

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

D27711
C/prt

_____AD3d_____

Submitted - May 4, 2010

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
HOWARD MILLER
LEONARD B. AUSTIN, JJ.

2009-03818

DECISION & ORDER

In the Matter of Xtacys Nayarie M. (Anonymous),
also known as Xtacys M. (Anonymous), also known
as Xtacys R. (Anonymous), also known as Xtacys
N.M. (Anonymous).

Little Flower Children and Family Services of New
York, et al., respondents; Jose Ruben M. (Anonymous),
also known as Jose M. (Anonymous), appellant.

(Docket No. B-1908-05)

David Laniado, Cedarhurst, N.Y., for appellant.

Carrieri & Carrieri, P.C., Mineola, N.Y. (Ralph R. Carrieri of counsel), for respondent
Little Flower Children and Family Services of New York.

Steven Banks, New York, N.Y. (Tamara A. Steckler and Louise Feld of counsel),
attorney for the child.

In a proceeding pursuant to Social Services Law § 384-b to terminate the father's
parental rights on the ground of abandonment, the father appeals from an order of fact-finding and
disposition of the Family Court, Kings County (Freeman, J.), dated March 3, 2009, which, after a
fact-finding hearing, found that he abandoned the child and terminated his parental rights, and
transferred custody and guardianship of the subject child to the Commissioner of Social Services of

June 8, 2010

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MATTER OF M. (ANONYMOUS), XTACYS NAYARIE, also known as
M. (ANONYMOUS), XTACYS, also known as R. (ANONYMOUS), XTACYS,
also known as M. (ANONYMOUS), XTACYS N.

the City of New York and Little Flower Children and Family Services of New York for the purpose of adoption.

ORDERED that the order is affirmed, without costs or disbursements.

The petitioner established by clear and convincing evidence that the father abandoned the subject child, by failing to visit or maintain contact with her, or the petitioner, for a six-month period preceding the filing of the petition to terminate his parental rights (*see* Social Services Law § 384-b; *Matter of Annette B.*, 4 NY3d 509). To the extent that there was evidence that the father was in contact with the petitioner during the relevant time frame, the Family Court did not err in holding that such contact was too minimal, sporadic, and insubstantial to defeat the showing of abandonment (*see Matter of Destiny Aaliyah K.*, 62 AD3d 708; *Matter of Peteress Reighly B.*, 62 AD3d 695).

Moreover, we reject the father's contention that he was prevented or discouraged from visiting or contacting the child during the six months preceding the filing of the petition. It was the father's obligation to keep in contact with his child, and the petitioner was not required to exercise diligent efforts to encourage contact between them (*see Matter of Gabrielle HH.*, 1 NY3d 549).

Finally, it was not an improvident exercise of discretion for the Family Court to terminate the father's parental rights without conducting a dispositional hearing (*see Matter of Tashara B.*, 299 AD2d 356; *Matter of Little Flower Children's Serv. v Clinton Tracy M.*, 222 AD2d 507).

RIVERA, J.P., FLORIO, MILLER and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court