

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

1210

CAF 13-00219

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

IN THE MATTER OF DARLENEA T. AND MIRACLE T.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

WANDA A., RESPONDENT-APPELLANT.

COLUCCI & GALLAHER, P.C., BUFFALO (REGINA A. DELVECCHIO OF COUNSEL),
FOR RESPONDENT-APPELLANT.

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

SHEILA SULLIVAN DICKINSON, ATTORNEY FOR THE CHILD, BUFFALO.

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 (Sharon M. LoVallo, J.), entered November 8, 2012 in a proceeding pursuant to Social Services Law § 384-b. The order revoked a suspended judgment and terminated the parental rights of respondent.

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, Erie County, for a new dispositional hearing in accordance with the following Memorandum: Respondent mother appeals from an order that, inter alia, revoked the suspended judgment entered upon a finding of permanent neglect and terminated her parental rights with respect to her children in this proceeding pursuant to Social Services Law § 384-b. We conclude that petitioner established by a preponderance of the evidence that the mother failed to comply with the terms of the suspended judgment (*see Matter of Shad S. [Amy C.Y.]*, 67 AD3d 1359, 1360). Nevertheless, based on new facts and allegations that we may properly consider, we further conclude that it is not clear that termination of the mother's parental rights is in the best interests of the children (*see id.*; *see also Matter of Leval B. v Kiona E.*, 115 AD3d 665, 667). We therefore reverse the order and remit the matter to Family Court for a new dispositional hearing to determine the children's best interests.

Entered: November 21, 2014

Frances E. Cafarell
Clerk of the Court