

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

1035

CAF 12-01380

PRESENT: SCUDDER, P.J., CENTRA, CARNI, LINDLEY, AND SCONIERS, JJ.

IN THE MATTER OF BRIAN SHAW,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

KATIE MAY SEALS-OWENS AND MICHELLE LEWIS,
RESPONDENTS-RESPONDENTS.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PIOTR BANASIAK OF
COUNSEL), FOR PETITIONER-APPELLANT.

LINDA M. CAMPBELL, SYRACUSE, FOR RESPONDENT-RESPONDENT KATIE MAY
SEALS-OWENS.

WILLIAM J. BARRETT, ATTORNEY FOR THE CHILD, MANLIUS.

Appeal from an order of the Family Court, Onondaga County
(Michael L. Hanuszczak, J.), entered June 11, 2012 in a proceeding
pursuant to Family Court Act article 6. The order dismissed the
petition seeking visitation with the subject child.

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

Memorandum: Petitioner appeals from an order dismissing with
prejudice his Family Court Act article 6 petition seeking visitation
with his daughter. While we agree with petitioner that, under the
unique circumstances of this case, Family Court erred in taking
judicial notice of the alleged fact that his daughter is a severely
abused child under Social Services Law § 384-b (8) (a) (iii) (A), we
nevertheless conclude that the court properly dismissed the petition
with prejudice. Inasmuch as there is an existing order of protection
prohibiting petitioner from having any contact with his daughter until
June 22, 2018, the court was without authority to award petitioner
visitation (*see e.g. Matter of Samantha WW. v Gerald XX.*, 107 AD3d
1313, 1315-1316; *Matter of William O. v John A.*, 84 AD3d 1447, 1448;
Matter of Balram v Balram, 53 AD3d 808, 809-810, *lv denied* 11 NY3d
708).

Entered: November 8, 2013

Frances E. Cafarell
Clerk of the Court