

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

754

CAF 22-00511

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

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IN THE MATTER OF DAVID P.S. AND JAMES R.S.

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STEBEN COUNTY DEPARTMENT OF SOCIAL SERVICES,  
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

GRACE C.L., RESPONDENT-APPELLANT.

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THOMAS L. PELYCH, HORNELL, FOR RESPONDENT-APPELLANT.

MARY HOPE BENEDICT, BATH, ATTORNEY FOR THE CHILDREN.

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Appeal from an amended order of the Family Court, Steuben County (Philip J. Roche, J.), entered January 26, 2022, in a proceeding pursuant to Family Court Act article 10. The amended order, inter alia, determined that respondent had neglected the subject children.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: In this proceeding pursuant to Family Court Act article 10, respondent mother appeals from an amended order of fact-finding and disposition that, inter alia, adjudged the subject children to be neglected children. Initially, the mother did not appear at the fact-finding hearing and, although her attorney was present at the hearing, the attorney did not participate. Under the circumstances, we conclude that the mother's unexplained failure to appear constituted a default (*see Matter of Malachi S. [Michael W.]*, 195 AD3d 1445, 1446 [4th Dept 2021], *lv dismissed* 37 NY3d 1081 [2021]). " '[I]t is well settled that no appeal lies from an order that is entered upon the default of the appealing party' " (*Matter of Roache v Hughes-Roache*, 153 AD3d 1653, 1653 [4th Dept 2017]; *see Matter of Rottenberg v Clarke*, 144 AD3d 1627, 1627 [4th Dept 2016]). Further, even assuming, arguendo, that the mother raised an issue that was contested below and is thus reviewable on this appeal despite her default (*see Matter of Thomas B. [Calla B.]*, 139 AD3d 1402, 1403 [4th Dept 2016]), we take judicial notice of the entry of a subsequent order terminating the mother's parental rights with respect to the subject children and that the time for the mother to appeal from that order has now passed (*see Family Ct Act § 1113; see Matter of John D., Jr. [John D.]*, 199 AD3d 1412, 1414 [4th Dept 2021], *lv denied* 38 NY3d 903 [2022]). Inasmuch as the order terminating the mother's parental rights to the subject children is final, the disposition renders moot

the appeal from the order entered in the neglect proceedings (*see John D., Jr.*, 199 AD3d at 1414).

Entered: December 22, 2023

Ann Dillon Flynn  
Clerk of the Court