

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

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**CAF 22-01143**

PRESENT: SMITH, J.P., CURRAN, OGDEN, GREENWOOD, AND KEANE, JJ.

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IN THE MATTER OF NOAH C., ROMEO C., JADEN C.,  
AND JACOB C.

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ONTARIO COUNTY DEPARTMENT OF SOCIAL SERVICES,  
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

GREG C. AND JACQUELINE C., RESPONDENTS-APPELLANTS.

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MARYBETH D. BARNET, ESQ., ATTORNEY FOR THE  
CHILDREN, APPELLANT.

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SHARON ALLEN, ESQ., ATTORNEY FOR THE  
CHILD, APPELLANT.

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ANDREW G. MORABITO, ESQ., ATTORNEY FOR THE  
CHILD, APPELLANT.

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CARA A. WALDMAN, FAIRPORT, FOR RESPONDENT-APPELLANT GREG C.

MICHAEL J. PULVER, NORTH SYRACUSE, FOR RESPONDENT-APPELLANT JACQUELINE  
C.

MARYBETH D. BARNET, MIDDLESEX, ATTORNEY FOR THE CHILDREN, APPELLANT  
PRO SE.

SHARON ALLEN, KEUKA PARK, ATTORNEY FOR THE CHILD, APPELLANT PRO SE.

ANDREW G. MORABITO, EAST ROCHESTER, ATTORNEY FOR THE CHILD, APPELLANT  
PRO SE.

HOLLY A. ADAMS, COUNTY ATTORNEY, CANANDAIGUA (JASON A. MACBRIDE OF  
COUNSEL), FOR PETITIONER-RESPONDENT.

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Appeals from an order of the Family Court, Ontario County  
(Jacqueline E. Sisson, J.), entered July 12, 2022, in a proceeding  
pursuant to Social Services Law § 384-b. The order, inter alia,  
terminated respondents' parental rights with respect to the subject  
children.

It is hereby ORDERED that the order so appealed from is  
unanimously modified on the law by vacating the disposition with  
respect to the three oldest children, and as modified the order is  
affirmed without costs and the matter is remitted to Family Court,  
Ontario County, for further proceedings in accordance with the

following memorandum: In this proceeding pursuant to Family Court Act article 6 and Social Services Law § 384-b, respondent parents and the four subject children appeal from an order that, inter alia, revoked prior suspended judgments entered upon respondents' admissions to permanently neglecting the children, terminated respondents' parental rights, and directed that the children be freed for adoption. We conclude that there is a sound and substantial basis in the record to support Family Court's determination that petitioner established by a preponderance of the evidence that respondents violated numerous terms of the suspended judgments and that, given the facts and circumstances at the time of the hearing, it was in the children's best interests to terminate respondents' parental rights (see *Matter of Dominic T.M. [Cassie M.]*, 169 AD3d 1469, 1470 [4th Dept 2019], lv denied 33 NY3d 902 [2019]; *Matter of Aiden T. [Melissa S.]*, 164 AD3d 1663, 1664 [4th Dept 2018], lv denied 32 NY3d 917 [2019]).

Nevertheless, the three oldest children, along with the father, assert that new facts and allegations warrant remittal for a new dispositional hearing to determine the best interests of those children. We may "consider . . . new facts and allegations 'to the extent [that] they indicate that the record before us is no longer sufficient' to determine whether termination of . . . parental rights is in [a child's] best interests" (*Matter of Gena S. [Karen M.]*, 101 AD3d 1593, 1595 [4th Dept 2012], lv dismissed 21 NY3d 975 [2013], quoting *Matter of Michael B.*, 80 NY2d 299, 318 [1992]; see *Matter of Darlenea T. [Wanda A.]*, 122 AD3d 1416, 1417 [4th Dept 2014]; *Matter of Malik S. [Jana M.]*, 101 AD3d 1776, 1777-1778 [4th Dept 2012]; *Matter of Shad S. [Amy C.Y.]*, 67 AD3d 1359, 1360 [4th Dept 2009]). Here, the court's best interests determination was based, in part, on the fact that the oldest child had been successfully placed with a kinship guardian, and that the second oldest child, the third oldest child, and the youngest child had long lived with foster parents who were willing to adopt them. The attorneys for the oldest child, the second oldest child, and the third oldest child now report that, in the intervening 20 months since the entry of the order on appeal, among other things, the oldest child's kinship guardianship has been terminated, the second oldest child's adoptive placement has been disrupted inasmuch as he repeatedly absconded from the foster parents' home and his paternal grandmother has been awarded custody of him, and there is a pending custody petition by the paternal grandmother for the third oldest child, who will turn 14 years old later this year and remains steadfast in his opposition to being adopted (see *Malik S.*, 101 AD3d at 1777; see also *Darlenea T.*, 122 AD3d at 1417; *Gena S.*, 101 AD3d at 1595; *Shad S.*, 67 AD3d at 1360). Although other new facts and allegations asserted by petitioner suggest that termination of respondents' parental rights might remain in the best interests of the oldest child, the second oldest child, and the third oldest child, we conclude that the record before us is no longer sufficient to determine whether termination of respondents' parental rights is in the best interests of those children (see *Darlenea T.*, 122 AD3d at 1417; *Gena S.*, 101 AD3d at 1595; *Malik S.*, 101 AD3d at 1777-1778; *Shad S.*, 67 AD3d at 1360; see generally *Michael B.*, 80 NY2d at 318). We therefore modify the order by vacating the disposition with respect to the three oldest children and remit the matter to Family Court for a

new dispositional hearing to determine the best interests of those children. We note that there are no new facts or allegations with respect to the circumstances of the youngest child, and that "the conflict between the result with respect to [the youngest child] and the results with respect to [the three oldest children] is of no moment inasmuch as termination has been upheld with respect to younger siblings in similar circumstances" (*Gena S.*, 101 AD3d at 1595).

We have considered the parties' remaining contentions and conclude that none warrants further modification or reversal of the order.