

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Matter of C. X.-E. B.

2026 NY Slip Op 00307 (Appellate Division of the Supreme Court of the State of New York First Department 2026) · No. Docket No. B-05193/22; Appeal No. 5678; Case No. 2024-06292 · Decided January 27, 2026

SUMMARY

The New York Appellate Division, First Department unanimously affirmed an order terminating the respondent mother's parental rights based on permanent neglect and transferring custody and guardianship for adoption. The court held that the mother's evidentiary challenge to the agency's progress notes was unpreserved and, in any event, that the notes were properly admitted under the CPLR business-records exception; it also rejected her ineffective-assistance claim.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Webber, J.P.; Gesmer, J.; Higgitt, J.; Michael, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	January 27, 2026
DOCKET	Docket No. B-05193/22; Appeal No. 5678; Case No. 2024-06292
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent mother appealed from an order terminating her parental rights following a finding of permanent neglect and transferring custody and guardianship of the child to the petitioner agency and the Commissioner of the Administration for Children's Services for adoption.
PRECEDENTIAL VALUE	Published
PARTIES	C.B., respondent-appellant v. Forestdale, Inc., petitioner-respondent

TOPICS

- termination of parental rights
- evidence
- preservation of error
- appellate procedure
- family law procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the appeal noticed from an earlier order could be deemed taken from the later final order terminating parental rights when the two orders contained identical findings and disposition.
2. Whether the agency's progress notes were inadmissible because they were not certified under Family Court Act § 1046(a)(iv).
3. Whether Family Court Act § 1046(a)(iv), rather than CPLR 4518(a), governs admission of agency progress notes in a termination of parental rights proceeding under Social Services Law § 384-b.
4. Whether counsel's failure to object to admission of the progress notes constituted ineffective assistance of counsel.

HOLDINGS

1. The court deemed the appeal taken from the final order terminating the mother's parental rights because the final order contained identical findings of fact and disposition as the order from which the appeal was noticed.
2. The mother's claim that the agency's progress notes were not properly certified was unpreserved and the court declined to review it.
3. Family Court Act § 1046(a)(iv), which governs article 10 proceedings, does not apply to termination of parental rights proceedings under Social Services Law § 384-b; CPLR 4518(a)'s business-record exception controls.
4. The mother's ineffective-assistance claim was unavailing.

KEY QUOTATIONS

“Family Ct Act § 1046(a)(iv), which governs article 10 proceedings, does not apply to termination of parental rights proceedings under Social Services Law § 384-b.”

FACTUAL BACKGROUND

The petitioner agency sought termination of the respondent mother's parental rights based on permanent neglect. The agency relied in part on progress notes concerning the relevant period covered by the petition. The mother's attorney consented to admission of the progress notes and stated that he was not challenging their certification or the delegation of authority.

PROCEDURAL HISTORY

The Family Court, New York County, entered an order on November 26, 2024, terminating the mother's parental rights based on permanent neglect. Although the appeal was noticed from an earlier order entered on or about October 17, 2024, the Appellate Division deemed the appeal taken from the final November 26 order because it contained identical findings and disposition. The Appellate Division unanimously affirmed the final order without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Samantha M. [Allison Y.], 112 AD3d 421, 422 (1st Dept 2013)
- Matter of Nevaeh N. [Heidi O.], 220 AD3d 1070, 1072 (3d Dept 2023), lv denied 41 NY3d 903 (2024)
- Matter of Shirley A.S. [David A.S.], 90 AD3d 1655, 1655 (4th Dept 2011), lv denied 18 NY3d 811 (2012)
- Matter of Judith L.C. v. Lawrence Y., 179 AD3d 616, 617 (1st Dept 2020), lv denied 35 NY3d 911 (2020)

OPINION

Matter of C. X.-E. B. 2026 NY Slip Op 00307

PER CURIAM.

Matter of C. X.-E. B. (2026 NY Slip Op 00307) Matter of C. X.-E. B. 2026 NY Slip Op 00307
Decided on January 27, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: January 27, 2026 Before: Webber, J.P., Gesmer, Higgitt, Michael, Chan, JJ. Docket No. B-05193/22|Appeal No. 5678|Case No. 2024-06292| [*1]In the Matter of C. X.-E. B., also known as C. B., A Child Under the Age of Eighteen Years etc., C.B., Respondent-Appellant, Forestdale, Inc., Petitioner-Respondent. Steven N. Feinman, White Plain, for appellant. Rosin Steinhagen Mendel, PLLC, New York (Marion C. Perry of counsel), for respondent. Dawne A. Mitchell, The Legal Aid Society (Polixene Petrakopoulos of counsel), attorney for the child. Order, Family Court, New York County (Valerie A. Pels, J.), entered on November 26, 2024, which, upon a finding of permanent neglect, terminated respondent mother's parental rights to the subject child and transferred custody and guardianship of the child to petitioner agency, and the Commissioner of the Administration for Children's Services of the City of New York for the purpose of adoption, unanimously affirmed, without costs. Even though the appeal was noticed from the order entered on or about October 17, 2024, and not the final order terminating the mother's parental rights entered on November 26, 2024, this Court deems the appeal to be taken from the final order, which contained identical findings of fact and the identical disposition as the order from which the appeal was noticed (see CPLR 5520[c]). The mother failed to preserve her claim that the agency's progress notes for the relevant time period covered by the petition were not properly certified pursuant to Family Court Act § 1046(a)(iv) and thus did not suffice to prove a prima facie case of permanent neglect, and we decline to review it (see Matter of Samantha M. [Allison Y.] , 112 AD3d 421 , 422 [1st Dept 2013]). In any event, on these facts, the progress notes were properly admitted as the mother's attorney consented to their admission and confirmed that he was not raising any issue as to certification of the notes and delegation of the authority. Moreover, Family Ct Act § 1046(a)(iv),

which governs article 10 proceedings, does not apply to termination of parental rights proceedings under Social Services Law § 384-b. Instead the CPLR 4518(a) business record exception controls (see Samantha M. , 112 AD3d at 422; Matter of Nevaeh N. [Heidi O.] , 220 AD3d 1070, 1072 [3d Dept 2023], lv denied 41 NY3d 903 [2024]; Matter of Shirley A.S. [David A.S.] , 90 AD3d 1655, 1655 [4th Dept 2011], lv denied 18 NY3d 811 [2012]). In light of the foregoing, the mother's claim of ineffective assistance of counsel based on her counsel's failure to object to the admissibility of the progress notes under Family Court Act § 1046(a)(iv) is unavailing (see Matter of Judith L.C. v Lawrence Y. , 179 AD3d 616, 617 [1st Dept 2020], lv denied 35 NY3d 911 [2020]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 27, 2026