

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

D32309
H/prt

_____AD3d_____

Argued - September 6, 2011

PETER B. SKELOS, J.P.
RANDALL T. ENG
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-09410

DECISION & ORDER

In the Matter of Amaru M. (Anonymous).
MercyFirst, appellant; Kizwana M. (Anonymous),
respondent-respondent, et al., respondent.

(Docket No. B-13891-08)

Warren & Warren, P.C., Brooklyn, N.Y. (Ira L. Eras of counsel), for appellant.

Matthew M. Lupoli, Flushing, N.Y., for respondent-respondent.

Heidi Connolly, New York, N.Y., attorney for the child.

In a proceeding pursuant to Social Services Law § 384-b to terminate the mother's parental rights on the grounds of permanent neglect and abandonment, the petitioner appeals, by permission, from an order of the Family Court, Kings County (Elkins, J.), dated August 2, 2010, which, after a fact-finding hearing, denied so much of the petition as sought to terminate the mother's parental rights on the ground of abandonment.

ORDERED that the order is reversed, on the law, on the facts, and in the exercise of discretion, without costs or disbursements, so much of the petition as sought to terminate the mother's parental rights on the ground of abandonment is granted, and the matter is remitted to the Family Court, Kings County, for disposition.

The petitioner established by clear and convincing evidence that the mother abandoned the subject child by failing to visit, or maintain contact with the child or the petitioner, for a six-month period preceding the filing of the petition to terminate her parental rights (*see* Social Services Law

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§ 384-b; *Matter of Annette B.*, 4 NY3d 509; *Matter of Xtacys Nayarie M. [Jose Ruben M.]*, 74 AD3d 970, 971). Contrary to the Family Court's conclusion, the fact that the mother maintained communication with the petitioner regarding her other children, with whom she continued to visit, did not negate the petitioner's showing that the mother intended to forgo her parental rights and obligations with respect to the subject child, about whom she did not substantially communicate with the agency (*see generally Matter of Peteress Reighly B.*, 62 AD3d 695, 696; *cf. Matter of Xtacys Nayarie M. [Jose Ruben M.]*, 74 AD3d at 971). Further, the mother failed to show that the petitioner prevented or discouraged her from communicating with the child or the agency (*see Matter of Alexa Ray R.*, 276 AD2d 703, 704; *cf. Matter of Alex Jordan D.*, 66 AD3d 1013). Accordingly, the Family Court should have granted so much of the petition as sought to terminate the mother's parental rights on the ground of abandonment, and we remit the matter to the Family Court, Kings County, for disposition.

SKELOS, J.P., ENG, AUSTIN and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court