

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

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CAF 09-00628

PRESENT: SMITH, J.P., CENTRA, LINDLEY, SCONIERS, AND PINE, JJ.

IN THE MATTER OF JANASIA H., JUSTIN H.,
JAYSHUN H., JOSHUA H., AND JAYLA H.

MEMORANDUM AND ORDER

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

EBONY H., RESPONDENT-APPELLANT.

CHARLES J. GREENBERG, BUFFALO, FOR RESPONDENT-APPELLANT.

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

DAVID C. SCHOPP, LAW GUARDIAN, THE LEGAL AID BUREAU OF BUFFALO, INC.,
BUFFALO (CHARLES D. HALVORSEN OF COUNSEL), FOR JANASIA H., JUSTIN H.,
JAYSHUN H., JOSHUA H., AND JAYLA H.

Appeal from an order of the Family Court, Erie County (Patricia A. Maxwell, J.), entered February 27, 2009 in a proceeding pursuant to Family Court Act article 6. The order granted the petition seeking to revoke a suspended judgment and terminated respondent's parental rights.

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

Memorandum: Respondent mother appeals from an order that, following a hearing, granted the petition seeking to revoke a suspended judgment issued pursuant to Family Court Act § 633 and terminated her parental rights with respect to the children who are the subject of this proceeding. Contrary to the mother's contention, petitioner established by a preponderance of the evidence at the hearing that the mother violated the terms and conditions of the suspended judgment (*see Matter of Dennis A.*, 64 AD3d 1191, 1192). The record establishes that the mother attended only one third of the scheduled visitation sessions with her children, that she failed to attend appointments for the children, and that she failed to obtain suitable housing. The contention of the mother that petitioner failed to use diligent efforts to strengthen and encourage her relationship with her children is without merit (*see Social Services Law* § 384-b [7] [a]; *Matter of Bert M.*, 50 AD3d 1509, 1510, *lv denied* 11 NY3d 704). Finally, we reject the mother's contention that Family Court erred in admitting hearsay testimony in evidence. Because a hearing on the issue of the revocation of a suspended judgment is part of the dispositional phase of a permanent neglect proceeding (*see Matter of*

Seandell L., 57 AD3d 1511, *lv denied* 12 NY3d 708), hearsay testimony is admissible where, as here, is it material and relevant (see Family Ct Act § 624; *Matter of Robert T.*, 270 AD2d 961, *lv denied* 95 NY2d 758).

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court