the mother, despite their separation, and he also admitted he was not capable of providing a proper home for the youngest child and requested permanent custody of her be awarded to his parents. The order terminating the mother's rights, however, was reversed since she had demonstrated the ability to be a fit parent by having a significant desire to regain custody of the children, progressing in her therapeutic counseling, separating herself from the father/stepfather's unhealthy influence, and revealing she was remorseful for her behavior. Matter of Audrey I. v William G., 57 A.D.3d 1172, 870 N.Y.S.2d 504, 2008 N.Y. App. Div. LEXIS 9561 (N.Y. App. Div. 3d Dep't 2008), app. denied, *12 N.Y.3d 704, 879 N.Y.S.2d 50, 906 N.E.2d 1084, 2009 N.Y. LEXIS 373 (N.Y. 2009)*.

While a mother had failings as a parent and required support for her success, pursuant to N.Y. Fam. Ct. Act § 1089(d)(2)(i) and N.Y. Soc. Serv. Law § 384-b(1)(a), the record did not demonstrate such a failure to engage in or

benefit from the services provided as to adequately support modification of the permanency goal and termination of the mother's parental rights. *Matter of Kobe D. (Kelli F.), 97 A.D.3d 947, 948 N.Y.S.2d 716, 2012 N.Y. App. Div. LEXIS 5503 (N.Y. App. Div. 3d Dep't 2012)*.

152. Termination in best interest of child

Dispositional hearing, though brief, adduced ample evidence that best interests of child would be served by terminating mother's parental rights where she suffered from continued drug addiction and incarceration, child had spent virtually her entire life in foster care, and she had been placed with loving foster family of relatives. *In re Desiree W., 232 A.D.2d 227, 648 N.Y.S.2d 26, 1996 N.Y. App. Div. LEXIS 10039 (N.Y. App. Div. 1st Dep't 1996)*.

There being no presumption, at dispositional stage, that return of custody to mother, who was found to have "permanently neglected" children, would be in children's best interests, mother's conclusory statements about her affection for her children were insufficient to show that children would be best served by removing them from care of their foster parents and returning them to mother. *In re Baby Girl S., 240 A.D.2d 215, 658 N.Y.S.2d 595, 1997 N.Y. App. Div. LEXIS 6183 (N.Y. App. Div. 1st Dep't 1997)*, app. dismissed, *91 N.Y.2d 887, 668 N.Y.S.2d 564, 691 N.E.2d 636, 1998 N.Y. LEXIS 29 (N.Y. 1998)*.

Custody of child was improperly awarded to mother on basis of mother's rehabilitation without adequate consideration of whether child's best interests would nevertheless be better advanced by terminating parental rights and awarding custody and guardianship to foster parents; where there have been fact-finding orders of permanent parental neglect, court may not simply dismiss petition to terminate parental rights on basis of its conclusion that parent has gained ability to become effective parent without also determining, after careful balancing of all relevant evidence, that it would be in child's best interest that custody be returned to parent. *In re Tiffany A., 242 A.D.2d 709, 662 N.Y.S.2d 796, 1997 N.Y. App. Div. LEXIS 9235 (N.Y. App. Div. 2d Dep't 1997)*.

Trial court properly terminated a mother's parental rights pursuant to *N.Y. Soc. Serv. Law § 384-b* on the basis of neglect, as the termination was in the best interest of the child, family court did not err in admitting the hearsay testimony of one of the agency's caseworkers at the dispositional hearing, *N.Y. Fam. Ct. Act § 624*, and thus the mother's counsel was not remiss in failing to object to that testimony. *In re Yusef P., 298 A.D.2d 968, 748 N.Y.S.2d 120, 2002 N.Y. App. Div. LEXIS 9009 (N.Y. App. Div. 4th Dep't 2002)*.

Termination of the mother's parental rights was in the children's best interests because the children had been in foster care for several years and had established a strong bond with their preadoptive foster family and while the mother continued to visit the children, she continued to fail to benefit from domestic violence and anger management programs. *Matter of Jasnia Y. (Alease Y.), 162 A.D.3d 1148, 78 N.Y.S.3d 467, 2018 N.Y. App. Div. LEXIS 4014 (N.Y. App. Div. 3d Dep't)*, app. denied, *32 N.Y.3d 901, 109 N.E.3d 1154, 84 N.Y.S.3d 854, 2018 N.Y. LEXIS 2468 (N.Y. 2018)*.

In a proceeding under this section, termination of the mother's parental rights was in the best interests of the children because she failed to consistently maintain a safe, clean, and sanitary home to which the children could return and she failed to provide the children with appropriate emotional support in light of her continued failure to acknowledge the father's sexual abuse. *Matter of Eden S. (Joshua S.), 170 A.D.3d 1580, 96 N.Y.S.3d 426, 2019 N.Y. App. Div. LEXIS 1926 (N.Y. App. Div. 4th Dep't)*, app. denied, *33 N.Y.3d 909, 127 N.E.3d 319, 103 N.Y.S.3d 361, 2019 N.Y. LEXIS 1771 (N.Y. 2019)*.

Substantial evidence supported the family court's finding that termination of the father's parental rights, rather than a suspended judgment, was in the child's best interests because the child, who was four years old at the time of the hearing, had lived in the same foster home since she first came into care as an infant, the child was thriving in the foster home and bonded with the foster mother. *Matter of Isabella H. (Richard I.), 174 A.D.3d 977, 107 N.Y.S.3d 444, 2019 N.Y. App. Div. LEXIS 5346 (N.Y. App. Div. 3d Dep't 2019)*.

Given children's lengthy stay in foster care, the foster parent's willingness to be an adoptive resource, the unwillingness of the mother and father to participate in mental health counseling and to acknowledge the sexual abuse committed against the children and that there was no progress made in achieving the permanency goals, there was a substantial basis in the record to support the determination that termination of the father's parental rights as to the children was in their best interests. *Matter of Makayla I. (Sheena K.), 201 A.D.3d 1145, 160 N.Y.S.3d 476, 2022 N.Y. App. Div. LEXIS 230 (N.Y. App. Div. 3d Dep't 2022)*.

153. —Termination proper

Evidence that father continued to use marihuana, broke into his child's mother's home and sexually assaulted her, behaved inappropriately with his child, denied that his parenting ability was impaired by anything other than his illiteracy, and disparaged all rehabilitative programs he was offered supported the family court's decision that the father failed to adequately plan for his child's future and that it was in the child's best interests to terminate the father's parental rights. *Cortland County Dep't of Soc. Servs. v Shane J. (In re Shane I.), 300 A.D.2d 709, 751 N.Y.S.2d 127, 2002 N.Y. App. Div. LEXIS 11593 (N.Y. App. Div. 3d Dep't 2002)*.

Family court properly terminated a mother's parental rights to her child pursuant to *N.Y. Soc. Serv. Law § 384-b*; the mother consented to a finding that she had permanently neglected the child, and the evidence supported the finding that the termination was in the best interest of the child. *In re Ulawrence J., 10 A.D.3d 658, 781 N.Y.S.2d 609, 2004 N.Y. App. Div. LEXIS 10789 (N.Y. App. Div. 2d Dep't 2004)*.

Because a mother failed to cooperate in preparing a plan for her child's future, and because the child's best interests would not be served by delaying the termination proceedings pursuant to *N.Y. Fam. Ct. Act § 631(b)*, the mother's parental rights were properly terminated under *N.Y. Soc. Serv. Law § 384-b(7)(c)*. *Matter of Keegan JJ. v Amanda JJ., 72 A.D.3d 1159, 898 N.Y.S.2d 312, 2010 N.Y. App. Div. LEXIS 2673 (N.Y. App. Div. 3d Dep't 2010)*.

After finding that a father permanently neglected his four children, termination of the father's parental rights was in the children's best interests because the father had been deported to Mexico and had only infrequent and irregular contact with the children after he was deported, and the three oldest children, who had been in foster care for almost five years, did not want to go to Mexico and did not want any contact with the father. *Matter of Elias P. (Ferman P.), 145 A.D.3d 1066, 44 N.Y.S.3d 516, 2016 N.Y. App. Div. LEXIS 8822 (N.Y. App. Div. 2d Dep't 2016)*, app. denied, *29 N.Y.3d 904, 80 N.E.3d 400, 57 N.Y.S.3d 707, 2017 N.Y. LEXIS 790 (N.Y. 2017)*.

Revocation of a suspended judgment and termination of a mother's parental rights based upon permanent neglect was in the child's best interests because the mother refused to follow recommendations with respect to how to handle visitations with the child, instructed the child to disobey a social worker and run away from the worker, and failed to notify the child services agency of her arrest and remand to the local jail, which resulted in the mother missing numerous mental health appointments. *Matter of Alexsander N. (Lena N.), 146 A.D.3d 1047, 45 N.Y.S.3d 253, 2017 N.Y. App. Div. LEXIS 50 (N.Y. App. Div. 3d Dep't)*, app. denied, *29 N.Y.3d 903, 80 N.E.3d 400, 57 N.Y.S.3d 707, 2017 N.Y. LEXIS 803 (N.Y. 2017)*.

Terminating a mother's parental rights was in the child's best interest because the mother was unable to care for the child due to her incarceration, the mother lacked a relationship with the child, and there was strong bond between the child and the foster parents, who wished to adopt the child. *Matter of Duane FF. (Harley GG.), 154 A.D.3d 1086, 62 N.Y.S.3d 566, 2017 N.Y. App. Div. LEXIS 7349 (N.Y. App. Div. 3d Dep't 2017)*, app. denied, *30 N.Y.3d 908, 94 N.E.3d 483, 71 N.Y.S.3d 1, 2018 N.Y. LEXIS 14 (N.Y. 2018)*.

Record supported the determination that termination of the father's parental rights was in the best interests of the children because petitioner established by clear and convincing evidence that it made diligent efforts to encourage and strengthen the relationship between the father and the children and the record of the fact-finding hearing contained sufficient admissible facts to support a permanent neglect finding. *Matter of Cyle F. (Alexander F.), 155 A.D.3d 1626, 64 N.Y.S.3d 842, 2017 N.Y. App. Div. LEXIS 8167 (N.Y. App. Div. 4th Dep't 2017)*, app. denied, *30 N.Y.3d 911, 94 N.E.3d 487, 71 N.Y.S.3d 5, 2018 N.Y. LEXIS 168 (N.Y. 2018)*.

Family court properly terminated a father's parental rights and freed his child for adoption because termination of the father's parental rights was in the child's best interests under where, despite the petitioner's various efforts to assist the father, he permanently neglected the child by failing to plan for the child's future, failing to gain insight into his previous behavior, and failing to address and overcome the specific personal and familial problems, which endangered the child and could endanger the child in the future. *Matter of Sarah J. A. (Ramadan G. O.-A.), 156 A.D.3d 691, 66 N.Y.S.3d 668, 2017 N.Y. App. Div. LEXIS 8727 (N.Y. App. Div. 2d Dep't 2017)*.

154. — —Failure to take responsibility for problems

Record supported determination that child's best interest would be served by terminating mother's parental rights and freeing him for adoption by foster parents with whom he had lived since one month after his birth, where mother's cooperation with petitioning agency had further deteriorated after finding of permanent neglect, she continued to show little insight into her neglectful behavior toward all of her children, and child received consistently affectionate and supportive environment in hands of his foster parents. *In re Matthew C., 227 A.D.2d 679, 641 N.Y.S.2d 753, 1996 N.Y. App. Div. LEXIS 4801 (N.Y. App. Div. 3d Dep't 1996)*.

Mother's parental rights were properly terminated for permanent neglect, even though she participated in some of services offered by county social services department, where she failed to address sexual abuse that led to removal of children from her home, and thus she was unable to make adequate plan for their future. *In re Steven K., 255 A.D.2d 943, 680 N.Y.S.2d 330, 1998 N.Y. App. Div. LEXIS 12186 (N.Y. App. Div. 4th Dep't 1998)*, app. denied, *92 N.Y.2d 820, 685 N.Y.S.2d 421, 708 N.E.2d 178, 1999 N.Y. LEXIS 2100 (N.Y. 1999)*.

155. — —Failure to attend or complete programs

Agency established by clear and convincing evidence that it used diligent efforts to strengthen the parental relationship by regularly scheduling visitation, assisting the father in finding appropriate housing, scheduling conferences, arranging for a psychological examination of the child, and referring the father to a parent skills training course pursuant to a court directive; however, notwithstanding the agency's efforts, the father was irresponsible in planning for his son's return, failing to attend three service plan review conferences, demonstrating belated interest in the child, missing or arriving late to nearly half the scheduled visits with the child, refusing to attend an intensive parenting skills program as directed by the family court, and failing to obtain suitable housing for his family in a timely fashion. Thus, a preponderance of the evidence supported the family court's finding that the child's best interests called for termination of the father's parental rights so as to facilitate adoption by the foster parents who have cared for the child since his birth. *In re Guardianship of Jordane John C., 14 A.D.3d 407, 789 N.Y.S.2d 113, 2005 N.Y. App. Div. LEXIS 300 (N.Y. App. Div. 1st Dep't 2005)*.

156. — —Failure to plan for future

Trial court properly terminated a mother's parental rights to her two children pursuant to *N.Y. Soc. Serv. Law § 384-b*; an agency made reasonable, meaningful efforts to encourage and strengthen the relationship between the mother and her children as required by *N.Y. Soc. Serv. Law § 384-b(7)(a)*, (f), and any progress the mother may have made in planning for the children's future was clearly outweighed by the instability of her lifestyle due to her substance abuse, and the trial court properly determined that termination was in the best interest of the children given the foster parents' desire to adopt both of them and the mother's failure to prepare herself and a suitable home to meet the children's needs. *Tompkins County Dep't of Soc. Servs. v Claire PP. (In re Brandon OO.), 304 A.D.2d 873, 757 N.Y.S.2d 374, 2003 N.Y. App. Div. LEXIS 3506 (N.Y. App. Div. 3d Dep't 2003)*.

Because the family court properly focused on the best interests of a father's child when it determined that custody with the stepmother was not a realistic and feasible plan under *N.Y. Soc. Serv. Law § 384-b(7)(c)*, and because the father failed to make other arrangements for the child's long-term care, his parental rights were properly terminated based on his permanent neglect of the child. *Matter of Deborah E.C. v Shawn K., 63 A.D.3d 1724, 883 N.Y.S.2d*

401, 2009 N.Y. App. Div. LEXIS 4722 (N.Y. App. Div. 4th Dep't), app. denied, *13 N.Y.3d 710, 890 N.Y.S.2d 448, 918 N.E.2d 963, 2009 N.Y. LEXIS 4014 (N.Y. 2009)*.

Father failed to plan for the child's future because he did not complete substance abuse or mental health treatment, downplayed or refused to acknowledge the severity of his substance abuse problem and mental health diagnoses, continued to engage in criminal behavior, did not improve his parenting skills and did not comply with the conditions set out by the agency. *Matter of Isabella H. (Richard I.), 174 A.D.3d 977, 107 N.Y.S.3d 444, 2019 N.Y. App. Div. LEXIS 5346 (N.Y. App. Div. 3d Dep't 2019)*.

157. — —Failure to contact

Termination of parental rights was in child's best interests where (1) despite agency's diligent efforts, mother failed to plan for child's future by missing $^{1}/_{3}$ of her scheduled counseling sessions, continuing to live with physically abusive boyfriend, making few visits to child, failing to understand child's needs, and relocating to Florida, and (2) child's foster parents were financially and psychologically able to meet child's special needs, and child expressed desire to be adopted by them. *In re Louise D., 227 A.D.2d 177, 641 N.Y.S.2d 670, 1996 N.Y. App. Div. LEXIS 4826 (N.Y. App. Div. 1st Dep't 1996)*.

Termination of mother's parental rights for purpose of adoption was in child's best interests, where mother did not contact or inquire about child during first 2 months of his life when he was hospitalized for cocaine toxicity, showed no interest in visiting him until 11 months after he was placed in foster care, displayed no inclination to overcome her severe drug addiction, and deliberately resisted agency's efforts to establish and promote contact with child and to engage her in planning for his future. *In re Matthew O., 236 A.D.2d 299, 653 N.Y.S.2d 349, 1997 N.Y. App. Div. LEXIS 1426 (N.Y. App. Div. 1st Dep't 1997)*.

In a N.Y. Soc. Serv. Law § 384-b termination proceeding, the Family Court properly concluded that termination of parental rights was in a child's best interest; the mother failed to maintain regular contact with the child, who had remained in placement for more than seven years prior to the date of the Court's order terminating her parental rights. The evidence showed that the mother permanently neglected her child. *Matter of Ray A. v Marilyn R., 30 A.D.3d 410, 817 N.Y.S.2d 328, 2006 N.Y. App. Div. LEXIS 7371 (N.Y. App. Div. 2d Dep't 2006)*.

158. — —Residing or associating with inappropriate person

Termination of mother's parental rights was in children's best interests where mother made little progress in establishing stable home environment and improving her housekeeping skills even though she was clearly informed of need to do so, she continued to permit her husband to have unsupervised contact with her daughters even though he was convicted and assertedly intractable child molester, and she repeatedly lied to involved agencies about her living arrangement, thus refusing to accept danger posed to her daughters' welfare by her husband and demonstrating unwillingness to deal with problems that necessitated children's removal and inability to protect them from harm. *In re Tina JJ, 217 A.D.2d 747, 629 N.Y.S.2d 340, 1995 N.Y. App. Div. LEXIS 7758 (N.Y. App. Div. 3d Dep't 1995)*, app. denied, *87 N.Y.2d 808, 641 N.Y.S.2d 830, 664 N.E.2d 896, 1996 N.Y. LEXIS 230 (N.Y. 1996)*.

Termination of the mother's parental rights was in the children's best interests because, despite the agency's efforts to help the mother, she steadfastly refused to place her children ahead of her relationship with her husband, who was violent and abused alcohol. *In re Travis A., 4 A.D.3d 632, 772 N.Y.S.2d 393, 2004 N.Y. App. Div. LEXIS 1741 (N.Y. App. Div. 3d Dep't)*, app. denied, *2 N.Y.3d 706, 781 N.Y.S.2d 287, 814 N.E.2d 459, 2004 N.Y. LEXIS 1054 (N.Y. 2004)*.

159. — —Drug addiction

Termination of mother's parental rights was in child's best interest, even though mother attended several drug programs, regularly visited her daughter, and made progress in other areas of her life, where she had failed to overcome her drug addiction and was subsequently arrested and incarcerated on drug possession charges, and there was strong bonding between child and foster family. *In re Maldrina R., 219 A.D.2d 723, 631 N.Y.S.2d 742, 1995 N.Y. App. Div. LEXIS 9544 (N.Y. App. Div. 2d Dep't 1995)*.

Termination of mother's parental rights was in best interests of children where she failed to make progress at drug rehabilitation despite agency's diligent and exhaustive efforts over 5-year period, and children had bonded with their foster parents and siblings. *In re Manuel Antonio M., 234 A.D.2d 87, 650 N.Y.S.2d 701, 1996 N.Y. App. Div. LEXIS 12410 (N.Y. App. Div. 1st Dep't 1996)*.

Termination of mother's parental rights was in child's best interest where, at time of dispositional hearing, child had been in foster care for 21 months, mother was in county jail serving 8-month sentence for seventh degree possession of controlled substance, and although mother stated her intention to enter residential treatment program after her release, she had history of cocaine addiction, and treatment program would take considerable time to complete. *In re Torrin G., 240 A.D.2d 820, 658 N.Y.S.2d 712, 1997 N.Y. App. Div. LEXIS 6530 (N.Y. App. Div. 3d Dep't 1997)*.

Termination of mother's parental rights was in children's best interests where mother had history of resistance to drug treatment, and children had bonded with their respective foster mothers. *In re Evelyn Rebecca W., 242 A.D.2d 477, 662 N.Y.S.2d 477, 1997 N.Y. App. Div. LEXIS 9009 (N.Y. App. Div. 1st Dep't 1997)*.

Termination of father's parental rights was in best interests of children, who had been in foster care for past 3 years, where father had not confronted his root problem of substance abuse and therefore had not yet received anger management counseling and parenting skills classes, which were concerns that led to children's removal; father's limited history of improvement did not require different disposition. *In re Lord-El "T", 260 A.D.2d 955, 689 N.Y.S.2d 272, 1999 N.Y. App. Div. LEXIS 4441 (N.Y. App. Div. 3d Dep't 1999)*.

It was not in children's best interests to be released to mother's custody, despite her recent entry into drug rehabilitation program, where she had failed to complete such program in past despite many referrals by caseworkers, she had failed to provide suitable housing, and she had failed to maintain consistent visitation; moreover, children had developed strong bond with foster parents, with whom they had lived with for 6 years in company of their other 2 older siblings. *In re Leake & Watts Servs. ex rel. Brandon W. (Anonymous), 262 A.D.2d 644, 693 N.Y.S.2d 608, 1999 N.Y. App. Div. LEXIS 7577 (N.Y. App. Div. 2d Dep't 1999)*.

Termination of a mother's parental rights to five children after an adjudication of permanent neglect was in accord with *N.Y. Soc. Serv. Law § 384-b* and with their best interests as required by *Family Ct Act § 631*; the record showed the mother was unwilling to address her substance abuse problem and that the mother made little effort to begin a treatment program in accordance with her permanency plan during the two and a half year period since the children had been removed from the mother's custody. *Matter of Angelica VV., 53 A.D.3d 732, 861 N.Y.S.2d 187, 2008 N.Y. App. Div. LEXIS 5972 (N.Y. App. Div. 3d Dep't 2008)*.

160. — —Alcohol abuse

Best interests of child required termination of father's parental rights based on permanent neglect where father was uncooperative and indifferent despite agency's diligent efforts to encourage his parental relationship by arranging visitation and counseling, by encouraging him to enroll in alcohol rehabilitation and parenting skills courses, and by providing him with assistance for housing and financial problems. *In re Aisha Latisha J., 182 A.D.2d 498, 582 N.Y.S.2d 408, 1992 N.Y. App. Div. LEXIS 6071 (N.Y. App. Div. 1st Dep't)*, app. denied, *80 N.Y.2d 759, 591 N.Y.S.2d 137, 605 N.E.2d 873, 1992 N.Y. LEXIS 3434 (N.Y. 1992)*.

161. — —Mental incapacity

Best interests of child did not support Family Court's award of custody to her mother rather than to her foster parents, who had demonstrated their abilities to successfully raise her since shortly after her birth, where despite mother's progress in rehabilitation after finding of permanent neglect of child, mother would require long-term therapy and might relapse into her former ways, and court-appointed psychologist opined that mother's depression, personality disorders, dependent personality type, and history of being abused child caused her to be poor parenting risk. *In re Tiffany A., 242 A.D.2d 709, 662 N.Y.S.2d 796, 1997 N.Y. App. Div. LEXIS 9235 (N.Y. App. Div. 2d Dep't 1997)*.

162. — —Incarceration

Termination of father's parental rights for permanent neglect, so as to free child for adoption, was clearly in child's best interest where father, who was serving 2-year prison sentence for federal narcotics violations, failed to show that he could provide child with supportive and nurturing home, foster mother was providing loving and nurturing environment in which she and child had become closely bonded, and for first time in child's life his needs were being provided for by capable custodian whose "prayer" was to be able to adopt him. *In re James Carton K., 245 A.D.2d 374, 665 N.Y.S.2d 426, 1997 N.Y. App. Div. LEXIS 12859 (N.Y. App. Div. 2d Dep't 1997)*, app. denied, *91 N.Y.2d 809, 670 N.Y.S.2d 403, 693 N.E.2d 750, 1998 N.Y. LEXIS 650 (N.Y. 1998)*.

Best interests of 15-year-old boy supported transfer of permanent custody from his father to his father's paramour, who was not boy's mother, where neither mother nor any party other than paramour petitioned for custody, father was currently incarcerated for sexual abuse of his daughter, that conviction was basis for finding of father's derivative neglect of boy, and boy had lived with father's paramour since 1990, had developed close and loving relationship with her, and desired to remain in her home along with his younger brother and paramour's other children. *Parliament v Harris, 266 A.D.2d 217, 697 N.Y.S.2d 694, 1999 N.Y. App. Div. LEXIS 11085 (N.Y. App. Div. 2d Dep't 1999)*.

In proceeding to terminate father's parental rights to his 2 biological children, based on permanent neglect while he was incarcerated for first degree sexual abuse of his stepdaughter, termination was in children's best interests where father did not provide realistic plan for children's future, his "plan" necessarily relegated children to long-term foster care, which was antithetical to their need for permanency, and he did not make sufficient progress in overcoming problems that precipitated removal of children in first instance. *In re Amanda "C", 281 A.D.2d 714, 722 N.Y.S.2d 267, 2001 N.Y. App. Div. LEXIS 2307 (N.Y. App. Div. 3d Dep't)*, app. denied, *96 N.Y.2d 714, 729 N.Y.S.2d 441, 754 N.E.2d 201, 2001 N.Y. LEXIS 1439 (N.Y. 2001)*.

Termination of parental rights and adoption by foster parents with whom children had lived for more than 5 years was in children's best interests where (1) agency made diligent efforts to help father meet goals of obtaining order of filiation, undergoing drug rehabilitation, learning parenting skills, and obtaining housing and job, (2) father's arrest, conviction and reincarceration for selling drugs during pendency of proceeding left him unable to meet his own goal of assisting to raise his children if they were permitted to reside with his elderly parents, and (3) even if his visits with children were substantial and meaningful, they did not negate his failure to plan. *In re Custody & Guardianship of Darrell Sheman A., 283 A.D.2d 185, 724 N.Y.S.2d 596, 2001 N.Y. App. Div. LEXIS 4288 (N.Y. App. Div. 1st Dep't 2001)*.

In light of the fact that a child had bonded with his foster parents, who wished to adopt him, that the child's father was not able to care for the child due to his incarceration, and that the father had no plan for the care of the child, a family court properly found that the child's best interests were served by terminating the father's parental rights under *N.Y. Soc. Serv. Law § 384-b* and freeing the child for adoption by the foster parents under *N.Y. Fam. Ct. Act § 631*. *Matter of Jonathan R. v Michael R., 30 A.D.3d 426, 817 N.Y.S.2d 335, 2006 N.Y. App. Div. LEXIS 7350 (N.Y. App. Div. 2d Dep't)*, app. denied, *7 N.Y.3d 711, 823 N.Y.S.2d 770, 857 N.E.2d 65, 2006 N.Y. LEXIS 2665 (N.Y. 2006)*.

163. — —Lack of bond with parent

Court properly concluded that best interests of special needs children required termination of respondent's parental rights and transfer of children's guardianship and custody for purposes of adoption where, despite respondent's efforts at rehabilitation, her situation remained unsettled, children had bonded with foster parents, and there was no evidence of positive, meaningful relationship with respondent to warrant suspended judgment. *In re Guardianship of Latesha Nicole M., 219 A.D.2d 521, 631 N.Y.S.2d 669, 1995 N.Y. App. Div. LEXIS 9501 (N.Y. App. Div. 1st Dep't 1995)*.

Termination of mother's parental rights was in child's best interests where child had bonded with foster family with whom he had been living for more than year, and child had not bonded with mother despite her bimonthly visits. *In re Vincent Anthony C., 235 A.D.2d 283, 652 N.Y.S.2d 289, 1997 N.Y. App. Div. LEXIS 516 (N.Y. App. Div. 1st Dep't 1997)*.

164. — —Bond with foster parents

Termination of mother's parental rights was in child's best interest, given strong bond between child and foster family, with whom she had lived since birth, mother's failure to visit her child regularly, and her failure to complete drug rehabilitation programs after numerous attempts. *In re Natanya Sharay G., 232 A.D.2d 487, 648 N.Y.S.2d 932, 1996 N.Y. App. Div. LEXIS 10137 (N.Y. App. Div. 2d Dep't 1996)*.

Termination of father's parental rights for permanent neglect, so as to free child for adoption, was clearly in child's best interest where father, who was serving 2-year prison sentence for federal narcotics violations, failed to show that he could provide child with supportive and nurturing home, foster mother was providing loving and nurturing environment in which she and child had become closely bonded, and for first time in child's life his needs were being provided for by capable custodian whose "prayer" was to be able to adopt him. *In re James Carton K., 245 A.D.2d 374, 665 N.Y.S.2d 426, 1997 N.Y. App. Div. LEXIS 12859 (N.Y. App. Div. 2d Dep't 1997)*, app. denied, *91 N.Y.2d 809, 670 N.Y.S.2d 403, 693 N.E.2d 750, 1998 N.Y. LEXIS 650 (N.Y. 1998)*.

On findings of abandonment by mother and permanent neglect by father, children's best interests would be served by terminating both parents' parental rights and freeing children for adoption by their foster parents where children had lived with foster parents since birth, and foster parents were sole parents whom children had ever known. *In re Barbara Luisa A., 266 A.D.2d 156, 699 N.Y.S.2d 38, 1999 N.Y. App. Div. LEXIS 12339 (N.Y. App. Div. 1st Dep't 1999)*.

It was in best interests of child that father's parental rights be terminated and that child be freed for adoption where child had resided with her foster family for 4 ½ years, she regarded her foster parents as her mother and father, she had performed well in school during her stay in foster home, and her foster mother was active in school functions and had taken keen interest in her development. *In re Jowell Lateefra B., 271 A.D.2d 366, 706 N.Y.S.2d 115, 2000 N.Y. App. Div. LEXIS 4630 (N.Y. App. Div. 1st Dep't)*, app. denied, *95 N.Y.2d 760, 714 N.Y.S.2d 710, 737 N.E.2d 952, 2000 N.Y. LEXIS 2291 (N.Y. 2000)*.

On finding of permanent neglect, termination of mother's parental rights, so as to free child for adoption by her foster parents, was in child's best interests where child had lived with her foster mother since 1997, had adapted well to her new environment, and was otherwise well adjusted. *In re Tanya Alexis G., 273 A.D.2d 19, 708 N.Y.S.2d 394, 2000 N.Y. App. Div. LEXIS 6109 (N.Y. App. Div. 1st Dep't 2000)*.

On termination of father's parental rights for permanent neglect, child's best interests were served by freeing her for adoption by foster family with whom she had lived since infancy. *In re Custody & Guardianship of Ziana Patricia D., 281 A.D.2d 241, 721 N.Y.S.2d 657, 2001 N.Y. App. Div. LEXIS 2436 (N.Y. App. Div. 1st Dep't 2001)*.

Termination of father's parental rights was proper because the evidence established that the father failed to plan for the future of his children despite the fact that the presentment agency made diligent efforts to assist the father in doing so, including scheduling regular visits with the children, counseling the father as to the importance of attending such visits and random drug screenings, and changing the day of visitation in order to accommodate his

schedule; the finding of permanent neglect was supported by clear and convincing evidence. In light of the fact that the children had bonded with their foster mother and the father's sporadic visitation, the trial court properly found that the best interests of the children were served by terminating the father's parental rights and freeing the children for adoption. *Matter of Ailayah Shawneque L., 40 A.D.3d 1097, 838 N.Y.S.2d 102, 2007 N.Y. App. Div. LEXIS 6642 (N.Y. App. Div. 2d Dep't)*, app. denied, *9 N.Y.3d 806, 843 N.Y.S.2d 536, 875 N.E.2d 29, 2007 N.Y. LEXIS 2661 (N.Y. 2007)*.

165. — —Prolonged foster care

On termination of mother's parental rights on ground of neglect, adoption by child's foster parents was in child's best interests where child had become more fearful of mother and resistant to visitation or contact with her, as manifested by child's physical and psychological problems, and to continue foster care after many years would only prolong uncertainty. *In re Juanita H., 245 A.D.2d 89, 665 N.Y.S.2d 650, 1997 N.Y. App. Div. LEXIS 12908 (N.Y. App. Div. 1st Dep't 1997)*, app. denied, *91 N.Y.2d 811, 671 N.Y.S.2d 714, 694 N.E.2d 883, 1998 N.Y. LEXIS 940 (N.Y. 1998)*.

Father's parental rights were properly terminated on evidence that he failed to offer viable resource for children, or to attend therapy for or even acknowledge his problem with domestic violence, and that after 5 years in foster care it was in children's best interests to be adopted by their foster family, despite father's participation in domestic violence program after fact-finding decision was made. *In re Samuel Enrique S., 282 A.D.2d 282, 722 N.Y.S.2d 872, 2001 N.Y. App. Div. LEXIS 3590 (N.Y. App. Div. 1st Dep't 2001)*.

In freeing the children for adoption in a termination proceeding, the trial court properly considered the best interests of children, including that they had spent all or substantially all of their lives in foster care, and the mother and the father had not demonstrated their ability to ameliorate the problems that led to their placement; thus, the evidence supported the further determination of the trial court that termination of the parental rights was in the children's best interests pursuant to *N.Y. Fam. Ct. Act § 631* and *N.Y. Soc. Serv. Law § 384-b(1)(b)*. *Matter of Darren V., 61 A.D.3d 986, 878 N.Y.S.2d 171, 2009 N.Y. App. Div. LEXIS 3371 (N.Y. App. Div. 2d Dep't)*, app. denied, *12 N.Y.3d 715, 884 N.Y.S.2d 690, 912 N.E.2d 1071, 2009 N.Y. LEXIS 2511 (N.Y. 2009)*.

166. — —Abuse

Father's lackadaisical attitude and inaction regarding his 16-year-old son's refusal to attend school and treatment plans for his incestuous abuses of other siblings would expose subject child to possible abuse if she lived with father and his oldest son, and thus her best interests were served by freeing her for adoption by intervenor-respondents. *In re Sylvia Esther O., 253 A.D.2d 465, 676 N.Y.S.2d 656, 1998 N.Y. App. Div. LEXIS 8852 (N.Y. App. Div. 2d Dep't 1998)*.

Trial court properly granted summary judgment to an agency pursuant to N.Y. *C.P.L.R. 3212* and found that a father had permanently neglected his children and terminated his parental rights to three of the children pursuant to *N.Y. Soc. Serv. Law § 384-b*; the father had sexually abused one child, and as part of a criminal sentence arising from that conduct the father was barred from having contact with his children until 2011, and the father failed to establish that he could contribute in any meaningful fashion to the children's future, and therefore the termination was in the best interest of the children. *St. Lawrence County Dep't of Soc. Servs. v Robert N. (In re Curtis N.), 302 A.D.2d 803, 755 N.Y.S.2d 505, 2003 N.Y. App. Div. LEXIS 1772 (N.Y. App. Div. 3d Dep't)*, app. dismissed, *100 N.Y.2d 535, 762 N.Y.S.2d 876, 793 N.E.2d 413, 2003 N.Y. LEXIS 1294 (N.Y. 2003)*.

167. — —Child's injuries

Termination of mother's parental rights for neglect was in best interests of children where 3 ½ -month-old child sustained life-threatening injuries, including bilateral fractured ribs, which resulted in placement of child and his 22-month-old brother in foster care, mother failed to give any medically tenable explanation for these injuries or for

fractured leg of third child born while other 2 were in foster care, and mother failed to cooperate with agency's efforts by completing course of psychotherapy addressed to abuse problem and by separating from her violent paramour, who was children's father. *In re Joe Alex F., 238 A.D.2d 154, 655 N.Y.S.2d 518, 1997 N.Y. App. Div. LEXIS 3198 (N.Y. App. Div. 1st Dep't 1997)*.

Family Court properly determined that children's best interests would be served by terminating mother's parental rights where, inter alia, testimony of several caseworkers and mental health professionals who had been involved with mother and her family over years indicated that children had serious behavioral problems and were prone to violence and that one or both of children had sexually abused their sister, during trial discharge period, mother slapped one child across face, leaving distinct handprint, and her boyfriend through child against wall, fracturing his clavicle, and mother then delayed seeking medical treatment and thereafter gave false statements as to manner in which child had been injured. *In re Patrick JJ., 262 A.D.2d 678, 690 N.Y.S.2d 786, 1999 N.Y. App. Div. LEXIS 6248 (N.Y. App. Div. 3d Dep't 1999)*.

168. — —Expert testimony

In proceedings under CLS *Soc Serv § 384-b(7)*, evidence established that best interests of children required termination of mother's parental rights where expert testimony of children's psychotherapists indicated that mere contact with mother would be detrimental to progress made by children while in foster care. *In re Shaquanna C. Forestdale, Inc., 184 A.D.2d 509, 584 N.Y.S.2d 197, 1992 N.Y. App. Div. LEXIS 7614 (N.Y. App. Div. 2d Dep't 1992)*.

169. —Not proper

Although best interests of child would likely be better served by terminating parental rights of both mother and father so as to enable foster parents to adopt her, further proceedings were necessary to ascertain child's current status, with final disposition to be predicated solely on her best interests in accordance with CLS *Family Ct Act § 631*, where child had been in mother's care for nearly 2 years, and one year had passed since conclusion of dispositional hearing. *In re Tiffany A., 242 A.D.2d 709, 662 N.Y.S.2d 796, 1997 N.Y. App. Div. LEXIS 9235 (N.Y. App. Div. 2d Dep't 1997)*.

Despite a proper finding that the father had neglected the children, termination of the father's parental rights in *N.Y. Soc. Serv. Law § 384-b* proceedings may not have been in the children's best interest based on new facts considered by the appellate court, including an allegation that there was no adoptive resource available for the children, that both children were now 12 years old, and that one of the children had expressed a clear desire to return to the father's care. *Matter of Samuel Fabien G. v Robert Earl G., 52 A.D.3d 713, 861 N.Y.S.2d 369, 2008 N.Y. App. Div. LEXIS 5640 (N.Y. App. Div. 2d Dep't 2008)*.

Judgment adjudicating two children to be abandoned and/or permanently neglected and terminating their parent's parental rights was improper, as termination of the parent's rights was not in their best interests; the children had not fared well in foster care and the foster parents were not seeking to adopt them. *Matter of Arianna I. (Roger I.), 100 A.D.3d 1281, 955 N.Y.S.2d 413, 2012 N.Y. App. Div. LEXIS 8143 (N.Y. App. Div. 3d Dep't 2012)*.

Decision terminating a parent's parental rights on the basis of neglect was improper, as there was no evidence indicating that an agency caseworker made more then a cursory attempt to promote a constructive relationship between the parent and the parent's child. *Matter of Arianna I. (Roger I.), 100 A.D.3d 1281, 955 N.Y.S.2d 413, 2012 N.Y. App. Div. LEXIS 8143 (N.Y. App. Div. 3d Dep't 2012)*.

Family court erred in terminating a mother's parental rights because termination was impractical as there was no need to free the child for adoption and termination was against the child's best interest; the plan for the child was for him to be returned to the care and custody of his father. *Matter of Marcus BB. (Donna AA.), 130 A.D.3d 1211, 13 N.Y.S.3d 626, 2015 N.Y. App. Div. LEXIS 5857 (N.Y. App. Div. 3d Dep't 2015)*.

Despite a finding of father's noncompliance of terms of the suspended judgment, the family court's determination terminating the father's parental rights was remanded because no dispositional hearing was held following the fact-finding hearing to discern the best interests of the children, and the family court did not render a best interests determination as part of its decision and order. *Matter of Nahlaya MM. (Britian MM.), 172 A.D.3d 1482, 100 N.Y.S.3d 119, 2019 N.Y. App. Div. LEXIS 3425 (N.Y. App. Div. 3d Dep't 2019)*.

A nine-year-old child who has been placed with the Commissioner of Social Services since 1969 due to the neglect of her mother, is discharged to respondent natural mother, who, by reason of her own rehabilitation by faithful adherence to a drug rehabilitation program, good employment record and co-operation with welfare officials in reuniting with her daughter, is an example of rehabilitation and should therefore be given an opportunity to care for her daughter to determine if permanent return to her can be accomplished. Although the desires of the child to remain with her foster parents should be considered, they should not be determinative. Termination of the parental rights of respondent (*Family Ct Act, § 1055*) is not warranted since the Law Guardian for the child and the foster parents have failed to overcome the preference accorded the natural parent in a custody contest with nonparents absent a showing of unfitness or abandonment. A trial discharge of the child to the natural mother, under the close supervision of the local welfare agency in Ohio where respondent resides with her husband, is a casework function that remains part of the rehabilitative effort. *In re E., 95 Misc. 2d 102, 407 N.Y.S.2d 380, 1978 N.Y. Misc. LEXIS 2389 (N.Y. Fam. Ct.)*, aff'd, *63 A.D.2d 1127, 405 N.Y.S.2d 1013, 1978 N.Y. App. Div. LEXIS 15582 (N.Y. App. Div. 1st Dep't 1978)*.

In a proceeding pursuant to *N.Y. Soc. Serv. Law § 384-b*, a family court erred in determining that termination of a mother's parental rights to a teenaged child and placing the child for adoption was in the child's best interests because the child was approximately one month shy of turning 14 when the dispositional order at issue was entered and the child's consent to adoption would have been required had she been 14 years old at that time, *N.Y. Dom. Rel. Law § 111(1)(a)*, the child refused to consent to adoption, the child had no real bond with anyone except her mother and siblings, and the child consistently stated she wanted to be reunited with the mother. *Matter of Gena S. (Karen M.), 101 A.D.3d 1593, 958 N.Y.S.2d 546, 2012 N.Y. App. Div. LEXIS 8928 (N.Y. App. Div. 4th Dep't 2012)*, app. dismissed, *101 A.D.3d 1596, 955 N.Y.S.2d 781, 2012 N.Y. App. Div. LEXIS 8922 (N.Y. App. Div. 4th Dep't 2012)*, app. dismissed, *101 A.D.3d 1596, 955 N.Y.S.2d 781, 2012 N.Y. App. Div. LEXIS 8927 (N.Y. App. Div. 4th Dep't 2012)*, app. dismissed, *101 A.D.3d 1597, 955 N.Y.S.2d 782, 2012 N.Y. App. Div. LEXIS 8930 (N.Y. App. Div. 4th Dep't 2012)*, app. denied, *104 A.D.3d 1263, 961 N.Y.S.2d 355, 2013 N.Y. App. Div. LEXIS 1655 (N.Y. App. Div. 4th Dep't 2013)*.

D. Abuse

170. Generally

Mother's sexual abuse of parties' child was sufficient to support change in custody to father. *Alan YY. v Laura ZZ., 209 A.D.2d 902, 619 N.Y.S.2d 369, 1994 N.Y. App. Div. LEXIS 11656 (N.Y. App. Div. 3d Dep't 1994)*, app. denied, *85 N.Y.2d 806, 627 N.Y.S.2d 322, 650 N.E.2d 1324, 1995 N.Y. LEXIS 1257 (N.Y. 1995)*.

Only a parent can be subject to a finding of severe abuse as defined in *N.Y. Soc. Serv. Law § 384-b(8)(a)*, and nothing in *N.Y. Dom. Rel. Law § 111(1)(f)* supports a construction of *N.Y. Soc. Serv. Law § 384-b* that includes any person having lawful custody of a child in the definition of a parent for the purpose of a severe abuse finding; the plain language of § 384-b is limited to parents, the legislative history indicates that its purpose is to establish necessary procedures and standards for the termination of parental rights and the weighing of the rights of birth parents against their children's rights to permanency, and any different meaning or intent to be ascribed to severe abuse under § 384-b should be the work of the legislature and not of the courts. *Matter of Meredith DD., 821 N.Y.S.2d 741, 13 Misc. 3d 894, 2006 N.Y. Misc. LEXIS 2511 (N.Y. Fam. Ct. 2006)*.

171. Applicability

Because the Adoption and Safe Families Act is remedial in nature and does not impair vested rights, it should be applied retroactively; the Act is an attempt to refine the law concerning permanency planning for children in foster case, and applying the Act retroactively does not violate parents' due process rights because the Act allows parents to offer evidence to contravene an agency's request to be excused from reasonable efforts at family reunification under N.Y. Soc. Serv. Law § 384-b(8)(a)(iv) or N.Y. Fam. Ct. Act § 1039-b(a). *In re Marino S., 100 N.Y.2d 361, 763 N.Y.S.2d 796, 795 N.E.2d 21, 2003 N.Y. LEXIS 1767 (N.Y.)*, cert. denied, *540 U.S. 1059, 124 S. Ct. 834, 157 L. Ed. 2d 714, 2003 U.S. LEXIS 8771 (U.S. 2003)*.

Newly created felony sex offense grounds for termination of parental rights under L 1999, ch 7 (NY-ASFA) are remedial and retroactive, and apply to all children in foster care as of effective date of Federal Adoption and Safe Families Act of 1997 (ASFA) including cases filed prior to effective date of NY-ASFA. *In re Custody & Guardianship of Marino S., 181 Misc. 2d 264, 693 N.Y.S.2d 822, 1999 N.Y. Misc. LEXIS 262 (N.Y. Fam. Ct. 1999)*, aff'd, *293 A.D.2d 223, 741 N.Y.S.2d 207, 2002 N.Y. App. Div. LEXIS 4026 (N.Y. App. Div. 1st Dep't 2002)*.

Allegation that the paramour of a child's mother severely abused the child as defined in N.Y. Soc. Serv. Law § 384-b(8)(a) when he sexually abused the child for four years was dismissed even though his conduct clearly violated N.Y. Penal Law art. 130 because the paramour was not the child's biological or adoptive father, he had no other natural children as to whom there was a potential for termination of his parental rights, and findings of severe abuse could be made only against parents; even if N.Y. Soc. Serv. Law § 384-b were more broadly interpreted, there was no evidence that he had ever been the child's lawful custodian under N.Y. Dom. Rel. Law § 111(i)(f). *Matter of Meredith DD., 821 N.Y.S.2d 741, 13 Misc. 3d 894, 2006 N.Y. Misc. LEXIS 2511 (N.Y. Fam. Ct. 2006)*.

Social Services Law § 384-b(8)(a)(i) did not permit a finding of severe abuse against the person legally responsible (PLR) for a deceased child because § 384-b(8)(a)(i) defined a severely abused child as one whose "parent's" reckless or intentional acts resulted in serious physical injury to the child, and the PLR was not the "parent" of the deceased child; however, Social Services Law § 384-b(8)(a)(iii) did permit a finding of derivative severe abuse against the PLR because he was the parent of the deceased child's half-sibling, and § 384-b (8)(a)(iii)(A) explicitly included in its definition of an abused child the parent of a sibling who had been convicted of homicide where the victim was another child for whose care such parent was or had been legally responsible. *Matter of Yamillette G., 872 N.Y.S.2d 897, 23 Misc. 3d 841, 241 N.Y.L.J. 29, 2009 N.Y. Misc. LEXIS 228 (N.Y. Fam. Ct. 2009)*, aff'd in part, *74 A.D.3d 1066, 906 N.Y.S.2d 271, 2010 N.Y. App. Div. LEXIS 5298 (N.Y. App. Div. 2d Dep't 2010)*.

172. Diligent efforts of agency

Where an eight-year-old girl was brutally raped by her mother's boyfriend, and where both the mother and boyfriend delayed in seeking medical attention for the girl and fabricated a story about her injuries, an agency did not have to demonstrate reasonable efforts at family reunification under N.Y. Soc. Serv. Law § 384-b(8)(a)(iv) or N.Y. Fam. Ct. Act § 1039-b(a) in a parental termination proceeding that occurred after the implementation of the Adoption and Safe Families Act; the rape and the mother's knowing allowance of it constituted severe abuse under N.Y. Soc. Serv. Law § 384-b(8)(a)(ii), and the failure to aid the child after the rape, even though she was bleeding profusely and vomiting, constituted a depraved indifference to human life that resulted in serious physical injury under N.Y. Soc. Serv. Law § 384-b(8)(a)(i). *In re Marino S., 100 N.Y.2d 361, 763 N.Y.S.2d 796, 795 N.E.2d 21, 2003 N.Y. LEXIS 1767 (N.Y.)*, cert. denied, *540 U.S. 1059, 124 S. Ct. 834, 157 L. Ed. 2d 714, 2003 U.S. LEXIS 8771 (U.S. 2003)*.

Administration was properly excused from making diligent efforts to reunite a father with his son in child protective proceedings because the trial court correctly found that diligent efforts to encourage and strengthen the parental relationship would have been detrimental to child's best interests, in accordance with N.Y. Soc. Serv. Law § 384-b(8)(a)(iv); the phrase "circumstances evincing a depraved indifference to human life" did not mean the same thing for purposes of § 384-b(8)(a)(i) as it did under the Penal Law, and, for purposes of § 384-b(8)(a)(i), "circumstances evincing a depraved indifference to human life" referred to the risk intentionally or recklessly posed to the child by the parent's abusive conduct. A showing of diligent efforts to encourage and strengthen the parental relationship

was not prerequisite to a finding of severe abuse under N.Y. Fam. Ct. Act § 1051(e) where the fact-finder determined that such efforts would have been detrimental to the best interests of the child, and where a court had previously determined that reasonable efforts to make it possible for the child to return safely to his or her home were not required, the agency was not required to demonstrate diligent efforts as set forth in § 384-b(8). *Matter of Dashawn W. (Antoine N.), 21 N.Y.3d 36, 970 N.Y.S.2d 474, 992 N.E.2d 402, 2013 N.Y. LEXIS 837 (N.Y. 2013)*.

Because proof of diligent efforts was unnecessary at a dispositional hearing under N.Y. Fam. Ct. Act § 1039-b and N.Y. Soc. Serv. Law § 384-b(8)(a)(iv), and because a father had previously been found to have severely abused his child, the department of social services was entitled to summary judgment on its petition to terminate the father's parental rights. *Matter of Rebecca KK., 53 A.D.3d 710, 861 N.Y.S.2d 459, 2008 N.Y. App. Div. LEXIS 5955 (N.Y. App. Div. 3d Dep't 2008)*.

Guilty pleas by a mother and father in connection with the death of a 20-month-old child in their care, clearly and convincingly established that reasonable efforts to return their other child to the home as set forth in N.Y. Soc. Serv. Law § 384-b(8)(a)(iv) were excused because such efforts were not in the child's best interests; the child was placed in the custody of the Commissioner of Social Services. *Matter of Yamillette G. v Marlene M., 74 A.D.3d 1066, 906 N.Y.S.2d 271, 2010 N.Y. App. Div. LEXIS 5298 (N.Y. App. Div. 2d Dep't 2010)*.

Petitioner was excused from making diligent efforts in termination of parental rights case based on felony sex offense grounds under L 1999, ch 7, even though finding of "aggravated circumstances" was not previously made, because "severe abuse" always constitutes aggravated circumstance. *In re Custody & Guardianship of Marino S., 181 Misc. 2d 264, 693 N.Y.S.2d 822, 1999 N.Y. Misc. LEXIS 262 (N.Y. Fam. Ct. 1999)*, aff'd, *293 A.D.2d 223, 741 N.Y.S.2d 207, 2002 N.Y. App. Div. LEXIS 4026 (N.Y. App. Div. 1st Dep't 2002)*.

When an agency moved to be excused from making reasonable efforts to reunify a father and the father's child, after the father was convicted of course of sexual conduct in the first degree, as to the child, under N.Y. Penal Law § 130.75(a)(1), the motion was denied because, inter alia, the child was not found to be abused, pursuant to N.Y. Fam. Ct. Act § 1012(e)(iii), so the child was not a "severely abused child," pursuant to N.Y. Soc. Serv. Law § 384-b(8)(a)(ii), as to whom such a motion could be granted, pursuant to N.Y. Fam. Ct. Act § 1039-b(b)(1). *Matter of Terrence C. (Clarence W.), 884 N.Y.S.2d 615, 24 Misc. 3d 1006, 241 N.Y.L.J. 106, 2009 N.Y. Misc. LEXIS 1302 (N.Y. Fam. Ct. 2009)*.

Father's parental rights were terminated pursuant to N.Y. Soc. Serv. Law § 384-b because the father killed his son's mother by strangling her, it was contrary to the son's best interest to be returned to the father's care in the unlikely event that he was paroled, and the department was not required to make reasonable efforts towards return of the son to the father; there was no evidence that the deceased mother committed domestic violence against the father that was a factor to her death for purposes of § 384-b(8)(a)(iii). *Matter of Paul C., 903 N.Y.S.2d 874, 28 Misc. 3d 1012, 2010 N.Y. Misc. LEXIS 2431 (N.Y. Fam. Ct. 2010)*.

Where a mother's parental rights were terminated, as the department of social services offered her parenting classes and domestic violence and mental health counseling; kept her informed of her son's progress; modified the visitation schedule to accommodate her; and provided her with bus passes and other practical assistance, it established that it made diligent efforts to encourage and strengthen her relationship with the child, as required by N.Y. Fam. Ct. Act § 614 and N.Y. Soc. Serv. Law §§ 384-b. *Matter of Jonathan NN. (Michelle OO.), 90 A.D.3d 1161, 934 N.Y.S.2d 568, 2011 N.Y. App. Div. LEXIS 8705 (N.Y. App. Div. 3d Dep't 2011)*, app. denied, *18 N.Y.3d 808, 944 N.Y.S.2d 479, 967 N.E.2d 704, 2012 N.Y. LEXIS 492 (N.Y. 2012)*.

173. Severe abuse

Family court had authority to made derivative findings of severe abuse as to two siblings who were not the victims of a rape because the absence of specific references to siblings in N.Y. Soc. Serv. Law § 384-b(8)(a)(i), (ii) did not limit derivative findings strictly to homicide and assault situations; the underlying finding that a child has been abused pursuant to N.Y. Soc. Serv. Law § 384-b(8)(a)(ii) may itself be a derivative finding, even in cases other than

those involving homicide or assault, and N.Y. Fam. Court Act § 1046(a)(i) provides indirect support for derivative findings in proceedings under N.Y. Fam. Ct. Act art. 10. *In re Marino S., 100 N.Y.2d 361, 763 N.Y.S.2d 796, 795 N.E.2d 21, 2003 N.Y. LEXIS 1767 (N.Y.)*, cert. denied, *540 U.S. 1059, 124 S. Ct. 834, 157 L. Ed. 2d 714, 2003 U.S. LEXIS 8771 (U.S. 2003)*.

Suspended judgment was not appropriate where mother was reluctant to admit that severe abuse had occurred, she continued to place her own interests above those of her child, and her therapist testified that she would be need to participate in sex offender treatment program for at least 2 to 3 years before child could be returned, even if she progressed in that program. *In re Kimberly B., 285 A.D.2d 982, 726 N.Y.S.2d 829, 2001 N.Y. App. Div. LEXIS 6948 (N.Y. App. Div. 4th Dep't 2001)*.

Father's child was properly adjudicated to be severely abused under N.Y. Soc. Serv. Law § 384-b(8)(a)(ii) based on the father's guilty plea to attempted sodomy in the first degree under N.Y. Penal Law § 130.50 because while the family court erred in failing to determine prior to that adjudication whether a county agency was required to make diligent efforts to rehabilitate the father, the error was harmless based on a 2003 consent order that barred the father from contacting the child until the child was 18. *Matter of Rebecca KK., 40 A.D.3d 1195, 834 N.Y.S.2d 732, 2007 N.Y. App. Div. LEXIS 5451 (N.Y. App. Div. 3d Dep't)*, app. denied, *9 N.Y.3d 811, 846 N.Y.S.2d 601, 877 N.E.2d 651, 2007 N.Y. LEXIS 3101 (N.Y. 2007)*.

Because the evidence adduced at a fact-finding hearing supported the Family Court's finding under N.Y. Soc. Serv. Law § 384-b(8)(a) as to a father's severe child abuse, because the father consented to the children's placement in accordance with N.Y. C.P.L.R. 5511, and because the mother was not deprived of the effective assistance of counsel, the children were properly placed in the care of the Commissioner of Social Services. *Matter of Baby Girl M., 48 A.D.3d 569, 849 N.Y.S.2d 908, 2008 N.Y. App. Div. LEXIS 1267 (N.Y. App. Div. 2d Dep't 2008)*.

Order terminating a father's parental rights in an N.Y. Soc. Serv. Law § 384-b proceeding based on derivative and severe abuse of the father's two children was proper because the father had been convicted of, inter alia, second degree murder as a result of the death of his paramour's 20-month-old child, and the undisputed facts showed that the father was a person legally responsible for his paramour's child, pursuant to N.Y. Fam. Ct. Act § 1012(g); the father began regularly spending the night with the mother and child two months before the incident which resulted in the child's death, a neighbor stated that she ate dinner every night with the mother, child, and the father, and in a statement to police, the father called the mother's apartment his home. The father was sometimes left alone with the child and previously disciplined him on several occasions, even when the mother was present. *In re Jamaal NN., 61 A.D.3d 1056, 878 N.Y.S.2d 205, 2009 N.Y. App. Div. LEXIS 2453 (N.Y. App. Div. 3d Dep't)*, app. denied, *12 N.Y.3d 711, 881 N.Y.S.2d 660, 909 N.E.2d 583, 2009 N.Y. LEXIS 968 (N.Y. 2009)*.

After a mother and father pleaded guilty to manslaughter in connection with the death of a 20-month-old child in their care, the criminal convictions satisfied allegations the mother severely abused the child that died and the mother and father derivatively severely abused their other child within the meaning of N.Y. Soc. Serv. Law § 384-b(8)(a)(i) and (iii); the criminal convictions were given collateral estoppel effect in the family court proceedings. *Matter of Yamillette G. v Marlene M., 74 A.D.3d 1066, 906 N.Y.S.2d 271, 2010 N.Y. App. Div. LEXIS 5298 (N.Y. App. Div. 2d Dep't 2010)*.

174. —Established

Father derivatively severely abused the subject child because the father's conviction of manslaughter in the second degree in connection with the death of the child's older sibling established, prima facie, that he derivatively severely abused the child, and in opposition, the father failed to raise a triable issue of fact. *Matter of Angela N.L. (Ying L.), 153 A.D.3d 1408, 62 N.Y.S.3d 421, 2017 N.Y. App. Div. LEXIS 6651 (N.Y. App. Div. 2d Dep't 2017)*.

Mother derivatively severely abused the subject child because the child's older sibling sustained retinal hemorrhages, a subdural hemorrhage, and a skull fracture with a severe brain injury while in the exclusive care of the mother and the father, and the sibling would have shown immediate symptoms of her injuries, such as lethargy,

limpness, vomiting, and fever, but the injuries were inflicted up to three days before the parents brought her to the hospital. *Matter of Angela N.L. (Ying L.), 153 A.D.3d 1408, 62 N.Y.S.3d 421, 2017 N.Y. App. Div. LEXIS 6651 (N.Y. App. Div. 2d Dep't 2017)*.

In termination proceedings, clear and convincing evidence supported the finding that a father derivatively severely abused his biological child because the father committed a felony sex offense against a child for whom he was legally responsible; terminating the father's parental rights was in a child's best interest because the child had been living with the foster mother since 2012, had bonded with her, and had expressed his desire to remain with the foster mother. *Matter of Riley C. P. (Tyrone P.), 157 A.D.3d 957, 69 N.Y.S.3d 699, 2018 N.Y. App. Div. LEXIS 554 (N.Y. App. Div. 2d Dep't 2018)*.

Clear and convincing evidence supported the trial court's finding of severe abuse against the mother because the record established that she brutally beat the deceased child based on the unrebutted medical evidence with respect to the cause of death, the severity of the injuries sustained and the clear need for medical treatment, coupled with the older son's observations, and the mother's implausible explanation to the police as to how the injuries could have otherwise occurred. *Matter of Lazeria F. (Paris H.), 193 A.D.3d 145, 142 N.Y.S.3d 228, 2021 N.Y. App. Div. LEXIS 1155 (N.Y. App. Div. 3d Dep't 2021)*.

The trial court did not err in granting the agency's motion for summary judgment and dispensing with a dispositional hearing prior to terminating the mother's parental rights because the court had determined by clear and convincing evidence that the mother had severely and repeatedly abused all six children since she failed to protect the children by allowing a known sexual predator to babysit them, and she essentially acquiesced in his continued behavior of raping them. *Matter of Ronan L. (jeana K.), 195 A.D.3d 1072, 149 N.Y.S.3d 356, 2021 N.Y. App. Div. LEXIS 3603 (N.Y. App. Div. 3d Dep't 2021)*.

Clear and convincing evidence supported termination of mother's parental rights where she severely abused her 8-year-old child, both by knowingly allowing her boyfriend to rape child and by her conduct after rape that endangered child's life, and report based on current evaluation by sympathetic psychologist revealed that she minimized her role in child's rape, was not inclined to discuss her problems, and required at least 2 years of intensive therapy with 70 percent chance of "moderate" success. *In re Custody & Guardianship of Marino S., 181 Misc. 2d 264, 693 N.Y.S.2d 822, 1999 N.Y. Misc. LEXIS 262 (N.Y. Fam. Ct. 1999)*, aff'd, *293 A.D.2d 223, 741 N.Y.S.2d 207, 2002 N.Y. App. Div. LEXIS 4026 (N.Y. App. Div. 1st Dep't 2002)*.

In termination of parental rights case based on felony sex offense grounds, severe abuse by mother (proved by clear and convincing evidence) and severe abuse by mother's boyfriend (proved beyond reasonable doubt by his rape conviction) constituted grounds for derivative finding of severe abuse as to child's 2 younger siblings, supporting termination of parental rights as to all 3 children. *In re Custody & Guardianship of Marino S., 181 Misc. 2d 264, 693 N.Y.S.2d 822, 1999 N.Y. Misc. LEXIS 262 (N.Y. Fam. Ct. 1999)*, aff'd, *293 A.D.2d 223, 741 N.Y.S.2d 207, 2002 N.Y. App. Div. LEXIS 4026 (N.Y. App. Div. 1st Dep't 2002)*.

Finding of severe abuse as to a mother's deceased child was warranted pursuant to *Social Services Law § 384-b (8)(a)(i)*, and a finding of severe derivative abuse as to the mother's surviving child was warranted pursuant to *Social Services Law § 384-b(8)(a)(iii)* because the mother's intentional act of failing to obtain needed medical care for the deceased child, knowing that her paramour had shaken and thrown the child into a playpen, demonstrated recklessness and depravity towards the deceased child's life. *Matter of Yamillette G., 872 N.Y.S.2d 897, 23 Misc. 3d 841, 241 N.Y.L.J. 29, 2009 N.Y. Misc. LEXIS 228 (N.Y. Fam. Ct. 2009)*, aff'd in part, *74 A.D.3d 1066, 906 N.Y.S.2d 271, 2010 N.Y. App. Div. LEXIS 5298 (N.Y. App. Div. 2d Dep't 2010)*.

Family court found that a child was severely abused, as a matter of law, because his parents were convicted of charges alleging that they committed manslaughter in the first degree resulting in the death of the child's sister, in violation of *N.Y. Penal Law § 125.20(4)*, and it granted the Administration for Children's Services' motion for summary judgment on its petition seeking an order that the child was abused. *Matter of Javier T. (Edison G.), 787 N.Y.S.2d 678, 3 Misc. 3d 1110(A), 2004 N.Y. Misc. LEXIS 770 (N.Y. Fam. Ct. 2004)*.

175. —Not established

Because a finding of severe abuse is admissible, and often central, in a subsequent proceeding to terminate parental rights, under *Family Ct Act § 1051(e)* and *Social Services Law § 384-b(4)(e)*, a finding of severe abuse must be based on clear and convincing evidence pursuant to *Family Ct Act § 1051(e)*, and must include, inter alia, a finding that a social service agency has made diligent efforts to encourage and strengthen the parental relationship, including efforts to rehabilitate the parent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future as required by *Social Services Law § 384-b(8)(a)(iv)*. Thus, a family court erroneously found that three children were severely abused as defined by § 384-b(8)(a)(ii) when children's services failed to show that it made diligent efforts to strengthen the parental relationship between the children and the father. *Matter of Latifah C. v Morris L., 34 A.D.3d 798, 826 N.Y.S.2d 333, 2006 N.Y. App. Div. LEXIS 14293 (N.Y. App. Div. 2d Dep't 2006)*.

In proceedings pursuant to *N.Y. Soc. Serv. Law § 384-b*, a child was improperly adjudicated to be a severely abused child, because there was no direct evidence of the parents' intent or recklessness, as the evidence failed to establish that some injuries were life threatening, or that an airway blockage which did qualify as a serious physical injury as defined by *N.Y. Penal Law § 10.00(10)*, was the result of smothering, and two other children were improperly found to be neglected, as there was no evidence whatsoever that their physical, mental, or emotional well-being was impaired or was in danger of becoming impaired as the result of the parents' conduct either as to the third child or otherwise, *N.Y. Fam. Ct. Act § 1012(f)*. *Matter of Julia BB. v Diana BB., 42 A.D.3d 208, 837 N.Y.S.2d 398, 2007 N.Y. App. Div. LEXIS 6519 (N.Y. App. Div. 3d Dep't)*, app. denied, *9 N.Y.3d 815, 849 N.Y.S.2d 31, 879 N.E.2d 171, 2007 N.Y. LEXIS 3724 (N.Y. 2007)*.

County agency's application to adjudicate a father's children to be severely abused within the meaning of *N.Y. Soc. Serv. Law § 384-b(8)* based on alleged sexual abuse of his minor daughter was dismissed because the daughter's out-of-court statements were not sufficiently corroborated as an investigator was inconsistent in testimony as to the father's alleged admissions and the father adamantly denied making the alleged admissions or committing the alleged acts. *Matter of Felicia N., 44 A.D.3d 1188, 843 N.Y.S.2d 859, 2007 N.Y. App. Div. LEXIS 10876 (N.Y. App. Div. 3d Dep't 2007)*.

While the children at issue were either neglected or derivatively neglected and abused under *N.Y. Fam. Ct. Act § 1012(f)(i)(B)*, (e)(i) based on excessive corporal punishment, the Family Court erred in concluding that they were derivatively severely abused since there was no evidence of serious physical injury or that diligent efforts were made to encourage and strengthen the parental relationship under *N.Y. Penal Law 10.00(10)* and *N.Y. Soc. Serv. Law § 384-b(8)(a)(i)*. *Matter of Nicholas S. (John T.), 107 A.D.3d 1307, 968 N.Y.S.2d 654, 2013 N.Y. App. Div. LEXIS 4764 (N.Y. App. Div. 3d Dep't)*, app. denied, *22 N.Y.3d 854, 977 N.Y.S.2d 183, 999 N.E.2d 548, 2013 N.Y. LEXIS 2947 (N.Y. 2013)*.

Claim alleging severe abuse was not sustained under circumstances in which, although a preponderance of the exist targeted the child's shaken baby syndrome to a time period in which the mother was solely caring for the child, the evidence did not rise to the level of clear and convincing proof; physicians testified that the injury could have occurred up to a week before the mother sought medical care for the child, which expanded the number of individuals caring for the child in the critical period and, given that the injury could have occurred within seconds, determining culpability became more difficult. In particular, at a minimum, the mother's boyfriend, his mother, and the mother's father all had some time alone with the child. *Matter of Child, 890 N.Y.S.2d 760, 25 Misc. 3d 745, 2008 N.Y. Misc. LEXIS 7486 (N.Y. Fam. Ct. 2008)*.

176. Repeated abuse

Trial court granted a motion by a county department of social services to dispense with a requirement of reasonable efforts towards reunification of a child with his parents, pursuant to *N.Y. Fam. Ct. Act § 1039-b*, as aggravated circumstances pursuant to N.Y. Fam. Ct. Act. § 1012(j) were found where the father's rights to another sibling had been involuntarily terminated, he was convicted of a sexual crime against the other sibling, and the child was found

to be neglected, severely abused, and repeatedly abused by the father, pursuant to N.Y. Soc. Serv. Law § 384-b(8); the mother also committed aggravating circumstances by her admitted knowledge that the sexual abuse was ongoing and by her failure to do anything to prevent it from recurring. Matter of S.H., 788 N.Y.S.2d 575, 6 Misc. 3d 851, 233 N.Y.L.J. 28, 2005 N.Y. Misc. LEXIS 69 (N.Y. Fam. Ct. 2005).

177. —Established

Repeated abuse of the parents' minor child had been established under N.Y. Soc. Serv. Law § 384-b(8)(b) after a finding of abuse under N.Y. Fam. Ct. Act § 1012(e)(i) based on, inter alia, an unexplained burn on the child's arm and a bruise above her right eye while in the parents' care as the child had been previously adjudicated an abused child within five years of the instant petition and an agency's efforts to rehabilitate the parents were unsuccessful; the abuse had occurred within two months after the child had been returned to the parents after the initial abuse adjudication. Matter of A.J., 847 N.Y.S.2d 354, 17 Misc. 3d 631, 238 N.Y.L.J. 68, 2007 N.Y. Misc. LEXIS 6546 (N.Y. Fam. Ct. 2007).

178. —Not established

Repeated abuse of a child's five siblings could not be established under N.Y. Soc. Serv. Law § 384-b(8)(b) because the siblings had to have been found abused previously under N.Y. Fam. Ct. Act § 1012(e)(i) or (iii); the siblings had been previously adjudicated derivatively abused under N.Y. Fam. Ct. Act § 1012(e)(ii). Matter of A.J., 847 N.Y.S.2d 354, 17 Misc. 3d 631, 238 N.Y.L.J. 68, 2007 N.Y. Misc. LEXIS 6546 (N.Y. Fam. Ct. 2007).

III. Practice and Procedure

179. Generally

Proceeding to terminate parental rights to children for neglect did not have to be dismissed merely because it was instituted after order of placement had lapsed. *In re Tisnique B., 245 A.D.2d 152, 665 N.Y.S.2d 882, 1997 N.Y. App. Div. LEXIS 13043 (N.Y. App. Div. 1st Dep't 1997)*.

Father, although found unable to provide proper and adequate care for his child by reason of mental illness, was not entitled to appointment of guardian ad litem where he was present at fact-finding hearing with his attorney, and there was no evidence that father was incapable of adequately defending his rights. *In re Casey J., 251 A.D.2d 1002, 674 N.Y.S.2d 239, 1998 N.Y. App. Div. LEXIS 7017 (N.Y. App. Div. 4th Dep't 1998)*.

Court properly refused to accept father's "innocent bystander" defense where evidence showed that his representation that he had no knowledge of mother's past family problems, or of her child abuse conviction and resulting imprisonment, was untrue. In re Keith "UU", 256 A.D.2d 673, 681 N.Y.S.2d 163, 1998 N.Y. App. Div. LEXIS 12976 (N.Y. App. Div. 3d Dep't 1998), app. denied, *93 N.Y.2d 801, 687 N.Y.S.2d 625, 710 N.E.2d 272, 1999 N.Y. LEXIS 142 (N.Y. 1999)*.

Proceeding to terminate father's parental rights was properly dismissed as to his daughter where agency's authority to maintain proceeding ceased when daughter attained age of 18. In re Tony Reyes W., 266 A.D.2d 222, 697 N.Y.S.2d 690, 1999 N.Y. App. Div. LEXIS 11079 (N.Y. App. Div. 2d Dep't 1999).

While a mother's parental rights were terminated as a result of an order committing guardianship and custody to a social services department, the termination was presumptively involuntary; therefore, the court was constrained to schedule further proceedings to confirm the records to be reviewed and whether there would be further evidence before the department would be excused of its efforts to reunify the mother and the children. In re Carl D., 195 Misc. 2d 741, 762 N.Y.S.2d 226, 2003 N.Y. Misc. LEXIS 373 (N.Y. Fam. Ct. 2003).

180. Counsel

Family Court properly denied motion to disqualify assistant corporation counsel from prosecuting neglect petition on behalf of commissioner of social services since (1) fact that assistant had testified against parents before grand jury in connection with criminal charges did not, standing alone, require disqualification, and (2) assistant's grand jury testimony was not with respect to matters of which she had personal knowledge, and thus it was not demonstrated that she would have been called as trial witness in criminal proceeding. *In re T.-B. Children, 168 A.D.2d 396, 563 N.Y.S.2d 404, 1990 N.Y. App. Div. LEXIS 15757 (N.Y. App. Div. 1st Dep't 1990)*.

Family Court abused its discretion in entering order on default terminating mother's parental rights after soliciting and authorizing motion for withdrawal of counsel without notice to mother. *In re Michael W., 239 A.D.2d 865, 660 N.Y.S.2d 102, 1997 N.Y. App. Div. LEXIS 6222 (N.Y. App. Div. 4th Dep't 1997)*.

Mother was not denied due process in permanent neglect proceeding by court's conducting of fact-finding and dispositional hearings in absence of assigned counsel, even if new counsel had been appointed after her original attorney disqualified himself for conflict of interest, where there was no showing that mother would have cooperated or been available for consultation with him. *In re Guardianship of Joshua K., 272 A.D.2d 160, 710 N.Y.S.2d 319, 2000 N.Y. App. Div. LEXIS 5674 (N.Y. App. Div. 1st Dep't)*, app. dismissed, *95 N.Y.2d 959, 722 N.Y.S.2d 475, 745 N.E.2d 395, 2000 N.Y. LEXIS 3913 (N.Y. 2000)*.

Family court properly denied a mother's motion to disqualify a daughter's law guardian in a termination action pursuant to *N.Y. Soc. Serv. Law § 384-b*; the representation of the mother in a criminal action by another member of the same legal aid society did not lead to a conflict. *In re T'Challa D., 3 A.D.3d 569, 770 N.Y.S.2d 649, 2004 N.Y. App. Div. LEXIS 722 (N.Y. App. Div. 2d Dep't 2004)*.

Because there were nonfrivolous issues, including the issue of a mother's failure to attend a hearing, in a *N.Y. Soc. Serv. Law § 384-b* proceeding regarding the mother's challenge to an order terminating her parental rights and transferring guardianship and custody, assigned counsel's motion to be relieved was granted and new counsel was assigned. *Graham-Windham, Inc. v Monique B. (In re Miguel M.-R. B.), 30 A.D.3d 514, 817 N.Y.S.2d 900, 2006 N.Y. App. Div. LEXIS 8027 (N.Y. App. Div. 2d Dep't 2006)*.

Because a mother was represented by counsel in *N.Y. Soc. Serv. Law § 384-b* permanent neglect and violation proceedings (until she elected to proceed pro se, at which time the attorney continued to represent her in an advisory capacity), the Family Court did not fail to advise her of the right to counsel under *N.Y. Fam. Ct. Act § 262(a)*, or err in permitting her to proceed pro se. *Matter of Isiah FF., 41 A.D.3d 900, 837 N.Y.S.2d 417, 2007 N.Y. App. Div. LEXIS 6838 (N.Y. App. Div. 3d Dep't 2007)*.

Commissioner of Social Services (CSS) would not be responsible for legal fees incurred by foster mother, who was permitted to intervene in proceeding to terminate parental rights because representation of her interests by CSS was inadequate, where she was financially able to afford counsel. *In re J.C., 163 Misc. 2d 562, 621 N.Y.S.2d 768, 1994 N.Y. Misc. LEXIS 592 (N.Y. Fam. Ct. 1994)*.

Respondent father in child abuse proceeding was denied due process where Family Court did not conduct searching inquiry to ensure that he understood his right to counsel and dangers and disadvantages of self-representation, and thus he did not knowingly, willingly, and voluntarily waive his right to attorney. *In re Rachel P., 286 A.D.2d 868, 730 N.Y.S.2d 890, 2001 N.Y. App. Div. LEXIS 8912 (N.Y. App. Div. 4th Dep't 2001)*.

181. —Presence of counsel during examination

In a proceeding to terminate a mother's parental rights on account of her mental illness pursuant to *Soc Serv Law § 384-b(6)*, the trial court erred in requiring the mother to forego the presence of her counsel at her previously-ordered examination by a court-appointed psychiatrist or to forfeit the opportunity such an examination might have afforded her to satisfy the psychiatrist of her competency to care for her child, since the mother's right to have her

counsel present from the time of her appearance in the proceeding, as expressly conferred by *Family Ct Act § 262(a)(4)*, was not subject to impairment absent a demonstration, which would usually be provided by the examining expert, as to how such presence would act to impair the validity and effectiveness of the particular examination, and the mother was not duty bound to establish that her attorney's presence would not impair the effectiveness of such examination. *In re Alexander L., 60 N.Y.2d 329, 469 N.Y.S.2d 626, 457 N.E.2d 731, 1983 N.Y. LEXIS 3451 (N.Y. 1983)*.

Petitioners were not entitled to reversal of Family Court order which terminated their parental rights due to their mental illnesses, on ground that their rights to counsel were abridged by their attorneys' failure to be present at their court-ordered psychiatric examinations, since they did not request presence of counsel and they failed to show that attorneys' absence rendered their legal assistance ineffective. *In re John Lawrence M., 142 A.D.2d 950, 531 N.Y.S.2d 149, 1988 N.Y. App. Div. LEXIS 14972 (N.Y. App. Div. 4th Dep't 1988)*.

Respondent in proceeding to terminate parental rights due to mental illness was not denied right to have his attorney present during court-ordered psychiatric examination by failure of Family Court and his attorney to inform him he had such right. *In re Rosemary ZZ., 154 A.D.2d 734, 545 N.Y.S.2d 948, 1989 N.Y. App. Div. LEXIS 12417 (N.Y. App. Div. 3d Dep't)*, app. denied, *75 N.Y.2d 702, 551 N.Y.S.2d 906, 551 N.E.2d 107, 1989 N.Y. LEXIS 4410 (N.Y. 1989)*.

In a proceeding to terminate parental rights, the respondent mother's motion requesting the presence of her attorney at the court-ordered psychiatric examination would be granted, since the right to counsel afforded a parent in a proceeding to terminate such rights contained in *Soc Serv Law § 384-b(4)(c)*, in order to be meaningful, must include the right to have counsel present as an observer at the statutory psychiatric examination in that such examination is a critical stage of a proceeding to terminate rights based on mental illness and counsel's presence at the examination is necessary to preserve the basic right to a fair trial. *In re Tanise B., 119 Misc. 2d 30, 462 N.Y.S.2d 537, 1983 N.Y. Misc. LEXIS 3455 (N.Y. Fam. Ct. 1983)*.

In a proceeding pursuant to *Soc Serv Law § 384-b(4)(c)* to terminate respondent mother's parental rights, on the ground that she was presently and for the foreseeable future unable, by reason of mental illness, to provide proper and adequate care for her child, the mother's attorney did not have the exclusive right to be present at her court-ordered psychiatric examination pursuant to *Soc Serv Law § 384-b(6)(e)*; other counsel in the proceeding would have a comparable right to be present, and simple fairness and equity would dictate that if both respondent's counsel and the child's Law Guardian have a right to be present during the examination, all counsel should be present as well. Furthermore, respondent would not be entitled to an order directing that her counsel be permitted to object to or stop the court-ordered psychiatric examination of respondent if counsel believed that questioning might relate to the attorney-client privilege or to possible incrimination. The accuracy and validity of the examination would require that counsel not take an active role at the examination; respondent's right to effective counsel could be met by permitting respondent to move at trial to strike any questions or answers at the psychiatric examination deemed objectionable. Respondent's motion to compel recordation of the court-ordered psychiatric examination and subsequent preparation of a transcript would also be denied. The presence of counsel during the psychiatric examination should provide sufficient aid to counsel in preparing for trial, and in exercising the right of examination and cross-examination at trial. However, the Family Court Mental Health Services could, in its discretion, allow the examination to be recorded by tape or by court recorder. *In re Jose T., 126 Misc. 2d 559, 481 N.Y.S.2d 991, 1984 N.Y. Misc. LEXIS 3665 (N.Y. Fam. Ct. 1984)*.

182. —Ineffective assistance of counsel

Respondent in proceeding to terminate parental rights for permanent neglect has right to effective assistance of counsel, and that right may be raised at any time. *In re James R., 238 A.D.2d 962, 661 N.Y.S.2d 160, 1997 N.Y. App. Div. LEXIS 4855 (N.Y. App. Div. 4th Dep't 1997)*.

183. — —Shown

Petitioner seeking to vacate default judgment terminating her parental rights was prejudiced by lack of effective representation where she appeared at every scheduled court date before scheduled trial date, counsel sent another attorney in her place on one court date but failed to appear on another court date and was not present on day scheduled for trial, counsel never met with petitioner, whose parental rights were terminated on scheduled trial date in absence of both petitioner and her attorney, default apparently was caused by petitioner's misunderstanding regarding necessity of appearing on date set for trial, and counsel did nothing to clear up that misunderstanding and did not fulfill her promise to bring motion to vacate default. *In re James R., 238 A.D.2d 962, 661 N.Y.S.2d 160, 1997 N.Y. App. Div. LEXIS 4855 (N.Y. App. Div. 4th Dep't 1997)*.

184. — —Not shown

In proceeding to terminate parental rights, ineffective assistance of counsel was not shown by decision of respondent's attorney not to offer evidence or delve deeper into respondent's participation in treatment program, and number and quality of her visits with children, since doctor and social worker were indeed questioned on such subjects, and further questioning might have redounded to respondent's disadvantage. *In re Guardianship & Custody of Angela Marie N., 223 A.D.2d 423, 636 N.Y.S.2d 758, 1996 N.Y. App. Div. LEXIS 348 (N.Y. App. Div. 1st Dep't)*, app. denied, *88 N.Y.2d 814, 651 N.Y.S.2d 15, 673 N.E.2d 1242, 1996 N.Y. LEXIS 3237 (N.Y. 1996)*.

In proceeding to terminate parental rights based on mental illness, mother was not denied meaningful legal representation based on her attorney's failure to call rebuttal psychiatric witness, where such witness was not shown to exist, and evidence of mother's lack of insight into her psychiatric problems and inability to care for her children was overwhelming. *In re Claudina Paradise Damaris B., 227 A.D.2d 135, 641 N.Y.S.2d 642, 1996 N.Y. App. Div. LEXIS 4761 (N.Y. App. Div. 1st Dep't 1996)*.

In permanent neglect proceeding, mother was meaningfully represented although her attorney exhibited, in some instances, difficulty in articulating proper questions and thus was faced with numerous objections by petitioner and admonitions from Family Court, where there was no evidence that mother was actually prejudiced by counsel's representation. *In re Matthew C., 227 A.D.2d 679, 641 N.Y.S.2d 753, 1996 N.Y. App. Div. LEXIS 4801 (N.Y. App. Div. 3d Dep't 1996)*.

In proceeding to terminate mother's parental rights to child, failure of mother's counsel to call rebuttal psychiatric witness was not ineffective assistance where evidence of mother's long-standing and severe psychological problems and inability to care even for herself was overwhelming, and there was no reason to expect another expert to reach different conclusion. *In re Guardianship of Sanovia G., 245 A.D.2d 207, 666 N.Y.S.2d 596, 1997 N.Y. App. Div. LEXIS 13323 (N.Y. App. Div. 1st Dep't 1997)*.

Counsel's failure to argue for disposition of suspended judgment did not constitute ineffective assistance, in light of fact that mother was previously found in violation of terms of suspended judgment ordered by same judge in earlier termination proceeding involving her 4 other children based on her failure to satisfactorily complete alcohol rehabilitation program and plan for her children's return. *In re Anthony "OO", 258 A.D.2d 788, 685 N.Y.S.2d 494, 1999 N.Y. App. Div. LEXIS 1380 (N.Y. App. Div. 3d Dep't 1999)*.

In proceeding for termination of father's parental rights for permanent neglect of child, ineffectiveness of father's attorney could not be inferred merely because attorney counseled father to admit allegations in petition. *In re Michael W., 266 A.D.2d 884, 697 N.Y.S.2d 898, 1999 N.Y. App. Div. LEXIS 11889 (N.Y. App. Div. 4th Dep't 1999)*.

Mother's attorney in a dependency case provided effective assistance where the attorney thoroughly cross-examined the department's witnesses, made many successful objections, and advocated her client's position with sufficient skill to constitute meaningful representation; the fact that no witnesses were called on the mother's behalf did not constitute ineffective assistance where only speculation was offered as to the possible witnesses or evidence. *In re Brenden O., 20 A.D.3d 722, 798 N.Y.S.2d 250, 2005 N.Y. App. Div. LEXIS 7808 (N.Y. App. Div. 3d Dep't 2005)*.

In a termination of the mother's parental rights proceeding based on her history of mental illness, the mother's counsel thoroughly cross-examined the agency's witnesses, made appropriate objections, and called several witnesses, including the mother, in support of her contentions; counsel also moved for a directed verdict and made an appropriate closing statement. With respect to the contention that counsel should have had another expert examine the mother and testify at the hearing, the evaluation and testimony of her own psychiatrist undermined that strategy; thus, the mother's counsel was not ineffective. *Matter of Ashley L. v Madeline L., 22 A.D.3d 915, 802 N.Y.S.2d 283, 2005 N.Y. App. Div. LEXIS 11206 (N.Y. App. Div. 3d Dep't 2005)*.

185. —Denial of counsel

Termination of parental rights must be reversed where parent is denied right to counsel both at fact-finding and dispositional stages of proceeding; parent is denied assistance of counsel where, even though counsel is appointed to represent her, counsel was unable to communicate with parent, who remained in psychiatric unit of hospital during hearing; parent does not receive effective assistance of counsel and counsel elects to stand mute at hearing because of inability to communicate with parent. *In re Guardianship & Custody of Orneika J., 112 A.D.2d 78, 491 N.Y.S.2d 639, 1985 N.Y. App. Div. LEXIS 56297 (N.Y. App. Div. 1st Dep't 1985)*.

186. — —Shown

Mother was denied right to assistance of counsel at hearing on petition to revoke suspended judgment and thereby terminate her parental rights where her attorney moved to withdraw as counsel on day of hearing, there was no evidence of earlier notice of that motion, court informed mother that there would be no adjournment for substitution of counsel and, therefore, if counsel were relieved, mother would "end up essentially representing herself," and court granted motion after discussion with mother as to attorney's alleged lack of communication; under circumstances, mother's statement that she would like to represent herself did not constitute valid waiver of right to attorney. *In re Meko M., 272 A.D.2d 953, 708 N.Y.S.2d 787, 2000 N.Y. App. Div. LEXIS 8218 (N.Y. App. Div. 4th Dep't 2000)*.

Family court erred in continuing a *N.Y. Soc. Serv. Law § 384-b* proceeding and terminating a mother's parental rights because the mother had a right under *N.Y. Fam. Ct. Act § 262(a)(iv)* to counsel in the proceeding, and the family court failed to conduct the requisite searching inquiry into whether her waiver of that right was knowing, intelligent, and voluntary. *Matter of Stephen D. A. (Sandra M.-A.), 101 A.D.3d 1109, 956 N.Y.S.2d 562, 2012 N.Y. App. Div. LEXIS 9016 (N.Y. App. Div. 2d Dep't 2012)*.

187. — —Not shown

Mother failed to establish denial of her right to counsel based on her attorney's failure to call any witnesses at factfinding hearing, in absence of showing that additional testimony would have altered conclusion that she permanently neglected her children; however, once finding of permanent neglect was made, there was no tactical reason nor legitimate explanation for attorney's failure to present any proof whatsoever during dispositional hearing, and his omissions (in what should have been adversarial proceeding) seriously prejudiced mother's right to fair dispositional hearing such that she was denied meaningful representation under *NY Const Art I § 6*. *In re Nicholas "GG", 285 A.D.2d 678, 726 N.Y.S.2d 802, 2001 N.Y. App. Div. LEXIS 7044 (N.Y. App. Div. 3d Dep't 2001)*.

188. Jurisdiction and venue

In permanent neglect proceeding, Family Court had jurisdiction to conduct dispositional hearing after it dismissed petition (due to petitioning agency's failure to show diligent efforts pursuant to CLS *Soc Serv § 384-b*) since (1) dismissal of permanent neglect petition leaves open question of custody and other issues that may have arisen during proceeding, and (2) Family Court's error in dismissing petition prior to dispositional hearing was

inconsequential. *In re Jessica UU., 174 A.D.2d 98, 578 N.Y.S.2d 925, 1992 N.Y. App. Div. LEXIS 551 (N.Y. App. Div. 3d Dep't 1992)*.

After custody and guardianship of child have been awarded to authorized agency in abandonment proceeding under CLS *Soc Serv § 384-b*, court should not exercise its jurisdiction over petition filed by private person who seeks custody of that child. *Arnetta S. v Commissioner of Social Services, 186 A.D.2d 519, 589 N.Y.S.2d 327, 1992 N.Y. App. Div. LEXIS 12356 (N.Y. App. Div. 1st Dep't 1992)*.

Family Court properly entertained permanent termination proceeding under CLS Family Ct Act Art 6 based on mental illness, even though child protective proceeding under CLS Family Ct Act Art 10 based on neglect was pending by reason of remand from Appellate Division for new fact-finding hearing, where adjudication of neglect in Article 10 proceeding is not jurisdictional requirement of Article 6 proceeding, and child was "in the care" of authorized agency for at least one year before institution of Article 6 proceeding, as required by CLS *Family Ct Act § 614(1)(b)* and CLS *Soc Serv § 384-b(4)(c)*. *In re Commitment of Raymond W., 263 A.D.2d 366, 693 N.Y.S.2d 27, 1999 N.Y. App. Div. LEXIS 7798 (N.Y. App. Div. 1st Dep't 1999)*.

Family Court lacked jurisdiction to hear father's Article 78 proceeding to compel county social services department to institute child neglect proceedings against child's mother; child neglect proceedings must be commenced in Supreme Court. *Bowers v Bowers, 266 A.D.2d 741, 698 N.Y.S.2d 771, 1999 N.Y. App. Div. LEXIS 12148 (N.Y. App. Div. 3d Dep't 1999)*.

Assuming that father's claim—that CLS *Dom Rel § 111* applies only to adoption proceedings and thus that Family Court erred in applying § 111 standard in proceeding under CLS *Soc Serv § 384-b*—involved Family Court's subject matter jurisdiction and thus was not waived by his stipulation to have § 111 issue decided in § 384-b proceeding, Family Court had authority to decide, as threshold issue, whether father's consent to adoption of his child was required under § 111. *In re Carrie "GG", 273 A.D.2d 561, 709 N.Y.S.2d 247, 2000 N.Y. App. Div. LEXIS 6677 (N.Y. App. Div. 3d Dep't)*, app. denied, *95 N.Y.2d 763, 716 N.Y.S.2d 38, 739 N.E.2d 294, 2000 N.Y. LEXIS 2822 (N.Y. 2000)*.

Family court did not lose jurisdiction over an action filed by a bureau for dependent children, pursuant to *N.Y. Soc. Serv. Law § 384-b*, seeking termination of a mother's parental rights, because the bureau did not ask the court to find that the mother violated conditions the court imposed when it entered a suspended judgment until after the period of suspension expired, and the appellate court reversed the family court's judgment finding that it lost jurisdiction and remitted the case to the family court for a hearing on the bureau's motion and to determine if the mother's parental rights should be terminated. *In re Jonathan B., 5 A.D.3d 477, 772 N.Y.S.2d 569, 2004 N.Y. App. Div. LEXIS 2471 (N.Y. App. Div. 2d Dep't)*, app. dismissed, *2 N.Y.3d 791, 781 N.Y.S.2d 277, 814 N.E.2d 447, 2004 N.Y. LEXIS 1066 (N.Y. 2004)*.

Trial court had jurisdiction in a removal and termination proceeding because no jurisdiction other than New York had ever issued custody determinations affecting the children, nor had any applications for such determinations been made elsewhere; the children did not have a home state pursuant to *N.Y. Dom. Rel. Law § 75-a(7)* when the proceeding was commenced as they did not live in Wisconsin immediately before the proceedings were commenced and had not yet lived in New York for the requisite six months. Although Wisconsin had been the children's home state within the previous six months, it did not have jurisdiction when the removal application was filed because no "parent or person acting as a parent" was residing there. *Matter of Destiny EE. (Karen FF.), 90 A.D.3d 1437, 936 N.Y.S.2d 703, 2011 N.Y. App. Div. LEXIS 9396 (N.Y. App. Div. 3d Dep't 2011)*.

Permissive venue choice given to a petitioning licensed foster care and adoption agency to lay venue of a commitment proceeding in county where its office is located does not mandate such venue upon Surrogate's Court in every instance where agency is a party. Contested cases involving adoption of infants due to abandonment should not be tried in Surrogate's Court except where necessary due to congestion and inability to obtain services in Family Court. Despite fact that Surrogate's Court has concurrent jurisdiction with Family Court; some effort should be made by counsel for agency and others to institute proceedings in Family Court in view of its city-wide

facilities for handling such cases and in view of shortage of personnel in Surrogate's Court occasioned by budgetary restrictions. *In re S., 90 Misc. 2d 139, 394 N.Y.S.2d 128, 1977 N.Y. Misc. LEXIS 2006 (N.Y. Sur. Ct. 1977)*.

Where the Department of Social Services returned two children in its care to their natural father a voluntary termination by the Department of the foster care status of the children occurred, notwithstanding the concurrent filing of a petition to review that foster care status, and therefore, the Family Court was without jurisdiction to entertain proceedings to continue the children in foster care pursuant to *Soc Serv Law § 392*, and the Department no longer had standing to seek termination of the mother's parental rights pursuant to *Soc Serv Law § 384-b*. *In re Lucinda G., 122 Misc. 2d 416, 471 N.Y.S.2d 736, 1983 N.Y. Misc. LEXIS 4125 (N.Y. Fam. Ct. 1983)*.

A proceeding for permanent termination of parental rights brought by an authorized foster care agency and commenced by the filing of a petition in Queens County Family Court, could properly be transmitted for trial to the city-wide trial part of the Family Court in New York County, pursuant to an administrative directive of the Family Court requiring trials of all contested termination of parental rights cases to be so referred, since *Soc Serv Law § 384-b(3)(c)* mandates merely that termination of parental rights proceedings be commenced in the county in which the authorized agency has its place of business or in which the child or the parent resides and since the venue provisions of *Family Ct Act § 174* are not controlling insofar as they conflict with the specific venue provisions of *Soc Serv Law § 384-b*, such a conflict being prohibited under the latter statute. *In re Dana Marie E., 123 Misc. 2d 112, 473 N.Y.S.2d 1008, 1983 N.Y. Misc. LEXIS 4167 (N.Y. Fam. Ct. 1983)*.

The petition in a proceeding to prohibit the administrative judge of the Family Court in the City of New York from establishing a city-wide Foster Care Term in New York County to deal solely with contested proceedings to terminate parental rights pursuant to *Soc Serv Law § 384-b* would be dismissed since the transfer of such proceedings to New York County was authorized by *Soc Serv Law § 384-b* and by *Family Ct Act § 174*; the New York City Commissioner of Social Services, who is a necessary party in a § 384-b proceeding, is an "authorized agency" within the meaning of the venue provisions and the proceedings could thus have been brought in New York County. *Brooklyn Home for Children v Miller, 122 Misc. 2d 925, 472 N.Y.S.2d 282, 1984 N.Y. Misc. LEXIS 2915 (N.Y. Sup. Ct. 1984)*.

Family Court lacked jurisdiction to entertain petition by foster parents seeking return of children whose custody and guardianship had been previously awarded to Department of Social Services for purpose of adoption; under circumstances, adoption would be proper procedure for anyone to follow who had interest in seeking custody of children. *Elaine R. v Department of Social Services, 139 Misc. 2d 694, 528 N.Y.S.2d 317, 1988 N.Y. Misc. LEXIS 243 (N.Y. Fam. Ct. 1988)*.

Family Court has no jurisdiction to review adequacy of proceeding involving authorized agency's decision to remove child from adoptive home. *Elaine R. v Department of Social Services, 139 Misc. 2d 694, 528 N.Y.S.2d 317, 1988 N.Y. Misc. LEXIS 243 (N.Y. Fam. Ct. 1988)*.

Petition for termination of parental rights filed by department of social services would be assigned to judge who determined neglect petition, not judge who entertained extension petitions; parental rights proceeding should be heard before same judge who heard abuse or neglect proceeding and issued dispositional order in effect during time period which is focus of parental rights proceedings, since that judge will know facts of case and be familiar with its own orders and directions. *In re Michael M., 162 Misc. 2d 676, 619 N.Y.S.2d 249, 1994 N.Y. Misc. LEXIS 485 (N.Y. Fam. Ct. 1994)*.

189. Authority of court

Family Court which placed child with his mother's friend did not exceed its authority in later ordering Commissioner of New York City Department of Social Services to commence termination of parental rights proceeding, to free child for adoption by his "foster" mother, since (1) court's direction to commence termination proceeding was not outside authority granted to commissioner by CLS *Soc Serv § 384-b*, which concerns actions that may be taken

regarding foster children, and (2) under CLS *Family Ct Act § 1055(d)*, which authorizes court to make order directing social services official to institute proceeding to legally free foster child for adoption, there is no reason to distinguish between foster child who is not placed by or with social welfare agency, and child placed by court in home not certified under applicable law. *In re Dale P., 189 A.D.2d 325, 595 N.Y.S.2d 970, 1993 N.Y. App. Div. LEXIS 3395 (N.Y. App. Div. 2d Dep't 1993)*, modified, aff'd, *84 N.Y.2d 72, 614 N.Y.S.2d 967, 638 N.E.2d 506, 1994 N.Y. LEXIS 1295 (N.Y. 1994)*.

Surrogate's Court would commit guardianship and custody of infant where parent whose consent to adoption would otherwise be required was deceased and other parent was unknown and thus did not meet any of statutory criteria necessary to require consent or notice of proceeding, notwithstanding fact that CLS *Soc Serv § 384-b* does not explicitly give court authority to commit guardianship and custody of infant under such circumstances, since strict construction of statute would be repugnant to clearly expressed legislative intent and run counter to best interests of child. *In re Guardianship of Tracy Q.T., 152 Misc. 2d 450, 576 N.Y.S.2d 783, 1991 N.Y. Misc. LEXIS 635 (N.Y. Sur. Ct. 1991)*.

Family Court could issue arrest warrant to secure foster care child who absconded from placement facility, although there was no statutory authority to do so and no proceeding was pending, where order of foster care status had been issued under CLS *Soc Serv § 392* affording court continuing jurisdiction under § 392(9); court, as parens patriae, must act in best interests of child. *In re J.G., 166 Misc. 2d 840, 634 N.Y.S.2d 998, 1995 N.Y. Misc. LEXIS 564 (N.Y. Fam. Ct. 1995)*.

Commissioner of Social Services had authority to withdraw petition to terminate parental rights despite decade of neglect proceedings, adjudications, extensions of placements and court-ordered supervision, where father substantially complied with previously entered order of fact finding and disposition, neither parent objected to proposed withdrawal, and no substantial rights (such as possible adoptions) had accrued. *In re Guardianship of Y.A.O., 166 Misc. 2d 922, 638 N.Y.S.2d 280, 1996 N.Y. Misc. LEXIS 21 (N.Y. Fam. Ct. 1996)*.

In termination of parental rights case, Family Court did not have authority under CLS *Family Ct Act § 1032(b)* to order Administration for Children's Services (ACS) to file do novo child neglect petition to maintain status quo of child's court-ordered living arrangements after ACS decided not to file petition to extend foster care placement, which resulted in lapsed placement; under CLS *Family Ct Act § 1034*, Family Court may direct ACS to undertake investigation with respect to possible child neglect or abuse, but it may not direct outcome of investigation. *In re Tiffany A., 183 Misc. 2d 391, 703 N.Y.S.2d 381, 2000 N.Y. Misc. LEXIS 20 (N.Y. Fam. Ct. 2000)*.

In termination of parental rights case, CLS *Family Ct Act § 255* did not authorize Family Court to order Administration for Children's Services (ACS) to file do novo child neglect petition in order to maintain status quo of child's court-ordered living arrangements after ACS decided not to file petition to extend foster care placement, because § 255 does not extend to issuance of order directing ACS to take specific legal action. *In re Tiffany A., 183 Misc. 2d 391, 703 N.Y.S.2d 381, 2000 N.Y. Misc. LEXIS 20 (N.Y. Fam. Ct. 2000)*.

In termination of parental rights case, separation of powers doctrine precluded Family Court from ordering Administration for Children's Services (ACS) to file do novo child neglect petition, so as to maintain status quo of child's court-ordered living arrangements after ACS decided not to file petition to extend foster care placement, because ACS's decision resulted from its exercise of executive judgment and discretion. *In re Tiffany A., 183 Misc. 2d 391, 703 N.Y.S.2d 381, 2000 N.Y. Misc. LEXIS 20 (N.Y. Fam. Ct. 2000)*.

Family court lacked authority to terminate a father's parental rights, despite the parents' joint petition to voluntarily surrender and terminate the father's rights, because the child lived with the mother, was not in foster care, would not be committed to the custody of a child services agency, and was not a destitute or dependent child, and there was no adoption planned for the child. *Matter of Hope B. v Avery G., 51 Misc. 3d 425, 26 N.Y.S.3d 670, 2016 N.Y. Misc. LEXIS 155 (N.Y. Fam. Ct. 2016)*.

190. —In camera interview

In neglect proceeding based on sexual abuse, Family Court did not err in refusing to conduct in camera interviews with children since such interviews, although permitted by CLS Soc Serv § 384-b(3)(k) for children over 14 years of age, are discretionary, and in any event no children involved in case were over 13 at time of hearing. *In re Crystal Q., 173 A.D.2d 912, 569 N.Y.S.2d 775, 1991 N.Y. App. Div. LEXIS 5323 (N.Y. App. Div. 3d Dep't)*, app. denied, *78 N.Y.2d 855, 573 N.Y.S.2d 645, 578 N.E.2d 443, 1991 N.Y. LEXIS 1311 (N.Y. 1991)*.

In proceeding pursuant to CLS Soc Serv § 384-b to terminate mother's parental rights, court did not abuse its discretion in conducting in camera interview with 13-year-old child where interview was conducted as result of mother's own urging and over specific objections of agency. *In re Charles "K", 202 A.D.2d 798, 609 N.Y.S.2d 116, 1994 N.Y. App. Div. LEXIS 2530 (N.Y. App. Div. 3d Dep't 1994)*.

191. Pleadings

A Family Court determination that respondent's daughter was a neglected child, and an order directing that adoption proceed, would be reversed where the court failed to comply with the pleading requirements essential to a permanent neglect proceeding, in that there was no allegation that the child was in the care of an authorized agency and that the agency had made diligent efforts to encourage and strengthen the parental relationship, and in that the petition alleging neglect did not contain notice informing the parties that the proceeding could result in an order freeing the child for adoption. *In re L., 80 A.D.2d 681, 436 N.Y.S.2d 427, 1981 N.Y. App. Div. LEXIS 10381 (N.Y. App. Div. 3d Dep't 1981)*.

Petition alleging neglect must contain notice informing the parties that the proceeding could result in an order freeing the child for adoption. *In re L., 80 A.D.2d 681, 436 N.Y.S.2d 427, 1981 N.Y. App. Div. LEXIS 10381 (N.Y. App. Div. 3d Dep't 1981)*.

Department of social services met requirements of CLS Soc Serv § 384-b and CLS Family Ct Act § 614(1)(c), which require permanent neglect petition to affirmatively assert efforts made by agency to strengthen parent-child relationship, where petitions alleged (1) provision of visitation periods for respondent with children, (2) failure of respondent to maintain residence adequate for day or overnight visits or for permanent placement of children, and (3) failure of respondent to follow court-ordered rehabilitative service plan. *In re Dixie Lu EE, 142 A.D.2d 747, 530 N.Y.S.2d 655, 1988 N.Y. App. Div. LEXIS 7792 (N.Y. App. Div. 3d Dep't 1988)*.

Permanent neglect petition which fails to specify, as required by CLS Family Ct Act § 614(1)(c), diligent efforts that petitioner undertook to encourage and strengthen parental relationship is jurisdictionally defective and must be dismissed. *In re Phillip Whitney B., 199 A.D.2d 1061, 605 N.Y.S.2d 609, 1993 N.Y. App. Div. LEXIS 12689 (N.Y. App. Div. 4th Dep't 1993)*.

Neglect proceedings were not jurisdictionally defective because petitions incorrectly prayed for order determining children to be "abandoned" where petitions were labeled "Permanent Neglect", and their factual allegations provided adequate factual support for and placed respondent on notice of relief actually sought. *In re Shavonda GG., 232 A.D.2d 780, 648 N.Y.S.2d 731, 1996 N.Y. App. Div. LEXIS 10200 (N.Y. App. Div. 3d Dep't 1996)*.

Failure to include the requisite N.Y. Soc. Serv. Law § 384-b(3)(e) warnings in a petition to terminate parental rights based upon allegations of permanent neglect resulted in a jurisdictional defect; a mother did not waive the jurisdictional defect by not asserting it before the trial court. *In re Rebecca KK., 19 A.D.3d 763, 796 N.Y.S.2d 720, 2005 N.Y. App. Div. LEXIS 6176 (N.Y. App. Div. 3d Dep't 2005)*.

Allegations in a petition to terminate parental rights that the department of human services worked with a mother and father to reunite them with their child and encouraged them to have regular visitation, counseling, parenting skills training, appropriate housing, and stable income, set forth the requisite diligent efforts of the department to encourage and strengthen the parental relationship pursuant to N.Y. Fam. Ct. Act § 614(1)(c). *Matter of Abraham C. v Rosa C., 55 A.D.3d 1442, 865 N.Y.S.2d 820, 2008 N.Y. App. Div. LEXIS 7569 (N.Y. App. Div. 4th Dep't 2008)*, app. denied, *12 N.Y.3d 701, 876 N.Y.S.2d 348, 904 N.E.2d 503, 2009 N.Y. LEXIS 110 (N.Y. 2009)*.

Child-care agency's petition to terminate mother's parental rights on ground of permanent neglect was subject to dismissal for failure to plead efforts to encourage and strengthen parent-child relationship, despite mother's failure to keep agency apprised of her location for more than 6 months, since 13 months had elapsed between time agency again learned of mother's whereabouts and time proceeding was commenced, and exception to "diligent efforts" requirement under CLS Soc Serv § 384-b (when parent fails to keep agency apprised of his or her location for 6 months) applies only during period that parent's whereabouts are unknown; broader interpretation would permit agency to retain child in foster care without acting to facilitate its return to natural family or otherwise secure permanent home. *In re Antoinette Frances G., 135 Misc. 2d 1034, 517 N.Y.S.2d 680, 1987 N.Y. Misc. LEXIS 2354 (N.Y. Fam. Ct. 1987)*.

Natural mother does not have standing to bring petition for termination of parental rights of natural father in order for child to be freed for adoption. *Aida G. v Carlos P., 163 Misc. 2d 423, 620 N.Y.S.2d 887, 1994 N.Y. Misc. LEXIS 572 (N.Y. Fam. Ct. 1994)*.

Commissioner of Social Services (CSS) failed to adequately represent foster mother's interests where court directed CSS to file petition to terminate natural mother's parental rights, petition drafted by CSS did not comply with requirements of CLS *Family Ct Act § 614* and CLS *Soc Serv § 384-b*, CSS did not oppose natural mother's motion to dismiss petition, and CSS failed to move to amend defective petition; thus, if CSS filed properly pleaded amended petition, foster mother would be permitted to intervene, as matter of court's discretion. *In re J.C., 163 Misc. 2d 562, 621 N.Y.S.2d 768, 1994 N.Y. Misc. LEXIS 592 (N.Y. Fam. Ct. 1994)*.

Agency improperly filed a petition to terminate a mother's parental rights on the basis of permanent neglect under *N.Y. Soc. Serv. Law § 384-b* only one month after a suspended judgment under *N.Y. Fam. Ct. Act § 1053* was agreed to as adoption was clearly not the appropriate permanency goal and the mother had to be given an opportunity to comply with the dispositional plan. *Matter of De'Von S., 854 N.Y.S.2d 291, 19 Misc. 3d 745, 2008 N.Y. Misc. LEXIS 1430 (N.Y. Fam. Ct. 2008)*.

192. Parties

Since *Dom Rel Law § 111(1)(c)*, providing that with respect to a child born out of wedlock only the consent of the mother is required for adoption, is unconstitutional, it was error for the Family Court, in proceedings to free a child for adoption, to exclude from the fact-finding hearing held under *Soc Serv Law § 384-b(4)(b)* the father of such a child. Even though the hearing in question was held prior to the ruling on the constitutionality of the statute, there was no obstacle to its retroactive application since no adoption had yet taken place and there was therefore no reliance interest on prior law to protect. *In re Guardianship of Victory, 78 A.D.2d 843, 433 N.Y.S.2d 445, 1980 N.Y. App. Div. LEXIS 13529 (N.Y. App. Div. 1st Dep't 1980)*, dismissed, *In re Robert Allen V., 52 N.Y.2d 1071, 1981 N.Y. LEXIS 5922 (N.Y. 1981)*.

Although foster parents had had continuous care of child for more than 12 months, they did not have right to intervene in fact-finding hearing in proceeding to terminate parental rights based on mental illness or retardation and permanent neglect since CLS *Soc Serv § 383(3)* limits their right to intervene to "any proceeding involving the custody of the child," and issues relating to custody are reserved for dispositional phase of termination proceeding. *In re Kimberly J., 191 A.D.2d 984, 595 N.Y.S.2d 146, 1993 N.Y. App. Div. LEXIS 2938 (N.Y. App. Div. 4th Dep't 1993)*.

Foster care parents lack standing to seek review of foster care status of children or, on such review, institute proceedings to free children for adoption; foster parents who are aggrieved by agency decision to relocate their foster children have remedy, outlined in CLS *Soc Serv § 400* and *18 NYCRR § 443.5*, which satisfies requirements of due process. *In re Dina Michelle S., 236 A.D.2d 544, 653 N.Y.S.2d 677, 1997 N.Y. App. Div. LEXIS 1380 (N.Y. App. Div. 2d Dep't 1997)*.

Mother was not aggrieved party entitled to appeal under CLS *CPLR § 5511* from order terminating her parental rights after hearing held in her absence where she waived her right to be present at hearing by her persistent and

unexplained failure to appear for court dates, and Family Court properly treated matter as default after mother's counsel declined to participate in proceedings. *In re Amy Lee P., 245 A.D.2d 1136, 666 N.Y.S.2d 532, 1997 N.Y. App. Div. LEXIS 13978 (N.Y. App. Div. 4th Dep't 1997)*.

Child services agency lacked standing to bring a petition to terminate the father's parental rights and the family court lacked jurisdiction to entertain the petition because this statute applied to destitute or dependent children in situations where termination of parental rights would free them for adoption, but the subject child was neither a destitute nor a dependent child and there was no indication that an adoption was planned for the child. *Matter of Bryleigh E.N. (Derek G.), 187 A.D.3d 1685, 132 N.Y.S.3d 506, 2020 N.Y. App. Div. LEXIS 5856 (N.Y. App. Div. 4th Dep't 2020)*.

A decision of the United States Supreme Court declaring the gender-based statutory distinction in adoption proceedings between an unmarried mother, and an unmarried father to be unconstitutional as being unrelated to legitimate governmental objectives (see *Caban v Mohammed (1979) 441 US 380, 60 L Ed 2d 297, 99 S Ct 1760*), mandates that an unwed father be made a party respondent to a termination of parental rights proceeding (*Social Services Law, § 384-b*) since he now has a right to consent to the adoption of his out-of-wedlock offspring. *In re "R" Children, 100 Misc. 2d 248, 418 N.Y.S.2d 741, 1979 N.Y. Misc. LEXIS 2446 (N.Y. Fam. Ct. 1979)*.

Former foster parents who voluntarily severed their relationship with the children one year previously lack standing to seek custody of the children presently residing in another foster home and whose custody and guardianship had been previously awarded to the Commissioner of Social Services for purposes of consenting to adoption. *In re M., 110 Misc. 2d 297, 441 N.Y.S.2d 950, 1981 N.Y. Misc. LEXIS 3080 (N.Y. Fam. Ct. 1981)*.

The Family Court would entertain a child protective proceeding in which respondent was charged with sexually abusing a child, even though he had no custodial interest in the child and had not seen the child in one and one-half years due to the termination of his cohabitation with the child's mother, where he was a proper party in that he was alleged to have continually resided in the same household as the child at the time relevant to the proceeding, pursuant to *Family Ct Act § 1012(g)*, where there was no compelling reason to deny either the child or the child's mother an order of protection, and where, pursuant to *Soc Serv Law § 384-b*, the court had the power to provide for termination of parental rights, including the right of non-parents, for repeated child abuse. *In re Theresa C., 121 Misc. 2d 15, 467 N.Y.S.2d 148, 1983 N.Y. Misc. LEXIS 3863 (N.Y. Fam. Ct. 1983)*.

Maternal grandmother had no statutory right to intervene as party in child abandonment proceeding brought under CLS *Soc Serv § 384-b* since interested parties in such proceeding include parents, whose consent would otherwise be required, and infant. *In re Guardianship of Jonathan N.W., 140 Misc. 2d 216, 530 N.Y.S.2d 501, 1988 N.Y. Misc. LEXIS 375 (N.Y. Sur. Ct. 1988)*.

Fact that father was nonrespondent in child protection proceeding against mother under CLS Family Ct Act Art 10 did not preclude court from considering agency's motion under CLS *Family Ct Act § 1039-b* to be excused from using reasonable efforts to reunite father with child, given father's extensive presence and participation in underlying Article 10 proceeding. *In re Jordy O., 182 Misc. 2d 42, 696 N.Y.S.2d 654, 1999 N.Y. Misc. LEXIS 434 (N.Y. Fam. Ct. 1999)*.

In termination of parental rights case involving child who had been in foster care for 7 years, court denied respondent mother's motion to vacate intervenor status previously granted to then-foster parents, although Administration for Children's Services's decision not to seek extension of child's foster care placement rendered their status to be that of former foster parents, where they had fully participated in prior dispositional hearings, child continued to spend every weekend with them, and they remained child's pre-adoptive resource should court decide to terminate mother's parental rights. *In re Tiffany A., 183 Misc. 2d 391, 703 N.Y.S.2d 381, 2000 N.Y. Misc. LEXIS 20 (N.Y. Fam. Ct. 2000)*.

Because an agency never filed an abuse or neglect petition against a father pursuant to *N.Y. Fam. Ct. Act § 1031*, a request was never made for the court to determine that reasonable and diligent efforts were not required by *N.Y. Fam. Ct. Act § 1039-b(a)* to reunite the child and the father; therefore, because the child was not placed with the

grandmother pursuant to a N.Y. Fam. Ct. Act art. 10 disposition, she had no standing to file a termination of parental rights action against the father under N.Y. Soc. Serv. Law § 384-b(8)(a)(iv). Matter of Paul C., 866 N.Y.S.2d 493, 21 Misc. 3d 864, 240 N.Y.L.J. 77, 2008 N.Y. Misc. LEXIS 5938 (N.Y. Fam. Ct. 2008), aff'd in part, modified, 68 A.D.3d 1473, 891 N.Y.S.2d 530, 2009 N.Y. App. Div. LEXIS 9381 (N.Y. App. Div. 3d Dep't 2009).

Mother lacked standing to commence a termination of parental rights proceeding against the father because she already had the care and custody of the child and did not fall within the statutory meaning of "a relative with care and custody of the child" in N.Y. Soc. Serv. Law § 384-b(3)(b) for purposes of instituting a termination proceeding against the father even though there was no real dispute that he had severely abused the child. Matter of Cadence SS. (Amy RR.-Joshua SS.), 103 A.D.3d 126, 956 N.Y.S.2d 639, 2012 N.Y. App. Div. LEXIS 8766 (N.Y. App. Div. 3d Dep't 2012), app. denied, *21 N.Y.3d 853, 2013 N.Y. LEXIS 1122 (N.Y. 2013)*.

193. Notice

Family Court should have held hearing on issue of personal service on mother of summons and petition commencing proceeding to terminate parental rights where record contained affidavit of service stating that mother had been served on particular date with "Summons with Notice," but mother asserted under oath that she had never been served. *Anthony C. v Schimke (In re Anthony C.), 216 A.D.2d 939, 629 N.Y.S.2d 344, 1995 N.Y. App. Div. LEXIS 7277 (N.Y. App. Div. 4th Dep't 1995)*.

Summons issued to mother in petition brought by county department of social services under CLS Soc Serv § 384-b was deficient where it made no mention of possibility that proceeding could result in adoption of child without mother's consent, and it omitted any reference to mother having any right to counsel, retained or assigned; thus, summons was defective and proceeding required dismissal, without prejudice to service of new summons and petition containing mandated warnings if department be so advised. *In re Nassau County Dep't of Social Servs. ex rel. Jean G., 225 A.D.2d 779, 640 N.Y.S.2d 153, 1996 N.Y. App. Div. LEXIS 3218 (N.Y. App. Div. 2d Dep't 1996)*.

Order adjudicating, by default, that mother's 2 children were permanently neglected and terminating mother's parental rights would not be vacated on basis of her conclusory assertions that she had not been served with permanent neglect petition and that she had meritorious defense where (1) process server's affidavit, which indicated that mother had been personally served and contained information required by CLS CPLR § 306(a) and (b), was prima facie evidence of proper service, (2) mother did not specifically refute veracity or content of affidavit of service, and (3) neither her affidavit nor answer accompanying her application to vacate recited any facts or controverted allegations in petition so as to support her claim of meritorious defense. In re Shaune TT., 251 A.D.2d 758, 674 N.Y.S.2d 457, 1998 N.Y. App. Div. LEXIS 6748 (N.Y. App. Div. 3d Dep't 1998).

N.Y. Soc. Serv. Law § 384-b proceeding finding that a child was a permanently neglected child and terminating a father's parental rights was affirmed; the father was present in the court when the next court date was announced, and thus his contention that he did not know of that court date was not a reasonable excuse. In re Zabrina M., 17 A.D.3d 1132, 794 N.Y.S.2d 255, 2005 N.Y. App. Div. LEXIS 4637 (N.Y. App. Div. 4th Dep't), app. denied, *5 N.Y.3d 709, 836 N.E.2d 1154, 2005 N.Y. LEXIS 2616 (N.Y. 2005)*.

In proceedings brought against a father by the department of social services pursuant to N.Y. Fam. Ct. Act art. 10 and N.Y. Soc. Serv. Law § 384-b, defective notice of the department's motion to dispense with the obligation to undertake reasonable efforts to reunite the father with his son did not render the family court's order void because although the requisite notice of eight days was not provided by the department as required by N.Y. C.P.L.R. 2214(b) and N.Y. Fam. Ct. Act § 165, any error was harmless because consideration of the severe abuse petition during the fact-finding hearings necessitated an inquiry into the appropriateness of diligent efforts and the extent to which they would be detrimental to the best interests of the child under N.Y. Soc. Serv. Law § 384-b(8)(a)(iv), and the father did not challenge the severe abuse determination, so the department's motion was "superfluous," and the father could demonstrate no actual prejudice from the failure to give proper notice of that motion. Matter of August ZZ. v Matthew ZZ., 42 A.D.3d 745, 840 N.Y.S.2d 184, 2007 N.Y. App. Div. LEXIS 8385 (N.Y. App. Div. 3d Dep't 2007).

Because a father was given and acknowledged notice of a *N.Y. Soc. Serv. Law § 384-b* termination hearing, but failed to appear, his due process rights were not violated; accordingly the father's parental rights were properly terminated. *Matter of Jasper QQ., 64 A.D.3d 1017, 883 N.Y.S.2d 344, 2009 N.Y. App. Div. LEXIS 5686 (N.Y. App. Div. 3d Dep't)*, app. denied, *13 N.Y.3d 706, 887 N.Y.S.2d 4, 915 N.E.2d 1182, 2009 N.Y. LEXIS 3849 (N.Y. 2009)*.

Order of disposition in previous neglect proceeding at the time of placement of children in foster care which set forth specific programs for the rehabilitation of the family unit, constitutes sufficient notice of what was expected of parents in order to forestall the termination of their parental rights and accomplish the return of the children to their custody. *In re N., 91 Misc. 2d 738, 398 N.Y.S.2d 613, 1977 N.Y. Misc. LEXIS 2406 (N.Y. Fam. Ct. 1977)*.

The maternal grandmother of a retarded and autistic child who had been institutionalized in foster care for over six years would be entitled to notice and an opportunity to be heard in a proceeding to terminate the parents' rights to the child on the asserted grounds of abandonment and permanent neglect where the grandmother stood in loco parentis to the child in that she had been primarily responsible for the child's care prior to his placement, had exhibited a continuing concern for his health and welfare, had been in close contact with the petitioner child care agency, and had taken the child to her home for weekend visits on a regular basis, and where, additionally, there had been no reported contact between the child and his putative father in 12 years, and, though the child's mother had cared for the child during his early childhood, she had continuously failed to visit the child in the institutions in which he had been placed, and had failed to remain in contact with the child care agency or to keep the agency apprised of her whereabouts. *In re Jamal B., 119 Misc. 2d 808, 465 N.Y.S.2d 115, 1983 N.Y. Misc. LEXIS 3599 (N.Y. Fam. Ct. 1983)*.

Rather than grant request by Department of Social Services (DSS) for warrant of arrest to secure attendance of respondent mother at neglect proceeding, Family Court would order commissioner of DSS to issue notice to mother pursuant to *18 NYCRR §§ 351.20*, *351.21* and *351.22* to appear for "face-to-face" interview or suffer loss of public assistance where mother, who had past drug problems, ignored prior arrest warrant and court order to appear in neglect proceeding; requested interview could occur at courthouse at same time as mother's required Family Court appearance. *In re Markeyta G., 169 Misc. 2d 847, 647 N.Y.S.2d 368, 1996 N.Y. Misc. LEXIS 276 (N.Y. Fam. Ct. 1996)*.

To secure attendance of respondent mother at neglect proceeding, Commissioner of Social Services could be ordered to request mother's appearance for "face-to-face" interview pursuant to *18 NYCRR §§ 351.20*, *351.21* and *351.22* and to send her notice of proposed discontinuance of her entitlement payments if she failed to appear; CLS *Family Ct Act § 255* could be used to assist efforts to meet needs of child, who had been in foster care for years, and actions ordered were not beyond commissioner's legal obligations in normal course of business. *In re Markeyta G., 169 Misc. 2d 847, 647 N.Y.S.2d 368, 1996 N.Y. Misc. LEXIS 276 (N.Y. Fam. Ct. 1996)*.

194. Evidence

In proceeding to terminate respondents' parental rights as to their third child, court properly denied their request for independent psychological examinations that had been conducted on their 2 older children, who had previously been adjudicated as neglected children, even though events surrounding abuse and neglect of 2 older children also formed basis for initial adjudication that youngest child was neglected, since material sought related to issues that had already been fully litigated and resolved in earlier proceedings. *In re Esther II., 256 A.D.2d 936, 681 N.Y.S.2d 876, 1998 N.Y. App. Div. LEXIS 13875 (N.Y. App. Div. 3d Dep't 1998)*.

Court would not apply CLS *Family Ct Act § 1051(f)*, establishing allocution required of court before accepting admission of neglect or abuse, to proceeding to terminate parental rights governed by CLS Family Ct Act Art 6. *In re Atiba Andrew B., 275 A.D.2d 320, 712 N.Y.S.2d 560, 2000 N.Y. App. Div. LEXIS 8548 (N.Y. App. Div. 2d Dep't 2000)*.

Court did not err in failing to order mental evaluation of respondent where he had appeared in court on numerous occasions over several years, including his appearance with counsel when he admitted allegations of permanent

neglect petition, no question as to his mental capacity to proceed was raised until shortly before evidentiary hearing on petition to revoke suspended judgment, and there was no evidence presented raising viable issue as to his mental health. *In re Skylar "NN", 284 A.D.2d 595, 725 N.Y.S.2d 473, 2001 N.Y. App. Div. LEXIS 6004 (N.Y. App. Div. 3d Dep't)*, app. denied, *96 N.Y.2d 722, 733 N.Y.S.2d 374, 759 N.E.2d 373, 2001 N.Y. LEXIS 3160 (N.Y. 2001)*.

In custody proceeding in which natural mother sought to terminate parental rights of natural father so that child could be freed for adoption, wishes and desires of mother, which were based on traditional and arguably inaccurate notions of family and her self-serving desire to be freed of any financial responsibility, were neither controlling nor even worthy of consideration by court; relevant issue was best interest of child. *Aida G. v Carlos P., 163 Misc. 2d 423, 620 N.Y.S.2d 887, 1994 N.Y. Misc. LEXIS 572 (N.Y. Fam. Ct. 1994)*.

In proceeding where unwed mother sought to terminate natural father's parental rights for purpose of freeing child for adoption, court would not give credence to allegation by mother that father stated, during her pregnancy, that he wanted her to have abortion and that he would have nothing to do with her if she had child; further, even assuming truth of allegation, court would draw no negative inference since abortion is legal alternative and consideration of such alternative has no further implications as to intentions or actions of parties and has no effect on custody proceedings once child is born. *Aida G. v Carlos P., 163 Misc. 2d 423, 620 N.Y.S.2d 887, 1994 N.Y. Misc. LEXIS 572 (N.Y. Fam. Ct. 1994)*.

In proceeding to terminate parental rights, *42 USCS § 290dd-2* and related regulations precluded access by county social services department to records of agencies at which parents had allegedly been treated for substance abuse, since parents had revoked any consent to such disclosure, it had not been demonstrated that information was unavailable through other sources, and public interest in providing permanent homes for children enunciated in CLS *Soc Serv § 384-b(1)(a)* did not provide sufficient basis to override strong policy goals of federal statute. *In re Brandon A., 165 Misc. 2d 736, 630 N.Y.S.2d 850, 1995 N.Y. Misc. LEXIS 308 (N.Y. Fam. Ct. 1995)*.

195. —Opportunity to offer evidence

In proceeding in which mother's parental rights were terminated and power was granted to petitioner to consent to adoption of son without further notice to mother, refusal to allow mother to testify on her own behalf or to offer any evidence was a denial of due process. *In re Roy Anthony A., 59 A.D.2d 662, 398 N.Y.S.2d 277, 1977 N.Y. App. Div. LEXIS 13577 (N.Y. App. Div. 1st Dep't 1977)*.

In proceeding under CLS Family Ct Act Art 6 to obtain custody of child in foster care, Appellate Division would reverse order granting custody to child's paternal aunt where order was entered without evidentiary hearing requested by mother, who was incarcerated; even though mother was unable to exercise physical custody due to her incarceration, she should have been given opportunity to present evidence as requested on issue of best interests of children. *In re Damien X., 217 A.D.2d 762, 629 N.Y.S.2d 319, 1995 N.Y. App. Div. LEXIS 7742 (N.Y. App. Div. 3d Dep't 1995)*.

In proceeding under CLS Family Ct Act Art 6 commenced by child's paternal aunt, court erred in terminating foster care placement and awarding custody of child to his father over mother's objection, where father had never petitioned court for such relief; mother was entitled to present evidence regarding best interests of child, including father's ability to care for child. *In re Damien X., 217 A.D.2d 762, 629 N.Y.S.2d 319, 1995 N.Y. App. Div. LEXIS 7742 (N.Y. App. Div. 3d Dep't 1995)*.

196. —Admissibility

In proceeding under CLS *Soc Serv § 384-b* to adjudicate child to be permanently neglected and to terminate father's parental rights, court did not err in hearing evidence as to events which occurred before department of social services took custody of child since evidence was material and relevant to determination. *In re Mary S., 182 A.D.2d 1026, 582 N.Y.S.2d 837, 1992 N.Y. App. Div. LEXIS 6429 (N.Y. App. Div. 3d Dep't 1992)*.

In proceeding under CLS Soc Serv § 384-b, court did not err in admitting, over objection, 3 form letters from caseworker that agency had failed to turn over, where failure was not willful, exhibits were brief and capable of review at hearing, and there was no request for continuance. *In re Guardianship of Troy Anthony G., 222 A.D.2d 287, 635 N.Y.S.2d 582, 1995 N.Y. App. Div. LEXIS 12848 (N.Y. App. Div. 1st Dep't 1995)*.

In permanent neglect proceeding involving mother whose children were removed because of father's domestic violence, physical abuse and suspected sexual abuse, court properly refused to allow evidence that father had been incarcerated (and thus was no longer threat to children) to be introduced in fact-finding hearing, as elimination of threat posed by father had no bearing on real issue, which concerned mother's inability or unwillingness to act as protective ally to her children. *In re Christopher II, 222 A.D.2d 900, 635 N.Y.S.2d 747, 1995 N.Y. App. Div. LEXIS 13318 (N.Y. App. Div. 3d Dep't 1995)*, app. denied, *87 N.Y.2d 812, 644 N.Y.S.2d 145, 666 N.E.2d 1059, 1996 N.Y. LEXIS 1124 (N.Y. 1996)*.

Court erred in admitting in evidence mother's entire case file from drug rehabilitation facility, even though portions thereof were properly admitted to prove her failure to attend and complete drug rehabilitation, since her entire file contained much irrelevant and prejudicial material. *In re Michael W., 239 A.D.2d 865, 660 N.Y.S.2d 102, 1997 N.Y. App. Div. LEXIS 6222 (N.Y. App. Div. 4th Dep't 1997)*.

Family Court's receipt of evidence as to special needs of subject children, at hearings on application to terminate parental rights of co-respondent father on ground of permanent neglect prior to commencement of fact-finding hearing as to respondent mother, did not prejudice court against mother because any findings against father were not binding on mother, who was free to present any evidence she wished at her own hearings on issues that had also been addressed at father's hearings. *In re Custody & Guardianship of Olympia Victoria R., 261 A.D.2d 191, 690 N.Y.S.2d 204, 1999 N.Y. App. Div. LEXIS 5244 (N.Y. App. Div. 1st Dep't 1999)*.

In finding permanent neglect by mother in proceeding to terminate her parental rights, court properly received in evidence, as business records, progress notes documenting mother's repeated refusal to cooperate with referrals for counseling and random drug and alcohol testing. *In re Rosie G., 266 A.D.2d 58, 698 N.Y.S.2d 637, 1999 N.Y. App. Div. LEXIS 11637 (N.Y. App. Div. 1st Dep't 1999)*.

Uniform case review plans were properly considered by Family Court in proceeding to terminate mother's parental rights where mother stipulated to receipt of plans in evidence, and evidence contained in them was provided by agency's witnesses, who were subject to cross-examination. *In re Anthony "S", 282 A.D.2d 778, 723 N.Y.S.2d 251, 2001 N.Y. App. Div. LEXIS 3443 (N.Y. App. Div. 3d Dep't 2001)*.

In a proceeding pursuant to N.Y. Soc. Serv. Law § 384-b to terminate an incarcerated father's parental rights for permanent neglect, the child's case file was properly admitted into evidence under N.Y. C.P.L.R. 4518(a) as a business record. *Matter of Jonathan R. v Michael R., 30 A.D.3d 426, 817 N.Y.S.2d 335, 2006 N.Y. App. Div. LEXIS 7350 (N.Y. App. Div. 2d Dep't)*, app. denied, *7 N.Y.3d 711, 823 N.Y.S.2d 770, 857 N.E.2d 65, 2006 N.Y. LEXIS 2665 (N.Y. 2006)*.

197. — —Hearsay

At fact-finding hearing to terminate mother's parental rights, Family Court committed reversible error in permitting Department of Social Services (DSS) to introduce into evidence its entire case file as business record in absence of advance notice to mother or adequate opportunity to examine file's contents; court compounded error by allowing DSS caseworker to refer to materials contained in file in course of delivering hearsay testimony damaging to mother. *In re Christina C., 185 A.D.2d 843, 586 N.Y.S.2d 990, 1992 N.Y. App. Div. LEXIS 9883 (N.Y. App. Div. 2d Dep't 1992)*.

In proceeding pursuant to CLS Soc Serv § 384-b to terminate mother's parental rights, it was not error to permit child's psychologist to testify to what child told him and of his wish to be adopted, even though words of

psychologist were clearly hearsay, since no objection on such ground was raised. *In re Charles "K", 202 A.D.2d 798, 609 N.Y.S.2d 116, 1994 N.Y. App. Div. LEXIS 2530 (N.Y. App. Div. 3d Dep't 1994)*.

In custody proceeding under CLS Family Ct Act Art 6, Family Court properly allowed child's therapist to testify as to that child's hearsay statements where those statements were corroborated by testimony of several experts, including child's therapist, who noted that child's disclosures had been made in manner consistent with what would be expected of child who had been sexually abused, and found no indication that child had been programmed. *Alan YY. v Laura ZZ., 209 A.D.2d 902, 619 N.Y.S.2d 369, 1994 N.Y. App. Div. LEXIS 11656 (N.Y. App. Div. 3d Dep't 1994)*, app. denied, *85 N.Y.2d 806, 627 N.Y.S.2d 322, 650 N.E.2d 1324, 1995 N.Y. LEXIS 1257 (N.Y. 1995)*.

In permanent neglect proceeding involving mother who was unwilling or unable to act as protective ally to her children, who were removed because of their father's domestic violence, physical abuse and suspected sexual abuse, evidence of accusations as to father's sexual abuse of daughter was not improperly received in fact-finding hearing where it was offered not for truth of statements but to establish mother's knowledge of claims and thus her reason to believe that children's father posed danger to them. *In re Christopher II, 222 A.D.2d 900, 635 N.Y.S.2d 747, 1995 N.Y. App. Div. LEXIS 13318 (N.Y. App. Div. 3d Dep't 1995)*, app. denied, *87 N.Y.2d 812, 644 N.Y.S.2d 145, 666 N.E.2d 1059, 1996 N.Y. LEXIS 1124 (N.Y. 1996)*.

Portion of caseworker's testimony, although hearsay, was material and relevant to issue of whether mother violated terms of earlier court order, and thus was properly admitted at dispositional hearing. *In re James Carton K., 235 A.D.2d 422, 652 N.Y.S.2d 92, 1997 N.Y. App. Div. LEXIS 144 (N.Y. App. Div. 2d Dep't 1997)*.

In proceeding to terminate parental rights for permanent neglect, petitioning agency's case record was admissible under business record exception to hearsay rule. *In re Baby Boy S., 251 A.D.2d 165, 674 N.Y.S.2d 338, 1998 N.Y. App. Div. LEXIS 7313 (N.Y. App. Div. 1st Dep't 1998)*.

198. —Judicial notice

In proceeding to declare children neglected and to terminate parental rights, court erred by taking judicial notice of respondent parents' criminal histories, sua sponte, after conclusion of fact-finding hearing, thereby depriving respondents of opportunity to challenge either accuracy or relevance of judicially noticed facts; however, error was harmless since mother's criminal record was contained in caseworker's progress notes and related documents which were received in evidence at hearing without objection, and bulk of judicially noticed criminal record of father was temporally far removed from his association with mother. *In re Justin EE, 153 A.D.2d 772, 544 N.Y.S.2d 892, 1989 N.Y. App. Div. LEXIS 10991 (N.Y. App. Div. 3d Dep't 1989)*, app. denied, *75 N.Y.2d 704, 552 N.Y.S.2d 109, 551 N.E.2d 602, 1990 N.Y. LEXIS 92 (N.Y. 1990)*.

199. —Presumptions

In absence of evidence to contrary, ability to visit and communicate with child will be presumed and, therefore, where petitioner conclusively establishes that there has been absence of contact for more than 6 months, it becomes mother's obligation to present evidence sufficient to establish that absence of contact was result of circumstances that made her unable to visit and communicate with child or agency. *In re Catholic Child Care Soc. of Diocese, 112 A.D.2d 1039, 492 N.Y.S.2d 831, 1985 N.Y. App. Div. LEXIS 52242 (N.Y. App. Div. 2d Dep't 1985)*.

After finding of permanent neglect, there is no presumption that best interests of child will be served by placement with natural parent. *In re Desire Star H., 202 A.D.2d 582, 609 N.Y.S.2d 268, 1994 N.Y. App. Div. LEXIS 2607 (N.Y. App. Div. 2d Dep't 1994)*, app. dismissed, *85 N.Y.2d 905, 627 N.Y.S.2d 326, 650 N.E.2d 1328, 1995 N.Y. LEXIS 5654 (N.Y. 1995)*.

Concerning disposition on finding of permanent neglect, there is no presumption that child's best interests are served by return to parent. *In re Paul H., 208 A.D.2d 402, 617 N.Y.S.2d 298, 1994 N.Y. App. Div. LEXIS 9649 (N.Y. App. Div. 1st Dep't 1994)*.

In proceeding to terminate parental rights, there is no presumption that best interests of children are served by return to natural parent. *In re Kimberly Rosemarie S., 211 A.D.2d 594, 621 N.Y.S.2d 614, 1995 N.Y. App. Div. LEXIS 834 (N.Y. App. Div. 1st Dep't)*, app. denied, *85 N.Y.2d 809, 628 N.Y.S.2d 52, 651 N.E.2d 920, 1995 N.Y. LEXIS 1507 (N.Y. 1995)*.

200. —Testimony

It was abuse of discretion to deny mother's request for continuance to produce testimony of her treating physician who was not in court because hearing progressed more quickly than anticipated by her counsel. *In re Joy Cynlinda C., 243 A.D.2d 631, 663 N.Y.S.2d 249, 1997 N.Y. App. Div. LEXIS 10211 (N.Y. App. Div. 2d Dep't 1997)*.

Family Court properly allowed agency to elicit testimony as to mother's statements and actions prior to initial findings of abuse and neglect since challenged evidence was relevant to whether agency had fashioned plan suited to mother's needs and whether mother had overcome problems that led to children's placement with agency initially. *In re Jesus II., 249 A.D.2d 846, 672 N.Y.S.2d 485, 1998 N.Y. App. Div. LEXIS 4812 (N.Y. App. Div. 3d Dep't 1998)*.

Testimony by parents' expert should not have been admitted since expert's testimony criticizing agency caseworker's methodology and "grading" her performance addressed dispositive legal issue of whether diligent efforts were sufficient, which was solely province of court; witness' testimony was almost exclusively concerned with whether agency's plan for parents was adequate, given their means and limitations. *In re Michael Anthony Vincent J., 253 A.D.2d 619, 677 N.Y.S.2d 347, 1998 N.Y. App. Div. LEXIS 9337 (N.Y. App. Div. 1st Dep't)*, app. dismissed, *92 N.Y.2d 1026, 684 N.Y.S.2d 490, 707 N.E.2d 445, 1998 N.Y. LEXIS 4285 (N.Y. 1998)*.

In permanent neglect proceeding wherein mother was unable to appear at scheduled fact-finding hearing due to medical emergency, court erred in not allowing her to testify on her own behalf at next court hearing, prior to finding that she had neglected her children, where her attorney had participated in fact-finding hearing on her behalf and thus she was not in default, and record failed to establish that she otherwise waived her right to be heard. *In re Tyrell M., 283 A.D.2d 500, 724 N.Y.S.2d 874, 2001 N.Y. App. Div. LEXIS 5033 (N.Y. App. Div. 2d Dep't 2001)*.

Witnesses that mother sought to call in the termination of parental rights proceeding were properly precluded from testifying, as they could not have provided psychiatric, psychological, or medical evidence under *N.Y. Soc. Serv. Law § 384-b(6)(e)*, nor could they have provided other relevant evidence. *Erie County Dep't of Soc. Servs. v Kimberly Ann R. (In re Christine Marie R.), 302 A.D.2d 992, 755 N.Y.S.2d 540, 2003 N.Y. App. Div. LEXIS 1030 (N.Y. App. Div. 4th Dep't)*, app. denied, *100 N.Y.2d 503, 762 N.Y.S.2d 873, 793 N.E.2d 410, 2003 N.Y. LEXIS 1269 (N.Y. 2003)*.

Psychologist's 2013 evaluation of a mother and father was fair and reliable because once the parents chose not to attend the court-ordered evaluation, the psychologist was entitled to rely on the available records to reach his conclusion; the psychologist's testimony as to the longstanding nature of the father's mental illness, as well the parents' refusal to seek and complete treatment, was not contradicted by any expert testimony. *Matter of Summer SS. (Thomas SS.), 139 A.D.3d 1118, 29 N.Y.S.3d 706, 2016 N.Y. App. Div. LEXIS 3461 (N.Y. App. Div. 3d Dep't 2016)*.

201. —Cross-examination

In child abandonment proceeding, Family Court did not err in limiting cross-examination regarding alleged communication between child's paternal grandmother and petitioning agency 2 years prior to commencement of

action, since precluded testimony was not relevant to pivotal issue—that is, whether there was sufficient communication between natural parent and child or agency within 6 months immediately preceding petition's filing so as to preclude inference of abandonment by parent. *In re Thomas G., 165 A.D.2d 729, 564 N.Y.S.2d 32, 1990 N.Y. App. Div. LEXIS 11176 (N.Y. App. Div. 1st Dep't 1990)*.

Mother was not deprived of right to cross-examine witnesses in neglect proceeding where (1) she was advised by Family Court at time fact-finding hearing was scheduled that hearing would be held in her absence if she failed to appear and that her parental rights could be terminated, (2) she assured court that she understood warning, but she failed to appear at fact-finding hearing or subsequent dispositional hearing, and (3) although mother's attorney appeared at hearings, she declined to cross-examine witnesses on ground that no meaningful cross-examination could be conducted in mother's absence. *In re Luis R., 184 A.D.2d 1012, 584 N.Y.S.2d 352, 1992 N.Y. App. Div. LEXIS 8240 (N.Y. App. Div. 4th Dep't 1992)*.

202. Evidentiary privilege

The testimony of a defendant's wife at his trial for the sexual abuse of his infant daughters and a girlfriend of one of the children, as to a declaration he allegedly made to his wife about two years before the charged incidents concerning the sexual acts he intended to engage in with his two daughters, was properly received, since a threat to do an act is some evidence that the act threatened was at least attempted, the declaration cannot be precluded under the claim of husband and wife privilege (*Family Ct Act, § 1046*, subd [a], par [vii]; *Social Services Law, § 384-b*). *People v St. John, 74 A.D.2d 85, 426 N.Y.S.2d 863, 1980 N.Y. App. Div. LEXIS 10084 (N.Y. App. Div. 3d Dep't 1980)*, app. dismissed, *53 N.Y.2d 704, 1981 N.Y. LEXIS 3593 (N.Y. 1981)*.

Family Court did not violate father's right against self-incrimination by requiring that he answer certain questions as to whether he had sexually abused his daughters since such questions were relevant to Family Court's decision to terminate his parental rights. *In re Gladys H., 235 A.D.2d 841, 653 N.Y.S.2d 392, 1997 N.Y. App. Div. LEXIS 592 (N.Y. App. Div. 3d Dep't 1997)*.

CLS *CPLR § 4504*, as well as other statutory privileges, applies to permanent neglect cases when doctor-patient or medical provider-patient relationship exists, information is acquired while patient is being treated, information is necessary for treatment, and there is expectation of confidentiality. *In re Brandon A., 165 Misc. 2d 736, 630 N.Y.S.2d 850, 1995 N.Y. Misc. LEXIS 308 (N.Y. Fam. Ct. 1995)*.

In proceeding to terminate parental rights, statutory privileges did not preclude disclosure of substance abuse records kept by agencies at which parents had allegedly been treated for substance abuse, since parents had agreed to limited waiver of privileges by virtue of suspended judgment orders pursuant to CLS *Family Ct Act §§ 631* and *633*, under which parents were to obtain substance abuse evaluation and county department of social services was to be permitted access to information from "court ordered services, limited to evaluation, attendance, progress and recommendations." *In re Brandon A., 165 Misc. 2d 736, 630 N.Y.S.2d 850, 1995 N.Y. Misc. LEXIS 308 (N.Y. Fam. Ct. 1995)*.

203. Standard of proof

Respondent's unsworn statements to effect that she was Native American, found on exhibits submitted by petitioner, did not prove that her children were members of or eligible for membership in Indian tribe and biological children of member of Indian tribe; thus, court properly applied clear and convincing evidence standard of proof in CLS *Family Ct Act § 622* and not beyond reasonable doubt standard of proof in *25 USCS § 1912(f)*. *In re Philip Jaye J., 256 A.D.2d 1201, 684 N.Y.S.2d 94, 1998 N.Y. App. Div. LEXIS 14362 (N.Y. App. Div. 4th Dep't 1998)*.

Record did not contain clear and convincing evidence supporting termination of parental rights pursuant to *N.Y. Soc. Serv. Law § 384-b*; the decision appeared to be premised incorrectly upon the conclusion that, since the parents could not function with total independence, they could not have their child returned. This was an incorrect

standard. *Matter of Natasha RR., 42 A.D.3d 769, 839 N.Y.S.2d 625, 2007 N.Y. App. Div. LEXIS 8576 (N.Y. App. Div. 3d Dep't)*, app. denied, *9 N.Y.3d 812, 846 N.Y.S.2d 603, 877 N.E.2d 653, 2007 N.Y. LEXIS 3186 (N.Y. 2007)*.

204. —Clear and convincing evidence

Orders permanently terminating the parental rights of appellant as the natural mother of two minor children upon the ground of abandonment would be reversed, where a fair preponderance of the evidence standard of proof was applied, rather than a clear and convincing proof standard. *In re Rose Marie M., 90 A.D.2d 810, 455 N.Y.S.2d 664, 1982 N.Y. App. Div. LEXIS 19042 (N.Y. App. Div. 2d Dep't 1982)*.

Under *Soc Serv Law § 384-b*, the evidentiary standard to be used in parental rights termination proceedings is one of "clear and convincing evidence." *Genesee County Dep't of Social Services v Zeagler, 90 A.D.2d 994, 456 N.Y.S.2d 596, 1982 N.Y. App. Div. LEXIS 19283 (N.Y. App. Div. 4th Dep't 1982)*.

Family Court's language did not indicate that it failed to find that mother was unable to provide proper and adequate care for her child by requisite standard of clear and convincing evidence where court stated in its oral decision that mother was unable to care for child "by a preponderance of the evidence, which is clear and convincing," and stated in its fact-finding order that she was unable to do so "based on the preponderance of clear and convincing evidence"; viewed in context, court employed correct statutory and constitutional standards in arriving at its decision. *In re Hannah C., 132 A.D.2d 659, 518 N.Y.S.2d 32, 1987 N.Y. App. Div. LEXIS 49204 (N.Y. App. Div. 2d Dep't 1987)*.

A standard equivalent to "clear and convincing" is the appropriate burden of proof to be applied where suspension of a parent's right to visit with a child who has been removed from home by the state is an issue. *In re C., 108 Misc. 2d 842, 439 N.Y.S.2d 229, 1980 N.Y. Misc. LEXIS 2934 (N.Y. Fam. Ct. 1980)*.

Termination of parental rights may be justified only upon clear and convincing evidence of unfitness, abandonment, neglect, or other extraordinary circumstances. *In re S., 115 Misc. 2d 177, 453 N.Y.S.2d 1007, 1982 N.Y. Misc. LEXIS 3655 (N.Y. Fam. Ct. 1982)*.

In a proceeding to permanently terminate respondent mother's parental rights to her child and free the child for adoption by her long-time foster parents, petitioner child care agency's motion for summary judgment would be denied, where respondent mother's opportunity in prior proceedings to litigate her rights under the current standard requiring "clear and convincing evidence" of unfitness, abandonment, neglect or other extraordinary circumstances was insufficient inasmuch as the prior proceeding was governed by the "preponderance of the evidence" quantum of proof subsequently found to be constitutionally infirm, although the court did "gratuitously" employ such higher standard in making the neglect finding, and where, even with respondent precluded from relitigating the neglect issue as a basis for terminating her parental rights, the issue of the best interests of the child as to placement would still have to be established upon a current evaluation in a dispositional hearing. *In re S., 115 Misc. 2d 177, 453 N.Y.S.2d 1007, 1982 N.Y. Misc. LEXIS 3655 (N.Y. Fam. Ct. 1982)*.

205. —Best interest of child

Family court properly determined in a combined hearing that a biological father's consent to the adoption of his child was not required, terminated his parental rights, dismissed his custody petition, and transferred custody of the child to a social service agency and the city for the purpose of adoption without further notice to the father because he failed to establish that he made payments toward the child's support in a fair and reasonable sum, according to his means, at any time, and the child's best interests would be served by freeing him for adoption by the foster parents. *Matter of Angel P. (Evelyn C.-Keith G.), 137 A.D.3d 793, 26 N.Y.S.3d 547, 2016 N.Y. App. Div. LEXIS 1486 (N.Y. App. Div. 2d Dep't)*, app. denied, *27 N.Y.3d 1180, 59 N.E.3d 1201, 38 N.Y.S.3d 89, 2016 N.Y. LEXIS 2447 (N.Y. 2016)*.

Appropriate standard to be applied in custody proceeding between grandparent and authorized agency in which custody of child has been placed pursuant to neglect adjudication is best interests of child; there is presumption in favor of continuing custody in agency which is rebuttable upon showing that rehabilitative efforts by agency would not be in child's best interests; change of custody to grandparent is not in child's best interest where change would deprive parent and child of benefits of statutorily mandated rehabilitative services and, due to distant location of grandparent, would be de facto permanent termination of parental rights. *Alberta V. v Charles C., 132 Misc. 2d 300, 503 N.Y.S.2d 524, 1986 N.Y. Misc. LEXIS 2687 (N.Y. Fam. Ct. 1986)*.

206. Hearing

There was no per se requirement of a separate dispositional hearing for consideration of long-term foster care where the subject child had been in the care of an authorized agency for more than a year prior to the petition to commit guardianship and custody to the agency, and where by clear and convincing evidence, the child's parents were shown to be presently and for the foreseeable future unable, by reason of mental retardation, to provide proper and adequate care for the child. The particularized testimony from medical witnesses as required by *Soc Serv Law § 384-b[6][e]*, and from lay witnesses who had known, examined and worked with the parents over a long period, supporting their conclusions as to the parents' retardation and inability to parent for the foreseeable future, with no countervailing evidence of the parents' alleged recent progress constituted clear and convincing proof of the statutory standards. A separate dispositional hearing for consideration of long-term foster care would have been a redundancy not mandated by statute, and the best interests of the child were served by freeing her for the permanence and stability of adoption. *Soc Serv Law § 384-b(4)(c)* is not an unconstitutional infringement on the fundamental rights of intellectually limited parents without a justifiable compelling State interest or a rational basis. *In re Joyce T., 65 N.Y.2d 39, 489 N.Y.S.2d 705, 478 N.E.2d 1306, 1985 N.Y. LEXIS 15846 (N.Y. 1985)*.

Evidence at dispositional hearing, establishing that mother had not made any progress in overcoming her problem with alcohol or her ability to tolerate regular visits with her children, supported determination that termination of her parental rights, as opposed to prolonged foster care, was in children's best interest. *In re Victoria B., 185 A.D.2d 811, 586 N.Y.S.2d 639, 1992 N.Y. App. Div. LEXIS 9826 (N.Y. App. Div. 2d Dep't 1992)*.

Once permanent neglect has been established, court in dispositional hearing must be concerned only with best interests of child. *In re Guardianship of Latesha Nicole M., 219 A.D.2d 521, 631 N.Y.S.2d 669, 1995 N.Y. App. Div. LEXIS 9501 (N.Y. App. Div. 1st Dep't 1995)*.

Dispositional proceeding held 4 weeks after factfinding hearing was adequate, although county department of social services (petitioner) called no witnesses and instead advised court that mother's mental health and alcoholism status was essentially unchanged since child's original placement immediately after birth and throughout history of her involvement with petitioner in connection with removal of her other 4 children, where law guardian concurred with request for termination of parental rights, and mother did not call any witnesses or offer any evidence and, while opposing termination of her rights, she did not object to form of proceeding. *In re Anthony "OO", 258 A.D.2d 788, 685 N.Y.S.2d 494, 1999 N.Y. App. Div. LEXIS 1380 (N.Y. App. Div. 3d Dep't 1999)*.

In proceeding to terminate parental rights based on permanent neglect wherein agency chose to proceed only against mother and, consequently, father was not allowed to participate in fact-finding hearing, it was error for Family Court to terminate father's rights after dispositional phase of proceeding in which father was allowed to participate; matter was remitted for fact-finding hearing as to father. *In re Chimere C., 259 A.D.2d 615, 686 N.Y.S.2d 775, 1999 N.Y. App. Div. LEXIS 2507 (N.Y. App. Div. 2d Dep't 1999)*.

Order of disposition would be remanded for new dispositional hearing in view of changed circumstances after original hearing, including unavailability of child's aunt as adoptive parent, movement of child into 2 non-kinship foster homes, and indication of progress by mother. *In re Guardianship of Christina Janian E., 260 A.D.2d 300, 689 N.Y.S.2d 58, 1999 N.Y. App. Div. LEXIS 4395 (N.Y. App. Div. 1st Dep't 1999)*.

Father was not denied fair and impartial hearing, at which court adjudicated child to be permanently neglected and transferred guardianship and custody to county social services department, where certain erroneous factual findings were based on court's mistaken recollections of testimony and did not prove bias, and court still arrived at proper disposition. *In re Tina F., 273 A.D.2d 900, 710 N.Y.S.2d 281, 2000 N.Y. App. Div. LEXIS 6797 (N.Y. App. Div. 4th Dep't 2000)*.

Case was remitted to the trial court for a hearing on whether a department of social services had met its burden to show permanent neglect to justify terminating a father's parental rights as the trial court had found the issue of permanent neglect academic in light of its finding, which was reversed on appeal, that a father's parental rights should be terminated due to mental illness. *In re Lina Catalina R., 21 A.D.3d 563, 800 N.Y.S.2d 589, 2005 N.Y. App. Div. LEXIS 8682 (N.Y. App. Div. 2d Dep't 2005)*.

207. —Hearing required

In a proceeding to terminate parental rights for permanent neglect, the trial court erred in dismissing the termination petition at the end of the fact-finding hearing without having a dispositional hearing, where there was no consent to waive such a hearing. *In re Amber "W", 105 A.D.2d 888, 481 N.Y.S.2d 886, 1984 N.Y. App. Div. LEXIS 21013 (N.Y. App. Div. 3d Dep't 1984)*.

Order terminating respondent's parental rights would be reversed and matter remitted for dispositional hearing where record did not demonstrate that parties agreed to waive hearing; CLS *Family Ct Act § 625(a)* mandates dispositional hearing in absence of finding of no permanent neglect or consent of parties to waive right to hearing. *In re Casondra W., 184 A.D.2d 1070, 585 N.Y.S.2d 270, 1992 N.Y. App. Div. LEXIS 8331 (N.Y. App. Div. 4th Dep't 1992)*.

It was reversible error to terminate mother's parental rights without first conducting dispositional hearing where she did not consent that Family Court dispense with dispositional hearing and make order of disposition on basis of evidence admitted at fact-finding hearing under CLS *Family Ct Act § 625(a)*. *In re Shavonda GG., 232 A.D.2d 780, 648 N.Y.S.2d 731, 1996 N.Y. App. Div. LEXIS 10200 (N.Y. App. Div. 3d Dep't 1996)*.

Family Court erred in terminating mother's parental rights without conducting dispositional hearing and in making its disposition based on evidence presented at fact-finding hearing where mother stated that she needed additional time to obtain proof for dispositional hearing, and court stated that dispositional hearing could be held either on date when counsel for mother could not be present, or immediately on conclusion of fact-finding hearing; moreover, court refused to allow mother to examine witnesses during fact-finding hearing on matters relevant to dispositional phase. *In re Rasyn W., 254 A.D.2d 827, 678 N.Y.S.2d 176, 1998 N.Y. App. Div. LEXIS 10564 (N.Y. App. Div. 4th Dep't 1998)*.

Court would order new dispositional hearing to reevaluate children's best interests given foster parents' decision not to adopt, and passage of more than year since dispositional hearing. *In re Guardianship & Custody of Danny Darrell V., 284 A.D.2d 247, 726 N.Y.S.2d 562, 2001 N.Y. App. Div. LEXIS 6675 (N.Y. App. Div. 1st Dep't 2001)*.

Where the trial court transferred the guardianship and custody of the child to the child's father and stepmother, the trial court erred in failing to conduct a dispositional hearing to determine the child's best interests, as there was no specific waiver of the dispositional hearing that was required under *N.Y. Soc. Serv. Law § 384-b*. *In re Ashley E., 6 A.D.3d 1231, 775 N.Y.S.2d 732, 2004 N.Y. App. Div. LEXIS 6274 (N.Y. App. Div. 4th Dep't 2004)*.

Order which terminated the parental rights of a father and committed the custody of a child to a home bureau for the purpose of freeing her for adoption was reversed where, since the trial court's order was entered just five months before the child's 14th birthday, the trial court should have held a separate dispositional hearing to determine the child's wishes, and where the child was 19 years of age and beyond the age, 18, of a commitment of her guardianship and custody on the ground of permanent neglect; further, the home bureau failed to demonstrate that the father permanently neglected the child and that it made diligent efforts to promote and encourage the parental

relationship as required by N.Y. Soc. Serv. Law § 384-b. *In re Hyacinth Angela W., 8 A.D.3d 129, 779 N.Y.S.2d 42, 2004 N.Y. App. Div. LEXIS 8535 (N.Y. App. Div. 1st Dep't 2004)*.

After a finding of permanent neglect by the father pursuant to N.Y. Soc. Serv. Law § 384-b, a new dispositional hearing was ordered as to the father's minor daughter as she adamantly refused to be adopted and her permanency goal had been changed to assisted independent living; a determination of the daughter's best interests had to be made. *Matter of Londel Chavis C. v Vincent C., 41 A.D.3d 843, 839 N.Y.S.2d 505, 2007 N.Y. App. Div. LEXIS 8017 (N.Y. App. Div. 2d Dep't 2007)*.

Although a mother failed to appear and was in default, the family court abused its discretion by not vacating the dispositional portions of the orders of fact-finding and disposition because in addition to the mother's mental illness, the petition to terminate her parental rights also alleged permanent neglect, and in the case of permanent neglect, the family court could not dispense with a dispositional hearing in the absence of the consent of the parties. *Matter of Isabella R.W. (Jessica W.), 142 A.D.3d 503, 36 N.Y.S.3d 205, 2016 N.Y. App. Div. LEXIS 5574 (N.Y. App. Div. 2d Dep't 2016)*.

208. —Hearing not required

Court was permitted to terminate mother's parental rights without further dispositional hearing where court had already found that she had violated terms of suspended judgment. *In re Kim Shantae M., 221 A.D.2d 199, 633 N.Y.S.2d 151, 1995 N.Y. App. Div. LEXIS 11564 (N.Y. App. Div. 1st Dep't 1995)*.

Court did not err in failing to conduct dispositional hearing where court had considered best interests of children in issuing stipulated order of disposition suspending judgment; court satisfied its obligation by conducting evidentiary hearing to determine issue of noncompliance with suspended judgment. *In re Ryan V., 243 A.D.2d 865, 662 N.Y.S.2d 861, 1997 N.Y. App. Div. LEXIS 10117 (N.Y. App. Div. 3d Dep't 1997)*.

Dispositional hearing was unnecessary where respondent's younger child had been in foster care almost since birth and his older child had been in foster care since just after his first birthday, same foster parents had been caring for children throughout their placement and wished to adopt them, and record established that respondent might be incarcerated for another 7 years. *In re Howard R., 258 A.D.2d 893, 685 N.Y.S.2d 369, 1999 N.Y. App. Div. LEXIS 1526 (N.Y. App. Div. 4th Dep't)*, aff'd, *261 A.D.2d 977, 689 N.Y.S.2d 596, 1999 N.Y. App. Div. LEXIS 5000 (N.Y. App. Div. 4th Dep't 1999)*.

Family Court was not required to conduct further dispositional hearing on issue of children's best interests before terminating mother's parental rights where (1) by its prior fact-finding order and disposition suspending judgment, court decided that it was in children's best interests to terminate mother's parental rights unless she overcame deficiencies that required placement of children in foster care, and (2) mother admitted that she did not comply with terms of suspended judgment. *In re Cameron S. H., 273 A.D.2d 884, 711 N.Y.S.2d 373, 2000 N.Y. App. Div. LEXIS 6941 (N.Y. App. Div. 4th Dep't 2000)*.

In proceeding to terminate mother's parental rights for permanent neglect, she was not entitled to further dispositional hearing on best interests of her son where she previously had conceded that it would be in her son's best interests to terminate her parental rights if, as occurred, she failed to comply with conditions of suspended judgment. *Wendy F. v Onondaga County Dep't of Soc. Servs., 273 A.D.2d 927, 708 N.Y.S.2d 793, 2000 N.Y. App. Div. LEXIS 6939 (N.Y. App. Div. 4th Dep't 2000)*.

Family Court was not required to conduct dispositional hearing in proceeding to terminate parents' parental rights where agency relied on evidence presented at fact-finding hearing, law guardian declined to present evidence, and parents were given opportunity to present evidence but declined to do so. *In re James H., 281 A.D.2d 920, 721 N.Y.S.2d 849, 2001 N.Y. App. Div. LEXIS 2859 (N.Y. App. Div. 4th Dep't)*, app. dismissed, *96 N.Y.2d 896, 730 N.Y.S.2d 792, 756 N.E.2d 80, 2001 N.Y. LEXIS 1992 (N.Y. 2001)*.

Mother was not entitled to dispositional hearing after Department of Social Services proved, at evidentiary hearing, that she was in violation of many conditions of suspended judgment issued following hearing in which she had admitted to permanent neglect of her child. *In re Caitlin H. (Anonymous), 287 A.D.2d 715, 732 N.Y.S.2d 84, 2001 N.Y. App. Div. LEXIS 10175 (N.Y. App. Div. 2d Dep't 2001)*, app. denied, *97 N.Y.2d 610, 740 N.Y.S.2d 694, 767 N.E.2d 151, 2002 N.Y. LEXIS 607 (N.Y. 2002)*.

209. — —Abandonment

Family Court findings that respondent mother abandoned and permanently neglected her infant son did not require reversal based on court's failure to conduct dispositional hearing under CLS *Family Ct Act § 625*, since dispositional hearing is not required where Family Court determines that there has been abandonment as well as permanent neglect. *In re Joseph H., 185 A.D.2d 682, 587 N.Y.S.2d 62, 1992 N.Y. App. Div. LEXIS 9232 (N.Y. App. Div. 4th Dep't 1992)*.

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