

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

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CAF 15-01604

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, NEMOYER, AND TROUTMAN, JJ.

IN THE MATTER OF DEON M.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

VERNON B., RESPONDENT.

MEMORANDUM AND ORDER

IN THE MATTER OF DAVID M.J.B.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

VERNON B., RESPONDENT.

IN THE MATTER OF DAVID M.J.B.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

VERNON B., RESPONDENT.

IN THE MATTER OF DAVID M.J.B.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

CYNTHIA M., RESPONDENT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR RESPONDENT-APPELLANT.

ERIC R. ZIOBRO, BUFFALO, FOR PETITIONER-RESPONDENT.

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

Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered August 20, 2015 in a proceeding pursuant to Social Services Law § 384-b. The order, among other things, terminated the parental rights of respondent Cynthia M. with respect to her son, David M.J.B.

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 with respect to her son, David M.J.B., 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 the mother 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 Christopher B., Jr.* [*Christopher B., Sr.*], 104 AD3d 1188, 1188 [4th Dept 2013]). Petitioner presented clear and convincing evidence establishing that the mother is presently suffering from "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 . . . the custody of [the mother], the child would be in danger of becoming a neglected child" (§ 384-b [6] [a]).

The mother further contends that she was denied effective assistance of counsel at the fact-finding hearing. We reject that contention inasmuch as the mother " 'did not demonstrate the absence of strategic or other legitimate explanations for counsel's alleged shortcomings' " (*Matter of Joey J.* [*Eleanor J.*], 140 AD3d 1687, 1687 [4th Dept 2016]; see *Matter of London J.* [*Niaya W.*], 138 AD3d 1457, 1458 [4th Dept 2016], *lv denied* 27 NY3d 912 [2016]; see generally *Matter of Brown v Gandy*, 125 AD3d 1390, 1390-1391 [4th Dept 2015]), and " '[t]he record, viewed in its totality, establishes that the [mother] received meaningful representation' " (*Matter of Kemari W.*, 153 AD3d 1667, 1668 [4th Dept 2017]; see generally *People v Baldi*, 54 NY2d 137, 1478 [1981]).