

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

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**CAF 10-00596**

PRESENT: SCUDDER, P.J., FAHEY, CARNI, GREEN, AND GORSKI, JJ.

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IN THE MATTER OF WILLIAM C.B.

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ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,  
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

JUDY B., RESPONDENT-APPELLANT.  
(APPEAL NO. 1.)

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

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

DAVID C. SCHOPP, ATTORNEY FOR THE CHILD, THE LEGAL AID BUREAU OF  
BUFFALO, INC., BUFFALO (CHARLES D. HALVORSEN OF COUNSEL), FOR WILLIAM  
C.B.

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Appeal from an order of the Family Court, Erie County (Patricia A. Maxwell, J.), entered February 2, 2010 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: In appeal No. 1, respondent mother appeals from an order terminating her parental rights with respect to her son on the ground of mental illness. Contrary to the mother's contention, we conclude that petitioner met its burden of demonstrating by clear and convincing evidence that she is "presently and for the foreseeable future unable, by reason of mental illness . . ., to provide proper and adequate care for [the] child" (Social Services Law § 384-b [4] [c]; see *Matter of Anthony C.*, 280 AD2d 1000). The mother's further contention in appeal No. 1 that Family Court erred in failing to conduct a separate dispositional hearing is unpreserved for our review and, in any event, that contention lacks merit (see *Matter of Keyarei M.*, 71 AD3d 1510, lv denied 14 NY3d 712).

In appeal No. 2, the mother appeals from an order denying her pro se motion seeking to vacate the order in appeal No. 1. To the extent that the motion was based upon newly discovered evidence, the mother failed to show that such evidence could not have been discovered previously by the exercise of due diligence, or that it would have altered the outcome of the proceeding (see *Matter of Catapano*, 17 AD3d 673, 674). Nor did the mother demonstrate that she was deprived of

effective assistance of counsel, the alternative ground alleged by the mother for vacatur (*see generally Matter of Leo UU.*, 288 AD2d 711, 713, *lv denied* 97 NY2d 609).

Entered: April 29, 2011

Patricia L. Morgan  
Clerk of the Court