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

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CAF 22-01104

PRESENT: WHALEN, P.J., CURRAN, BANNISTER, OGDEN, AND DELCONTE, JJ.

IN THE MATTER OF ARIC D.B. AND MICHAEL H.B.

JEFFERSON COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

CARRIE B., RESPONDENT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR RESPONDENT-APPELLANT.

MICHAEL D. WERNER, WATERTOWN, FOR PETITIONER-RESPONDENT.

SCOTT A. OTIS, WATERTOWN, ATTORNEY FOR THE CHILDREN.

Appeal from an order of the Family Court, Jefferson County (Eugene J. Langone, Jr., J.), entered June 23, 2022, in a proceeding pursuant to Social Services Law § 384-b. The order terminated the parental rights of respondent with respect to the subject children.

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

Memorandum: In this proceeding pursuant to Family Court Act article 6 and Social Services Law § 384-b, respondent mother appeals from an order that terminated her parental rights with respect to the subject children on the ground of permanent neglect.

Contrary to the mother's contention, we conclude that petitioner established that it made diligent efforts to encourage and strengthen the relationship between the mother and the children (*see* Social Services Law § 384-b [7] [a]; *Matter of Kemari W. [Jessica J.]*, 153 AD3d 1667, 1667-1668 [4th Dept 2017], *lv denied* 30 NY3d 909 [2018]). The record demonstrates that the mother received services to work on maintaining her home and other life skills. In addition, she received parenting counseling and a referral for counseling to address her mental health needs. We reject the mother's contention that petitioner failed to establish diligent efforts because it did not offer financial assistance to the mother. The services that petitioner arranged for the mother were tailored to address the problems that gave rise to the removal of the children from her care (*see generally Matter of Sheila G.*, 61 NY2d 368, 385 [1984]). Contrary to the mother's contention, despite the services that were offered and provided to her, the mother failed to plan for the future of the children or to progress meaningfully to overcome the issues that led to their removal from her care (*see Matter of Aubree R.*

[Natasha B.], 217 AD3d 1565, 1566 [4th Dept 2023], *lv denied* — NY3d — [2023]). Petitioner is not required to " 'guarantee that . . . parent[s] succeed in overcoming [their] predicaments' " (*Kemari W.*, 153 AD3d at 1668).

The mother further contends that Family Court erred in accepting opinion testimony from the testifying mental health counselor. The mother failed to preserve that contention inasmuch as she failed to object to the testimony that she now contends constitutes improper opinion testimony. In any event, to the extent that the court erred in admitting the testimony of the mental health counselor, we conclude that "[a]ny error in the admission of [that testimony] is harmless because the result reached herein would have been the same even had such [testimony] been excluded" (*Matter of Bryson M. [Victoria M.]*, 184 AD3d 1138, 1139 [4th Dept 2020] [internal quotation marks omitted]).

Finally, we reject the mother's contention that the court erred in terminating her parental rights. "Unlike a fact-finding hearing [that] resolves the issue of permanent neglect and in which the best interests of the child[ren] play no part in the court's determination, the court in the dispositional hearing must be concerned only with the best interests of the child[ren]" (*Matter of Star Leslie W.*, 63 NY2d 136, 147 [1984]; *see* Family Ct Act § 631; *Matter of Brendan S.*, 39 AD3d 1189, 1190 [4th Dept 2007]). We conclude that the record provides ample support for the court's determination that terminating the mother's parental rights is in the best interests of the children (*see Brendan S.*, 39 AD3d at 1190).

Entered: November 17, 2023

Ann Dillon Flynn
Clerk of the Court