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

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CAF 14-00274

PRESENT: CENTRA, J.P., CARNI, SCONIERS, VALENTINO, AND WHALEN, JJ.

IN THE MATTER OF DAVID W., JR.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,   MEMORANDUM AND ORDER
PETITIONER-RESPONDENT;

DAVID W., SR., RESPONDENT-APPELLANT.

ALAN BIRNHOLZ, EAST AMHERST, FOR RESPONDENT-APPELLANT.

JOSEPH T. JARZEMBEK, BUFFALO, FOR PETITIONER-RESPONDENT.

DAVID C. SCHOPP, ATTORNEY FOR THE CHILD, THE LEGAL AID BUREAU OF
BUFFALO, INC., BUFFALO (CHARLES D. HALVORSEN OF COUNSEL).

Appeal from an order of the Family Court, Erie County (Sharon M. LoVallo, J.), entered August 9, 2013 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 terminating his parental rights with respect to his son on the ground of permanent neglect. Contrary to the father's contention, Family Court did not abuse its discretion in refusing to enter a suspended judgment (*see Matter of Arella D.P.-D.*, 35 AD3d 1222, 1223, *lv denied* 8 NY3d 809). Petitioner established that the father failed to comply with his service plan, i.e., he failed to complete substance abuse treatment successfully, attend scheduled visitation with the child consistently, or verify that he had obtained stable income and housing (*see Matter of Mikia H. [Monique K.]*, 78 AD3d 1575, 1576, *lv dismissed in part and denied in part* 16 NY3d 760). "The record therefore supports the court's refusal to grant a suspended judgment inasmuch as the record establishes that the [father] had no 'realistic feasible plan to care for the child[ ] . . . and . . . that [he] was not likely to change [his] behavior' " (*Matter of Dahmani M. [Jana M.]*, 104 AD3d 1245, 1246; *see Matter of Sean W. [Brittany W.]*, 87 AD3d 1318, 1319, *lv denied* 18 NY3d 802).

Entered: June 12, 2015   Frances E. Cafarell
                                                Clerk of the Court