

children's] return to [the mother's] care . . . , and that the [mother] failed substantially and continuously to plan for the future of the child[ren] although physically and financially able to do so . . . Although the [mother] participated in [some of] the services offered by petitioner, [she] did not successfully address or gain insight into the problems that led to the removal of the child[ren] and continued to prevent the child[ren's] safe return" (*Matter of Michael S. [Kathryne T.]*, 162 AD3d 1651, 1652 [4th Dept 2018], *lv denied* 32 NY3d 906 [2018] [internal quotation marks omitted]; see Social Services Law § 384-b [7] [a]; *Matter of Alexander S. [David S.]*, 130 AD3d 1463, 1463 [4th Dept 2015], *lv denied* 26 NY3d 910 [2015], *appeal dismissed and lv denied* 26 NY3d 1030 [2015], *rearg denied* 26 NY3d 1132 [2016]).

Contrary to the mother's further contention, we conclude that "the record supports the court's determination that termination of her parental rights is in the best interests of the child[ren], and that a suspended judgment was not warranted under the circumstances inasmuch as any progress made by the mother prior to the dispositional determination was insufficient to warrant any further prolongation of the child[ren's] unsettled familial status" (*Matter of Kendalle K. [Corin K.]*, 144 AD3d 1670, 1672 [4th Dept 2016]).

The mother's contention that the Attorney for the Children (AFC) was ineffective because she substituted her judgment for that of the children is "based on matters outside the record and is not properly before us" (*Matter of Daniel K. [Roger K.]*, 166 AD3d 1560, 1561 [4th Dept 2018], *lv denied* 32 NY3d 919 [2019] [internal quotation marks omitted]). We also conclude that the record does not support the mother's additional contention that the AFC represented conflicting interests requiring her disqualification (see *Matter of Smith v Smith*, 241 AD2d 980, 980 [4th Dept 1997]; cf. *Matter of Brian S. [Tanya S.]*, 141 AD3d 1145, 1148 [4th Dept 2016]).

We reject the father's contention on his appeal that the court erred in finding that he permanently neglected the subject children. Contrary to the father's contention, we conclude that "there is no evidence that [the father] had a realistic plan to provide an adequate and stable home for the child[ren]" (*Matter of Jarrett P. [Jeremy P.]*, 173 AD3d 1692, 1695 [4th Dept 2019], *lv denied* 34 NY3d 902 [2019] [internal quotation marks omitted]). Contrary to the father's further contention, the record supports the court's determination that termination of the father's parental rights was in the best interests of the children (see *Kendalle K.*, 144 AD3d at 1672).

Finally, we reject the father's contention that reversal is required because petitioner failed to properly notify the children's uncle and his fiancée of the instant proceeding. Even assuming, arguendo, that petitioner violated its statutory duty (see Family Ct Act § 1017 [1] [a]), the record establishes that the uncle and his fiancée were aware for years that the children had been placed in foster care, yet they did not express any interest in obtaining custody until several months into the fact-finding hearing. We thus

conclude that no prejudice arose from any failure by petitioner to notify the uncle and his fiancée of this proceeding (see *Matter of Mirabella H. [Angela I.]*, 162 AD3d 1733, 1734 [4th Dept 2018], lv denied 32 NY3d 909 [2018]; *Matter of Elizabeth YY. v Albany County Dept. of Social Servs.*, 229 AD2d 618, 620-621 [3d Dept 1996]).

Entered: January 31, 2020

Mark W. Bennett
Clerk of the Court