

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

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CAF 13-02133

PRESENT: WHALEN, P.J., SMITH, CENTRA, CARNI, AND SCUDDER, JJ.

IN THE MATTER OF BRAYDEN R.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

DUANE R., RESPONDENT-APPELLANT.

EVELYNE A. O'SULLIVAN, 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 (Margaret O. Szczur, J.), entered November 26, 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: We affirm for reasons stated in the decision at Family Court. We add only that the testimony at the hearing established that nothing concerning respondent father's mental health had changed since we previously affirmed an order terminating his parental rights with respect to another child on the ground of mental illness (*Matter of Zachary R. [Duane R.]*, 118 AD3d 1479, 1480). Inasmuch as the father agreed that the court could take judicial notice of those past proceedings, we again conclude "that petitioner met its burden of demonstrating by clear and convincing evidence that the father is 'presently and for the foreseeable future unable, by reason of mental illness . . . , to provide proper and adequate care for [the] child' " (*id.*, quoting Social Services Law § 384-b [4] [c]).

Entered: February 5, 2016

Frances E. Cafarell
Clerk of the Court