

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D22995  
O/kmg

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Submitted - March 23, 2009

REINALDO E. RIVERA, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

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2008-05882

DECISION & ORDER

In the Matter of Peteress Reighly B. (Anonymous).  
Orange County Department of Social Services,  
petitioner-respondent; Daniel S. (Anonymous),  
appellant, et al., respondent.

(Docket No. B-3629-07)

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Edward C. Bruno, Pine Bush, N.Y., for appellant.

David Darwin, County Attorney, Goshen, N.Y. (Peter R. Schwarz of counsel), for  
petitioner-respondent.

Farber, Pappalardo & Carbonari, White Plains, N.Y. (John A. Pappalardo of counsel),  
attorney for the child.

In a proceeding pursuant to Social Services Law § 384-b to terminate parental rights on the ground of abandonment, the father appeals from an order of fact-finding and disposition of the Family Court, Orange County (Klein, J.), dated May 23, 2008, which, after a hearing, found that he abandoned the subject child, terminated his parental rights, and transferred custody and guardianship rights to the Orange County Department of Social Services for the purpose of adoption.

ORDERED that the order of fact-finding and disposition is affirmed, without costs or disbursements.

In order to terminate parental rights on the ground of abandonment, it must be established by clear and convincing proof that the parent evinced an intent to forego his or her parental rights and obligations (*see Matter of Jeremiah Kwimea T.*, 10 AD3d 691). Here, the

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petitioner established by clear and convincing evidence that the father evinced an intent to forego his parental rights and obligations. This intent was manifested by the father's failure to visit and communicate with his child or the petitioner, although able to do so and not prevented or discouraged from doing so, for the six-month period preceding the filing of the termination petition (*see* Social Services Law § 384-b[4][b], [5][a]). The petitioner was not required to show that it made diligent efforts to encourage him to visit and/or contact the child (*see* Social Services law § 384-b[5][b]). Moreover, the father's sporadic, insubstantial contacts with the petitioner, and the filing of a custody petition during the six months preceding the filing of the termination petition, were insufficient to defeat the showing of abandonment (*see Matter of Anthony T.*, 35 AD3d 1201; *Matter of Kerry J.*, 288 AD2d 221, 221-223).

RIVERA, J.P., BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court