

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CAF 10-00512

PRESENT: CENTRA, J.P., CARNI, LINDLEY, GREEN, AND GORSKI, JJ.

IN THE MATTER OF JALEEL E.F.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

CHERYL S. (DECEASED), RESPONDENT,
AND ERNEST F., RESPONDENT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR RESPONDENT-APPELLANT.

JOSEPH T. JARZEMBEK, BUFFALO, FOR PETITIONER-RESPONDENT.

DAVID C. SCHOPP, ATTORNEY FOR THE CHILD, THE LEGAL AID BUREAU OF
BUFFALO, INC., BUFFALO (CHARLES D. HALVORSEN OF COUNSEL), FOR JALEEL
E.F.

Appeal from an order of the Family Court, Erie County (Patricia A. Maxwell, J.), entered February 9, 2010 in a proceeding pursuant to Social Services Law § 384-b. The order freed the subject child for adoption.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner commenced this proceeding pursuant to Social Services Law § 384-b seeking to free the subject children for adoption following the death of their mother. Respondent Ernest F. (hereafter, father), the biological father of one of the children, previously appealed from an order determining that his consent to that child's adoption is not required (*Matter of Jaleel F.*, 63 AD3d 1539; see § 384-c [1], [2] [a]; [3]). There, we concluded that the father had been denied his right to due process based on the failure to inform him of the date of the dispositional hearing on the termination of parental rights petition. We therefore reversed the order insofar as appealed from and vacated the determination that the father is a notice father pursuant to Social Services Law § 384-c, and we remitted the matter for a hearing at which the father was to be afforded the opportunity to present evidence that he was a consent father rather than a notice father, as well as to afford him the opportunity to be heard on the issue of the child's best interests (*id.*). The father now appeals from the order entered following that hearing determining he is not a consent father, i.e., that his consent to the adoption was not required, and freeing that child for adoption. We affirm.

Contrary to the contention of the father, he failed to meet his burden of establishing his right to consent to the adoption (see Domestic Relations Law § 111 [1] [d]; *Matter of Andrew Peter H. T.*, 64 NY2d 1090, 1091). The father testified at the hearing upon remittal that he had no contact with the child for the three years prior to the hearing. In addition, the record does not support the assertion of the father on appeal that he attempted to communicate regularly with the child during that time, inasmuch as the only evidence of such an attempt is a single card sent to the child more than two years after the father learned of the mother's death (see § 111 [1] [d] [iii]; *Matter of Taylor R.*, 290 AD2d 830, 832-833).

Entered: February 10, 2011

Patricia L. Morgan
Clerk of the Court