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

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## CAF 08-00458

PRESENT: SMITH, J.P., CENTRA, FAHEY, PERADOTTO, AND PINE, JJ.

IN THE MATTER OF SHAHIDA M. AND SHAHID M., JR.

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ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES, PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

TIFFANY W., RESPONDENT-APPELLANT.

CHARLES J. GREENBERG, BUFFALO, FOR RESPONDENT-APPELLANT.

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

WILLIAM D. BRODERICK, JR., LAW GUARDIAN, ELMA, FOR SHAHIDA M. AND SHAHID M., JR.

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Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered January 18, 2008 in a proceeding pursuant to Social Services Law § 384-b. The order terminated the parental rights of respondent.

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

Memorandum: Respondent mother appeals from an order terminating her parental rights on the ground of mental illness pursuant to Social Services Law § 384-b (4) (c). We conclude that Family Court's determination that the mother "is presently and for the foreseeable future unable by reason of mental illness to provide proper and adequate care for [the] children [in question] is supported by clear and convincing evidence" (Matter of Steven M., 37 AD3d 1072; see § 384-b [4] [c]). The court was entitled to credit the testimony of a psychologist that, based on the mental illness of the mother, any child in her care would be placed at significant risk of neglect for the foreseeable future. That testimony was based upon the results of standardized testing, interviews with the mother and petitioner's caseworkers, the psychologist's observation of the mother's interaction with the children and a review of records relevant to both the mother and the children (see Matter of Anthony M., 56 AD3d 1124).

Entered: February 6, 2009 JoAnn M. Wahl Clerk of the Court