

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

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CAF 10-00757

PRESENT: SMITH, J.P., CENTRA, FAHEY, GORSKI, AND MARTOCHE, JJ.

IN THE MATTER OF KEVON S.

MONROE COUNTY DEPARTMENT OF HUMAN SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

JEFFREY S., RESPONDENT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID M. ABBATOY, JR., OF COUNSEL), FOR RESPONDENT-APPELLANT.

WILLIAM K. TAYLOR, COUNTY ATTORNEY, ROCHESTER (ROBIN UNWIN OF COUNSEL), FOR PETITIONER-RESPONDENT.

LISA J. MASLOW, ATTORNEY FOR THE CHILD, ROCHESTER, FOR KEVON S.

Appeal from an order of the Family Court, Monroe County (John J. Rivoli, J.), entered March 23, 2010 in a proceeding pursuant to Social Services Law § 384-b. The order terminated the parental rights of respondent.

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

Memorandum: Respondent father appeals from an order terminating his parental rights on the ground of abandonment, pursuant to Social Services Law § 384-b (5) (a). Petitioner established that, for the relevant period of six months before the filing of the petition, the father failed to visit the child and to communicate with the child or petitioner although able to do so and not prevented or discouraged from doing so by petitioner. We agree with the father that Family Court erred in its order when it applied a disjunctive reading of the statute by referring to the father's "failure to visit with or communicate" with the child or petitioner (emphasis added), but we conclude that the error is of no moment inasmuch as the evidence establishes that petitioner met its burden under the statute (see *Matter of Catholic Child Care Socy. Diocese of Brooklyn*, 112 AD2d 1039, 1040).

Entered: June 10, 2011

Patricia L. Morgan
Clerk of the Court