

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

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CAF 12-02212

PRESENT: SMITH, J.P., FAHEY, LINDLEY, WHALEN, AND DEJOSEPH, JJ.

IN THE MATTER OF JOSLYN U., DANZARIO E.,
ANASIAH L. AND ARIEL L.

MEMORANDUM AND ORDER

OSWEGO COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

HEATHER L., RESPONDENT-APPELLANT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (ELIZABETH deV. MOELLER OF
COUNSEL), FOR RESPONDENT-APPELLANT.

LESLEY C. GERMANOW, MEXICO, FOR PETITIONER-RESPONDENT.

JOHN W. SPRING, JR., ATTORNEY FOR THE CHILD, PHOENIX.

STEPHANIE N. DAVIS, ATTORNEY FOR THE CHILD, OSWEGO.

PAMELA A. MUNSON, ATTORNEY FOR THE CHILDREN, FULTON.

Appeal from an order of the Family Court, Oswego County (Kimberly M. Seager, J.), entered October 15, 2012 in a proceeding pursuant to Family Court Act article 10. The order determined that respondent had neglected the subject children.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the matter is remitted to Family Court, Oswego County, for further proceedings in accordance with the following Memorandum: Respondent mother appeals from an order determining that she neglected the subject children. The record establishes that the mother failed to appear at the fact-finding hearing and that her attorney withdrew and did not participate therein. We agree with the mother that Family Court erred in allowing her attorney to withdraw and in proceeding with the hearing in the mother's absence, inasmuch as the attorney failed to provide reasonable notice to the mother that she planned to withdraw (see *Matter of Meko M.*, 272 AD2d 953, 954). The mother's attorney did not make a written motion to withdraw as counsel and merely sent the mother a letter six days before the hearing stating she may withdraw if the mother did not appear for the hearing and thus failed to give the mother proper notice and time to respond. We note that, although the record fully supports a finding that the mother neglected the subject children, " 'such a finding may not stand [where, as here, the mother] was denied due process' " (*id.*). We therefore reverse the order and remit the matter to Family Court for the assignment of new

counsel and a new hearing on the petition.

Entered: October 3, 2014

Frances E. Cafarell
Clerk of the Court