

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

**281**

**CAF 20-00201**

PRESENT: WHALEN, P.J., LINDLEY, CURRAN, AND DEJOSEPH, JJ.

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IN THE MATTER OF MALACHI S., ALSO KNOWN AS  
MALACHI W.

MEMORANDUM AND ORDER

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MONROE COUNTY DEPARTMENT OF HUMAN SERVICES,  
PETITIONER-RESPONDENT;

TERESA S., RESPONDENT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JANET C. SOMES OF  
COUNSEL), FOR RESPONDENT-APPELLANT.

JOHN P. BRINGEWATT, COUNTY ATTORNEY, ROCHESTER (CAROL L. EISENMAN OF  
COUNSEL), FOR PETITIONER-RESPONDENT.

ELLA MARSHALL, ROCHESTER, ATTORNEY FOR THE CHILD.

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Appeal from an order of the Family Court, Monroe County (James A. Vazzana, J.), entered January 10, 2020 in a proceeding pursuant to Social Services Law § 384-b. The order, among other things, terminated respondent's parental rights with respect to the subject child.

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

Memorandum: In this proceeding pursuant to Social Services Law § 384-b, respondent mother appeals from an order that terminated her parental rights with respect to the subject child on the ground of mental illness. We affirm.

The mother contends that a new trial is required because Family Court permitted the mother's guardian ad litem to absent herself from a portion of the termination proceeding. That contention is unpreserved inasmuch as the mother's counsel did not move for an adjournment of the proceeding or object on the ground that the guardian ad litem was absent (*see generally Matter of Justin T. [Wanda T.-Joseph M.]*, 154 AD3d 1338, 1339-1340 [4th Dept 2017], *lv denied* 30 NY3d 910 [2018]). In any event, although the better practice would have been to have the guardian ad litem present, under the circumstances of this case, any error was harmless (*see generally Matter of Steven D., Jr. [Steven D., Sr.]*, 188 AD3d 1770, 1772 [4th

Dept 20201).

Entered: March 26, 2021

Mark W. Bennett  
Clerk of the Court