

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
SECOND JUDICIAL DEPARTMENT

Matter of Daiyah D. F. F. (Darren S.)

2018 NY Slip Op 05162 (N.Y. Ct. App. 2018) · No. 2017-05808 · Decided July 11, 2018

SUMMARY

The Appellate Division, Second Department, affirmed a Family Court order determining that the father's consent to the child's adoption was not required under Domestic Relations Law § 111(1)(d). The court held that the father failed to establish substantial and continuous or repeated contact with the child through support and visitation or other communication, and that the agency was not required to show diligent efforts to encourage compliance with the statutory requirements.

CASE DETAILS

|                       |                                                                                                                                                                                   |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                            |
| WRITING FOR THE COURT | Mark C. Dillon, J.P.; Sheri S. Roman, J.; Joseph J. Maltese, J.; Linda Christopher, J.                                                                                            |
| JURISDICTION          | New York                                                                                                                                                                          |
| DECIDED               | July 11, 2018                                                                                                                                                                     |
| DOCKET                | 2017-05808                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                          |
| PROCEDURAL POSTURE    | The father appealed from an order of the Family Court, Kings County, entered after a fact-finding hearing, determining that his consent to the child's adoption was not required. |
| STANDARD OF REVIEW    | Whether the Family Court's determination was supported by clear and convincing evidence.                                                                                          |
| PRECEDENTIAL VALUE    | Published appellate opinion                                                                                                                                                       |
| PARTIES               | Darren S. (Anonymous) v. Graham Windham Services to Families and Children                                                                                                         |

TOPICS

- termination of parental rights
- adoption
- family law procedure
- appellate procedure
- standard of review

## PRACTICE AREAS

family law

adoption

termination of parental rights

appellate procedure

## QUESTIONS PRESENTED

1. Whether the father's consent to the child's adoption was required under Domestic Relations Law § 111(1)(d).
2. Whether the agency's failure to inform the father of his support and contact obligations excused his failure to satisfy the statutory requirements.

## HOLDINGS

1. The father's consent to the adoption was not required because he failed to establish substantial and continuous or repeated contact with the child through payment of support and either regular visitation or other communication.
2. The agency was not required to demonstrate diligent efforts to encourage the father to perform the acts specified in Domestic Relations Law § 111(1)(d), and the father's contention that the agency's omissions excused his failure was without merit.

## KEY QUOTATIONS

*“the agency is not required to make a showing of diligent efforts to encourage the father to perform the acts specified in the statute”* (at 2)

## FACTUAL BACKGROUND

The child was born in April 2013 to an unmarried mother, and no father was listed on the birth certificate. The child was removed from the mother's custody two days after birth and placed in foster care under the agency's supervision; a later paternity test confirmed that Darren S. was the biological father. The father did not establish that he maintained substantial and continuous or repeated contact with the child through support payments and regular visitation or other communication.

## PROCEDURAL HISTORY

The agency commenced a proceeding under Social Services Law § 384-b seeking termination of the mother's and father's parental rights and alleging that the father's consent to adoption was not required. After a hearing, the Family Court determined that the father's consent was unnecessary and that adoption by the foster mother was in the child's best interests. The father appealed, and the Appellate Division affirmed insofar as appealed from.

## DISPOSITION

affirmed

## CASES CITED

- Matter of Angelina J. [Frantz J.], 112 A.D.3d 932 (2d Dep't 2013)
- Matter of Janelle C. [Sean R.], 88 A.D.3d 787 (2d Dep't 2011)
- Matter of Seasia D., 10 N.Y.3d 879, 880 (2008)
- Matter of Cristal O.C. [Chris C.], 161 A.D.3d 726 (2d Dep't 2018)
- Matter of Amina I.M.J. [Vaughin A.], 160 A.D.3d 737 (2d Dep't 2018)
- Matter of Julian J.C. [Juan C.], 96 A.D.3d 937, 938 (2d Dep't 2012)
- Matter of Martin V.L. [Martin L.], 88 A.D.3d 714, 715 (2d Dep't 2011)
- Matter of James M.B. [Claudia H.], 155 A.D.3d 1027, 1029 (2d Dep't 2017)

## OPINION

### PER CURIAM.

Matter of Daiyah D. F. F. (Darren S.) (2018 NY Slip Op 05162) Matter of Daiyah D. F. F. (Darren S.) 2018 NY Slip Op 05162 Decided on July 11, 2018 Appellate Division, Second 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 on July 11, 2018 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P. SHERI S. ROMAN JOSEPH J. MALTESE LINDA CHRISTOPHER, JJ. 2017-05808 (Index No. B-25554-15) [\*1]In the Matter of Daiyah D. F. F. (Anonymous). Graham Windham Services to Families and Children, petitioner-respondent; Darren S. (Anonymous), respondent-appellant, et al., respondent.

Francine Shraga, Brooklyn, NY, for respondent-appellant. Carrieri & Carrieri, P.C., Mineola, NY, for petitioner-respondent. Legal Aid Society, New York, NY (Dawn A. Mitchell and Amy Hausknecht of counsel), attorney for the child. DECISION & ORDER In a proceeding pursuant to Social Services Law § 384-b, the father appeals from an order of the Family Court, Kings County (Margaret Morgan, J.), dated April 10, 2017.

The order, insofar as appealed from, after a hearing, determined that the father's consent to the adoption of the subject child was not required pursuant to Domestic Relations Law § 111(1)(d). ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

The subject child was born in April 2013. Her mother was unmarried, and the child's birth certificate did not identify a father. Two days after the child's birth, she was removed from the mother's custody and placed in foster care under the supervision of the petitioner, Graham Windham Services to Families and Children (hereinafter the agency).

In November 2015, the agency commenced this proceeding in the Family Court to terminate the mother's and father's parental rights, alleging, inter alia, that the father's consent to the adoption of the child was not required pursuant to Domestic Relations Law § 111(1)(d).

Although the child's birth certificate did not identify a father, the father was listed as the child's putative father in the petitioner's case records, and a paternity test later confirmed that he is the biological father.

In August 2016, the mother executed a voluntary surrender of her parental rights and agreed to a conditional adoption of the child by the child's foster mother. After a fact-finding hearing at which the father and the agency's case planner testified, the court determined that the father's consent to the adoption was not required and that it was in the child's best interests to be adopted by her foster mother.

The father appeals. The Family Court's determination that the father's consent to the adoption of the subject child was not required was supported by clear and convincing evidence (see *Matter of Angelina J.* [Frantz J.], 112 AD3d 932; *Matter of Janelle C.* [Sean R.], 88 AD3d 787).

The father failed to meet his burden of establishing that he maintained substantial and continuous or repeated contact with the child through the payment of support and either regular visitation or other [\*2]communication with the child (see Domestic Relations Law § 111[1][d]; *Matter of Seasia D.*, 10 NY3d 879, 880; *Matter of Cristal O.C.* [Chris C.], 161 AD3d 726; *Matter of Amina I.M.J.*

[Vaughin A.], 160 AD3d 737; *Matter of Angelina J.* [Frantz J.], 112 AD3d 932; *Matter of Julian J.C.* [Juan C.], 96 AD3d 937, 938; *Matter of Martin V.L.* [Martin L.], 88 AD3d 714, 715). The father's contention that the agency prevented him from visiting and communicating with the child because it did not inform him of his support obligations and the contact he needed to maintain with the agency or the child during the six months prior to the filing of the petition is without merit.

Pursuant to Domestic Relations Law § 111(1)(d), "the agency is not required to make a showing of diligent efforts to encourage the father to perform the acts specified in the statute" (*Matter of James M.B.* [Claudia H.], 155 AD3d 1027, 1029). DILLON, J.P., ROMAN, MALTESE and CHRISTOPHER, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court