

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

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CAF 22-00599

PRESENT: SMITH, J.P., LINDLEY, MONTOUR, GREENWOOD, AND DELCONTE, JJ.

IN THE MATTER OF STEVEN M.

OSWEGO COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

SCOTT M., RESPONDENT-APPELLANT.

ROBERT J. GALLAMORE, ST. GEORGE, UTAH, FOR RESPONDENT-APPELLANT.

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

Appeal from an order of the Family Court, Oswego County (Thomas Benedetto, J.), entered February 24, 2022, in a proceeding pursuant to Social Services Law § 384-b. The order, among other things, transferred respondent's guardianship and custody rights over the subject child to petitioner.

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

Memorandum: Respondent appeals from an order terminating his parental rights pursuant to Social Services Law § 384-b (4) (c) on the ground of mental illness. We affirm. We conclude that petitioner established by clear and convincing evidence that respondent is "presently and for the foreseeable future unable, by reason of mental illness . . . , to provide proper and adequate care for [his] child" (*id.*; see *Matter of Michael S. [Rebecca S.]*, 165 AD3d 1633, 1633 [4th Dept 2018], *lv denied* 32 NY3d 915 [2019]). Petitioner presented the testimony of a licensed psychologist, several caseworkers assigned to respondent, mental health staff who interacted with respondent, and two former foster parents of the child, along with the psychologist's written report and respondent's records from mental health and substance abuse providers. The evidence established that respondent suffers from antisocial personality disorder, "which is characterized by a lack of empathy, the failure to adhere to social norms, aggression, impulsiveness, and a failure to plan" (*Michael S.*, 165 AD3d at 1633; see *Matter of Neveah G. [Jahkeya A.]*, 156 AD3d 1340, 1341 [4th Dept 2017], *lv denied* 31 NY3d 907 [2018]), and that the child "would be in danger of being neglected if [he was] returned to [respondent's] care at the present time or in the foreseeable future" (*Matter of Jason B. [Phyllis B.]*, 160 AD3d 1433, 1434 [4th Dept 2018], *lv denied* 32 NY3d 902 [2018]; see *Michael S.*, 165 AD3d at 1633).

We also reject respondent's related contention that Family

Court's determination did not have a sound and substantial basis in the record inasmuch as it was not supported by sufficient admissible evidence. The psychologist who testified that, as a result of respondent's antisocial personality disorder, the child would be placed in immediate jeopardy of neglect or harm if he was returned to respondent's care, was qualified as an expert in the field of psychology, including the administration of psychiatric assessments, without objection. The fact that the court later noted that the psychologist was not qualified as "a psychiatrist or a mental health expert" is irrelevant because the statute expressly provides that a determination to terminate parental rights may be based upon the testimony of either a psychiatrist or psychologist (see Social Services Law § 384-b [6] [c]; see e.g. *Matter of Jason B. [Gerald B.]*, 155 AD3d 1575, 1575 [4th Dept 2017], *lv denied* 31 NY3d 901 [2018]). Likewise, the fact that the psychologist diagnosed respondent with a personality disorder, and not a mental illness, is irrelevant inasmuch as personality disorders, such as antisocial personality disorder, are "mental condition[s]" as that term is used in the definition of "mental illness" in Social Services Law § 384-b (6) (a) and may provide a sound and substantial basis to support a determination terminating parental rights (see e.g. *Michael S.*, 165 AD3d at 1633; *Neveah G.*, 156 AD3d at 1341). Additionally, respondent's counsel stipulated to the admission of respondent's medical records, without objection. Thus, to the extent respondent challenges the court's reliance on those records in reaching its determination, his challenge is waived (see *Matter of Byler v Byler*, 207 AD3d 1072, 1073 [4th Dept 2022], *lv denied* 39 NY3d 901 [2022]; *Lahren v Boehmer Transp. Corp.*, 49 AD3d 1186, 1187 [4th Dept 2008]).

Respondent's contention that the court erred in failing to order an independent psychiatric or psychological examination of him pursuant to Social Services Law § 384-b (6) (e) is not preserved for our review (see *Matter of Jasmine F.*, 298 AD2d 997, 997 [4th Dept 2002], *lv denied* 99 NY2d 506 [2003]; cf. *Matter of Rahsaan I. [Simone J.]*, 180 AD3d 1162, 1164 [3d Dept 2020]).

We reject respondent's contention that the court abused its discretion in denying his request for an adjournment. "The grant or denial of a motion for an adjournment for any purpose is a matter resting within the sound discretion of the trial court" (*Matter of Dixon v Crow*, 192 AD3d 1467, 1467 [4th Dept 2021], *lv denied* 37 NY3d 904 [2021] [internal quotation marks omitted]; see *Matter of Nathan N. [Christopher R.N.]*, 203 AD3d 1667, 1669 [4th Dept 2022], *lv denied* 38 NY3d 909 [2022]), and we conclude that the court did not abuse its discretion.

Finally, we have reviewed respondent's remaining contention and conclude that it does not warrant modification or reversal of the order.