

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

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**CAF 09-00688**

PRESENT: SMITH, J.P., FAHEY, CARNI, SCONIERS, AND PINE, JJ.

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IN THE MATTER OF DEMARIAH A.

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ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,  
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

REBECCA B., RESPONDENT,  
AND DEMARIO A., RESPONDENT-APPELLANT.

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DAVID J. PAJAK, ALDEN, 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 DEMARIAH A.

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Appeal from an order of the Family Court, Erie County (Patricia A. Maxwell, J.), entered March 18, 2009 in a proceeding pursuant to Social Services Law § 384-b. The order, insofar as appealed from, terminated the parental rights of respondent Demario A.

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 the child in question on the ground of mental illness. We affirm. Petitioner met its burden of demonstrating by clear and convincing evidence that the father is presently and for the foreseeable future unable to provide proper and adequate care for his child by reason of mental illness (see Social Services Law § 384-b [4] [c]; [6] [a]). "The failure of the [court-appointed] psychologist to provide a precise, clinically accepted diagnosis does not render his testimony legally insufficient to satisfy the statutory mandate" (*Matter of Dylan K.*, 269 AD2d 826, 827, *lv denied* 95 NY2d 766). Contrary to the contention of the father, the foundation for the psychologist's testimony was sufficient (see *Matter of Shahida M.*, 59 AD3d 976, *lv denied* 12 NY3d 708).

Entered: April 30, 2010

Patricia L. Morgan  
Clerk of the Court