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

D32438
O/kmb

_____AD3d_____ Submitted - September 19, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-08622 DECISION & ORDER
2010-08624

In the Matter of Martin V. L. (Anonymous), Jr.
Edwin Gould Services for Children & Families,
petitioners-respondents; Martin L. (Anonymous) Sr.,
appellant, et al., respondent.
(Proceeding No. 1)

In the Matter of Miles V. L. (Anonymous).
Edwin Gould Services for Children & Families,
petitioners-respondents; Martin L. (Anonymous) Sr.,
appellant, et al., respondent.
(Proceeding No. 2)

(Docket Nos. B-1883-09, B-1885-09)

Robert Siano, White Plains, N.Y., for appellant.

John R. Eyerman, New York, N.Y., for petitioner-respondent.

Steven Banks, New York, N.Y. (Tamara A. Steckler and Diane Pazar of counsel), for appellant.

In related proceedings pursuant to Social Services Law § 384-b to terminate the mother's parental rights, the father appeals, as limited by his brief, from so much of two orders of fact-finding and disposition (one as to each child) of the Family Court, Kings County (Lim, J.), dated July 19, 2010, as, after a fact-finding and dispositional hearing, determined that he was not a father

whose consent to the subject children's adoptions was required pursuant to Domestic Relations Law § 111 and transferred guardianship and custody of the subject children to the Commissioner of the Administration for Children's Services of the City of New York and Edwin Gould Services for Children and Families, for the purpose of adoption.

ORDERED that the orders of fact-finding and disposition are affirmed insofar as appealed from, without costs or disbursements.

The Family Court properly determined that the father's consent to the adoption of the subject children was not required (*see* Domestic Relations Law § 111[1][d]). The father failed to sustain his burden of establishing that he maintained substantial and continuous or repeated contact with the children through the payment of support and either regular visitation or other communication with the children (*id.*; *see Matter of Sharissa G.*, 51 AD3d 1019, 1020; *Matter of Michael D.D.S.*, 24 AD3d 680; *Matter of Kasiem H.*, 230 AD2d 796). The father's incarceration did not absolve him of his responsibility to financially support and maintain regular communication with the children (*see Matter of Jayquan J.* [*Clint J.*], 77 AD3d 947; *Matter of Kevin A. Jr.*, 61 AD3d 859; *Matter of Sharissa G.*, 51 AD3d at 1020).

In light of the foregoing, the father's remaining contentions have been rendered academic (*see* Domestic Relations Law § 111; *Matter of Kasiem H.*, 230 AD2d at 797).

RIVERA, J.P., BALKIN, HALL and COHEN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court