

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

Matter of Abel J. R. (Michael S.)

2022 NY Slip Op 04728 (App. Div. 2022) · No. 2021-04902 · Decided July 27, 2022

SUMMARY

The Appellate Division, Second Department affirmed an order terminating the father's parental rights and transferring custody and guardianship of the child for adoption. The court held that the petitioner proved by clear and convincing evidence that the father abandoned the child under Social Services Law § 384-b by failing to visit or maintain meaningful contact during the relevant six-month period.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Reinaldo E. Rivera, J.; Deborah A. Dowling, J.; Helen Voutsinas, J.
JURISDICTION	New York
DECIDED	July 27, 2022
DOCKET	2021-04902
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from a Family Court order of fact-finding and disposition that determined he had abandoned the child, terminated his parental rights, and transferred custody and guardianship to the Westchester County Department of Social Services for adoption.
STANDARD OF REVIEW	Abandonment supporting termination of parental rights must be proven by clear and convincing evidence.
PRECEDENTIAL VALUE	Published opinion; precedential value under New York appellate practice.
PARTIES	Michael S. v. Westchester County Department of Social Services

TOPICS

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

PRACTICE AREAS

family law

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the notice of appeal from the amended order dated July 2, 2021, could be treated as a premature notice of appeal from the order of fact-finding and disposition dated October 15, 2021.
2. Whether the petitioner established by clear and convincing evidence that the father abandoned the child under Social Services Law § 384-b.
3. Whether the Family Court properly terminated the father's parental rights and transferred custody and guardianship of the child for purposes of adoption.

HOLDINGS

1. On the court's own motion, the notice of appeal from the amended order dated July 2, 2021, was deemed a premature notice of appeal from the order of fact-finding and disposition dated October 15, 2021.
2. The petitioner established by clear and convincing evidence that the father abandoned the child by failing to visit or maintain contact with the child or the petitioner for the six-month period preceding the filing of the termination petition.

KEY QUOTATIONS

*“The burden rests on the parent to maintain contact, and the petitioner need not show diligent efforts to encourage the parent to visit or communicate with the child.” (*2)*

*“The father's minimal, sporadic, and insubstantial contacts are insufficient to overcome a finding of abandonment” (*2)*

FACTUAL BACKGROUND

The child was born in January 2018 and had been in foster care since shortly after birth. The father had minimal, sporadic, and insubstantial contact with the child and the petitioner and failed to visit or maintain contact during the six-month period preceding the filing of the termination petition. The Westchester County Department of Social Services petitioned to terminate his parental rights based on abandonment.

PROCEDURAL HISTORY

The child had been in foster care since shortly after birth. The Westchester County Department of Social Services filed a petition on February 4, 2020, seeking termination of the father's parental rights on abandonment grounds. After a fact-finding hearing, the Family Court entered an amended order dated July 2, 2021, followed by an order of fact-finding and disposition dated October 15, 2021. The Appellate Division deemed the notice of appeal from the amended order a premature notice of appeal from the later order and affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Gabrielle HH., 1 N.Y.3d 549, 550 (2004)
- Matter of Julius P., 63 N.Y.2d 477, 481 (1984)
- Matter of Annette B., 4 N.Y.3d 509, 514 (2005)
- Matter of Myla-Ray L. [Ryan L.], 195 A.D.3d 1024, 1025 (2d Dep't 2021)
- Matter of Nyshawn R.V.S. [Erica M.V.], 145 A.D.3d 902, 902-903 (2d Dep't 2016)
- Matter of Maricel J.S. [Alex S.], 181 A.D.3d 804, 805 (2d Dep't 2020)
- Matter of Blake A.M. [Marisa L.], 167 A.D.3d 895, 897 (2d Dep't 2018)

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