

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

1001

CAF 09-00699

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

IN THE MATTER OF WHYTNEI B., JADA B., AND
JEFFREY B.

MEMORANDUM AND ORDER

MONROE COUNTY DEPARTMENT OF HUMAN SERVICES,
PETITIONER-RESPONDENT;

JEFFREY B., RESPONDENT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (KIMBERLY F. DUGUAY OF
COUNSEL), FOR RESPONDENT-APPELLANT.

WILLIAM K. TAYLOR, COUNTY ATTORNEY, ROCHESTER (CAROL L. EISENMAN OF
COUNSEL), FOR PETITIONER-RESPONDENT.

LISA J. MASLOW, ATTORNEY FOR THE CHILDREN, ROCHESTER, FOR WHYTNEI B.,
JADA B., AND JEFFREY B.

Appeal from an order of the Family Court, Monroe County (Patricia
E. Gallaher, J.), entered March 10, 2009 in a proceeding pursuant to
Social Services Law § 384-b. The order, among other things,
terminated respondent's parental rights.

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

Memorandum: On appeal from an order terminating his parental
rights on the ground of permanent neglect, respondent father contends
that petitioner failed to establish that it had exercised diligent
efforts to encourage and strengthen the parent-child relationship both
prior to and during the period of his incarceration as required by
Social Services Law § 384-b (7) (a). We reject that contention.
"Diligent efforts include reasonable attempts at providing counseling,
scheduling regular visitation with the child[ren], providing services
to the parent[] to overcome problems that prevent the discharge of the
child[ren] into [his or her] care, and informing the parent[] of [the
children's] progress" (*Matter of Jessica Lynn W.*, 244 AD2d 900,
900-901; see § 384-b [7] [f]). Petitioner is not required, however,
to "guarantee that the parent succeed in overcoming his or her
predicaments" (*Matter of Sheila G.*, 61 NY2d 368, 385; see *Matter of
Jamie M.*, 63 NY2d 388, 393) but, rather, the parent must "assume a
measure of initiative and responsibility" (*Jamie M.*, 63 NY2d at 393).
Here, petitioner established, by the requisite clear and convincing
evidence (see § 384-b [3] [g] [i]), that it fulfilled its duty to
exercise diligent efforts to encourage and strengthen the father's

relationships with his children during the relevant time period (see generally *Matter of Star Leslie W.*, 63 NY2d 136, 142). Petitioner further established that, despite those efforts, the father "failed substantially and continuously or repeatedly to maintain contact with or plan for the future of the child[ren] although . . . able to do so" (*id.*; see *Matter of Justin Henry B.*, 21 AD3d 369).

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court