

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

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CAF 24-02038

PRESENT: LINDLEY, J.P., CURRAN, OGDEN, NOWAK, AND KEANE, JJ.

IN THE MATTER OF DE'SHAUN H.

ONTARIO COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

CIERRA S., RESPONDENT-APPELLANT.

LAW OFFICE OF VERONICA REED, SCHENECTADY (VERONICA REED OF COUNSEL),
FOR RESPONDENT-APPELLANT.

HOLLY A. ADAMS, COUNTY ATTORNEY, CANANDAIGUA (CHELSEA B. CARTER OF
COUNSEL), FOR PETITIONER-RESPONDENT.

ALEXANDRA BURKETT, CANANDAIGUA, ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Ontario County (Jacqueline E. Sisson, A.J.), dated November 7, 2024, in a proceeding pursuant to Social Services Law § 384-b. The order, inter alia, terminated respondent's parental rights with respect to the subject child.

It is hereby ORDERED that the order so appealed from is unanimously affirmed.

Memorandum: In this proceeding pursuant to Social Services Law § 384-b, respondent mother appeals from an order that, inter alia, terminated her parental rights with respect to the subject child on the ground of permanent neglect.

Contrary to the mother's contention, Family Court did not err in concluding that her failure to appear at the fact-finding hearing constituted a default. The court on several occasions warned the mother that if she failed to appear, the court would proceed in her absence, which could result in the termination of her parental rights. Nevertheless, the mother "did not appear at the fact-finding hearing and, although her attorney was present at the hearing, the attorney did not participate" (*Matter of David P.S. [Grace C.L.]*, 222 AD3d 1332, 1332 [4th Dept 2023]; see generally *Matter of Jayden M. [Carlos M.]*, 237 AD3d 1560, 1562 [4th Dept 2025], lv denied 44 NY3d 902 [2025]). Although "an appeal from a dispositional order in a permanent neglect proceeding would ordinarily bring up the fact-finding order for review, no appeal lies from an order entered upon default" (*Matter of Corey MM. [Cassandra LL.]*, 177 AD3d 1119, 1120 [3d Dept 2019]; see CPLR 5511; see also *Matter of Lilliana S.*

[*Nicole D.*], 234 AD3d 1248, 1249 [4th Dept 2025]), and thus the mother's challenges to the sufficiency of the evidence adduced during the fact-finding hearing are not properly before us (see *Corey MM.*, 177 AD3d at 1120).

We reject the mother's contention that she was denied effective assistance of counsel. The mother did not "demonstrate the absence of strategic or other legitimate explanations" for counsel's failure to participate at the fact-finding hearing (*Matter of Elijah D. [Allison D.]*, 74 AD3d 1846, 1847 [4th Dept 2010] [internal quotation marks omitted]; see *People v Benevento*, 91 NY2d 708, 712 [1998]); to the contrary, by declining to participate, counsel preserved the mother's ability to move to vacate the default if grounds for such a motion existed (see generally *Matter of Kenneth L. [Michelle B.]*, 92 AD3d 1245, 1246 [4th Dept 2012]). We further conclude that counsel was not ineffective in ultimately failing to move to vacate the default judgment inasmuch as such a motion had "little or no chance of success" on this record (*Matter of Buckley v Kleinahans*, 162 AD3d 1561, 1562 [4th Dept 2018] [internal quotation marks omitted]).

Finally, contrary to the mother's contention, the court did not err in refusing to issue a suspended judgment. The court's sole concern at a dispositional hearing is "the best interests of the child[] . . . and its determination is entitled to great deference" (*Matter of Aubree R. [Natasha B.]*, 217 AD3d 1565, 1567 [4th Dept 2023], *lv denied* 40 NY3d 905 [2023] [internal quotation marks omitted]). At the time of the dispositional hearing in this case, the child had been in foster care since he was four weeks old and had bonded with his foster parents, who wished to adopt him. Any progress that the mother made in addressing the issues that led to the child's removal "was not sufficient to warrant any further prolongation of the [child's] unsettled familial status" (*id.* [internal quotation marks omitted]; see *Matter of London J. [Niaya W.]*, 138 AD3d 1457, 1458 [4th Dept 2016], *lv denied* 27 NY3d 912 [2016]).