

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

In re De'Von M.F.C.

105 A.D.3d 738 (N.Y. App. Div. 2d Dep't 2013) · Decided April 3, 2013

SUMMARY

The court affirmed a Family Court order determining that the appellant's consent was not required for the adoption of the subject child and transferring guardianship and custody for adoption. It held that the appellant failed to establish substantial and continuous or repeated contact with the child through support and visitation or communication, and that his incarceration did not excuse those obligations.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Angiolillo, J.E.; Dickerson, J.; Chambers, J.; Lott, J.
JURISDICTION	New York
DECIDED	April 3, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mustafa F. appealed from the portion of a Family Court order of fact-finding and disposition that determined his consent to the adoption of the subject child was not required and transferred guardianship and custody for the purpose of adoption.
STANDARD OF REVIEW	Whether the Family Court's determination was supported by clear and convincing evidence.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Mustafa F. v. Children's Aid Society, Commissioner of the Administration for Children's Services of the City of New York

TOPICS

termination of parental rights adoption parental rights guardianships appellate procedure

PRACTICE AREAS

family law termination of parental rights adoption

QUESTIONS PRESENTED

1. Whether the Family Court properly determined that Mustafa F.'s consent to the child's adoption was not required under Domestic Relations Law § 111(1)(d).
2. Whether Mustafa F. met his burden of establishing substantial and continuous or repeated contact with the child through support payments and regular visitation or other communication.
3. Whether Mustafa F.'s incarceration relieved him of the duties to provide financial support and maintain regular contact.

HOLDINGS

1. The Family Court properly determined that Mustafa F.'s consent to the adoption was not required because the determination was supported by clear and convincing evidence.
2. The appellant failed to meet his burden of establishing substantial and continuous or repeated contact with the child through payment of support and either regular visitation or other communication.
3. Incarceration did not absolve the appellant of the responsibility, according to his means, to provide financial support for the child and maintain regular contact with the child or the petitioner.

KEY QUOTATIONS

“incarceration did not absolve him of the responsibility to provide financial support for the child, according to his means, and to maintain regular contact with the child or the petitioner” (739)

FACTUAL BACKGROUND

Mustafa F. claimed a parental relationship with the subject child and challenged the determination that his consent to adoption was not required. The court found that he failed to establish substantial and continuous or repeated contact with the child through payment of support and regular visitation or other communication. His incarceration did not excuse his responsibility, according to his means, to provide financial support and maintain regular contact with the child or petitioner.

PROCEDURAL HISTORY

Following fact-finding and dispositional hearings in a proceeding under Social Services Law § 384-b to terminate the mother's parental rights on the ground of permanent neglect, the Family Court, Richmond County, determined that Mustafa F. was not a father whose consent to adoption was required under Domestic Relations Law § 111 and transferred guardianship and custody of the child to the Children's Aid Society and the Commissioner of the Administration for Children's Services of the City of New York. The Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Matter of Julian J.C. [Juan C.], 96 A.D.3d 937 (N.Y. App. Div. 2d Dep't 2012)
- Matter of Jaden Dasani-Amru B. [Roy Alphonso B.], 74 A.D.3d 801 (N.Y. App. Div. 2d Dep't 2010)
- Matter of Serenity Anya C., 60 A.D.3d 852 (N.Y. App. Div. 2d Dep't 2009)
- Matter of Janette C. [Sean R.], 88 A.D.3d 787, 787 (N.Y. App. Div. 2d Dep't 2011)
- Matter of Martin V.L. [Martin L.], 88 A.D.3d 714, 715 (N.Y. App. Div. 2d Dep't 2011)
- Matter of Aaron P., 61 A.D.3d 448, 448 (N.Y. App. Div. 2d Dep't 2009)
- Matter of Hassan Lawrence W., 42 A.D.3d 573, 573-574 (N.Y. App. Div. 2d Dep't 2007)
- Matter of Jayquan J. [Clint J.], 77 A.D.3d 947, 948 (N.Y. App. Div. 2d Dep't 2010)
- Matter of Kevin A., Jr., 61 A.D.3d 859, 860 (N.Y. App. Div. 2d Dep't 2009)

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