

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

118

CAF 20-00943

PRESENT: WHALEN, P.J., SMITH, CENTRA, AND PERADOTTO, JJ.

IN THE MATTER OF LARAE L.

ONONDAGA COUNTY DEPARTMENT OF CHILDREN AND
FAMILY SERVICES, PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

HEATHER L., RESPONDENT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (DANIELLE K. BLACKABY OF
COUNSEL), FOR RESPONDENT-APPELLANT.

ROBERT A. DURR, COUNTY ATTORNEY, SYRACUSE (JOSEPH M. MARZOCCHI OF
COUNSEL), FOR PETITIONER-RESPONDENT.

CATHERINE M. SULLIVAN, OSWEGO, ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Onondaga County
(Michael L. Hanuszczak, J.), entered March 9, 2020 in a proceeding
pursuant to Social Services Law § 384-b. The order, inter alia,
terminated the parental rights of respondent with respect to the
subject child.

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

Memorandum: In this proceeding pursuant to Social Services Law
§ 384-b, respondent mother appeals from an order, entered upon her
default, that, inter alia, adjudicated the subject child to be
permanently neglected, terminated the mother's parental rights, and
transferred custody of the child to petitioner. Preliminarily,
contrary to the contention of the Attorney for the Child, the mother
properly served and timely filed her notice of appeal (see Family Ct
Act §§ 1113, 1115; Executive Order [A. Cuomo] No. 202.8 [9 NYCRR
8.202.8], Executive Order [A. Cuomo] No. 202.67 [9 NYCRR 8.202.67];
cf. Matter of Fraser v Fraser, 185 AD3d 1444, 1444-1445 [4th Dept
2020]). Nonetheless, the order appealed from was entered following a
fact-finding and dispositional hearing at which the mother failed to
appear and in which her attorney, although present, elected not to
participate. The order was thus entered upon the mother's default
(see *Matter of Tyrone O. [Lillian G.]*, 199 AD3d 1386, 1387 [4th Dept
2021]; *Matter of Ramere D. [Biesha D.]*, 177 AD3d 1386, 1386 [4th Dept
2019], *lv denied* 35 NY3d 904 [2020]; *Matter of Makia S. [Catherine
S.]*, 134 AD3d 1445, 1445-1446 [4th Dept 2015]). Consequently, in this
Court's prior order in response to petitioner's motion, we dismissed
the mother's appeal except insofar as the mother challenges the denial

of her attorney's request for an adjournment or raises any other issue that was the subject of contest before Family Court (see *Tyrone O.*, 199 AD3d at 1387; *Ramere D.*, 177 AD3d at 1386). Contrary to the mother's contention, we conclude that the court did not abuse its discretion in denying her attorney's request for an adjournment (see *Tyrone O.*, 199 AD3d at 1387; *Matter of John D., Jr. [John D.]*, 199 AD3d 1412, 1413 [4th Dept 2021]; see generally Family Ct Act § 1048 [a]). The remaining issue raised by the mother is not reviewable on appeal from the order entered upon her default because it was not a subject of contest before the court (cf. *Matter of Dinunzio v Zylinski*, 175 AD3d 1079, 1080-1082 [4th Dept 2019]).

Entered: February 4, 2022

Ann Dillon Flynn
Clerk of the Court