

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

711

**CAF 24-00850**

PRESENT: WHALEN, P.J., BANNISTER, SMITH, NOWAK, AND DELCONTE, JJ.

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IN THE MATTER OF HAILEY H. AND CALEB T.

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ONTARIO COUNTY DEPARTMENT OF SOCIAL SERVICES,  
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

BRANDY F., RESPONDENT-APPELLANT.

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MULLEN ASSOCIATES LLC, BATH (ALAN P. REED OF COUNSEL), FOR  
RESPONDENT-APPELLANT.

HOLLY A. ADAMS, COUNTY ATTORNEY, CANANDAIGUA (SANDRA J. PACKARD OF  
COUNSEL), FOR PETITIONER-RESPONDENT.

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

JESSICA B. SERRETT, GENEVA, ATTORNEY FOR THE CHILD.

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Appeal from an order of the Family Court, Ontario County  
(Jacqueline E. Sisson, A.J.), entered April 22, 2024, in a proceeding  
pursuant to Social Services Law § 384-b. The order terminated the  
parental rights of respondent with respect to the subject children.

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 that terminated her  
parental rights to the subject children on the ground of mental  
illness.

Initially, contrary to the assertion of petitioner and the  
attorneys for the children, we conclude that the mother's notice of  
appeal was timely filed inasmuch as the record establishes that the  
mother was served with the order appealed from only by email.  
Inasmuch as the mother "was served the order by [Family Court] via  
email, which is not a method provided for in Family Court Act § 1113,  
and there is no indication that [s]he was served by any of the methods  
authorized by the statute, . . . the time to take an appeal did not  
begin to run and . . . it cannot be said that the [mother's] appeal is  
untimely" (*Matter of Grayson S. [Thomas S.]*, 209 AD3d 1309, 1311 [4th  
Dept 2022]; see generally *Matter of Bukowski v Florentino*, 210 AD3d  
1520, 1521 [4th Dept 2022]).

With respect to the merits, we reject the mother's contention

that petitioner failed to meet its burden on the petition. Indeed, petitioner met its burden of establishing by clear and convincing evidence that the mother was presently and for the foreseeable future unable, by reason of mental illness, to provide proper and adequate care for the children, who had each been in the care of an authorized agency for over one year immediately prior to the filing of the petition (see Social Services Law § 384-b [4] [c]). "[T]ermination of parental rights on the ground of mental illness 'requires a two-part determination at the fact-finding stage, first of the parent['s] condition and capacity, including consideration of measures on the part of the [s]tate to maintain the family setting, and second of the anticipated effect for the foreseeable future if the child is returned to the [parent's] care' " (*Matter of Albert S. [Albert S.]*, 238 AD3d 1510, 1511 [4th Dept 2025]). Here, the testimony of petitioner's expert psychologists established that the mother suffers from posttraumatic stress disorder, bipolar disorder, and borderline personality disorder, and that " 'the child[ren] would be in danger of being neglected if [they were] returned to her care at the present time or in the foreseeable future' " (*Matter of Landin F. [Jodi G.]*, 222 AD3d 1405, 1406 [4th Dept 2023], *lv denied* 41 NY3d 909 [2024]; see *Matter of Jason B. [Phyllis B.]*, 160 AD3d 1433, 1434 [4th Dept 2018], *lv denied* 32 NY3d 902 [2018]).

Finally, we reject the mother's contention that the court abused its discretion in declining to hold a dispositional hearing (see *Matter of Michael S. [Rebecca S.]*, 165 AD3d 1633, 1633-1634 [4th Dept 2018], *lv denied* 32 NY3d 915 [2019]).