

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

133

CAF 11-01240

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, WHALEN, AND MARTOCHE, JJ.

IN THE MATTER OF AIDEN J.W.

NIAGARA COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

MICHAEL E.M., RESPONDENT-APPELLANT.

KATHLEEN E. CASEY, BARKER, FOR RESPONDENT-APPELLANT.

SUSAN M. SUSSMAN, NIAGARA FALLS, FOR PETITIONER-RESPONDENT.

ALVIN M. GREENE, ATTORNEY FOR THE CHILD, BUFFALO, FOR AIDEN J.W.

Appeal from an order of the Family Court, Niagara County (John F. Batt, J.), entered June 13, 2011 in a proceeding pursuant to Social Services Law § 384-b. The order terminated the parental rights of respondent.

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

Memorandum: Respondent father appeals from an order finding that he permanently neglected his child and terminating his parental rights. We reject the father's contention that Family Court failed to consider the appropriate factors, including the "special circumstances of an incarcerated parent," in determining that the child was permanently neglected (Social Services Law § 384-b [7] [a]). Indeed, we agree with the court that the father "has failed to demonstrate any commitment to the responsibilities of parenthood and demonstrates a fundamental defect in his understanding of proper parenting responsibilities." The petitioning agency is not required to " 'guarantee that the parent succeed in overcoming his or her predicaments' . . . but, rather, the parent must 'assume a measure of initiative and responsibility' " (*Matter of Whytnei B. [Jeffrey B.]*, 77 AD3d 1340, 1341).

Entered: April 26, 2013

Frances E. Cafarell
Clerk of the Court