

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

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**CAF 24-01402**

PRESENT: LINDLEY, J.P., CURRAN, BANNISTER, OGDEN, AND DELCONTE, JJ.

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IN THE MATTER OF OSIRUS K.

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ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,  
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

HORACE W., RESPONDENT-APPELLANT.

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CAITLIN M. CONNELLY, BUFFALO, FOR RESPONDENT-APPELLANT.

LINDSEY PASTUSZYNSKI, BUFFALO, FOR PETITIONER-RESPONDENT.

DAVID C. SCHOPP, THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO  
(ROXANNA Q. HERREID OF COUNSEL), ATTORNEY FOR THE CHILD.

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Appeal from an order of the Family Court, Erie County (Sharon M. LoVallo, J.), entered July 26, 2024, in a proceeding pursuant to Social Services Law § 384-b. The order, inter alia, terminated the parental rights of respondent with respect to the subject child.

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

Memorandum: In this proceeding pursuant to Social Services Law § 384-b, respondent father appeals from an order that, inter alia, terminated his parental rights on the ground of abandonment. We reject the father's contention that petitioner failed to establish by clear and convincing evidence that he abandoned the subject child (see generally § 384-b [3] [g] [i]; [4] [b]; *Matter of Annette B.*, 4 NY3d 509, 514 [2005], *rearg denied* 5 NY3d 783 [2005]). An order terminating parental rights may be granted where the parent has abandoned the child "for the period of six months immediately prior to the date on which the petition [for termination of parental rights] is filed" (§ 384-b [4] [b]). A child is abandoned by their parent if that parent "evinces an intent to forego [their] parental rights and obligations as manifested by [their] failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency" (§ 384-b [5] [a]). "In the absence of evidence to the contrary, such ability to visit and communicate shall be presumed" (*id.*), and it is the parent's burden "to establish that circumstances existed that prevented [the parent's] contact with the child or agency or that the agency discouraged such contact" (*Matter of Najuan W. [Stephon W.]*, 184 AD3d 1111, 1112 [4th Dept 2020]; see *Matter of Madelynn T. [Rebecca M.]*, 148 AD3d 1784, 1785 [4th Dept 2017]).

Here, the undisputed evidence at the factfinding hearing established that the father failed to maintain contact with the child for the statutory period. To the extent the record supports that the father attempted to contact the child, we conclude that those efforts were "minimal, sporadic [and] insubstantial" and thus insufficient to preclude a finding of abandonment (*Matter of Dennym K.J. [Ronnie O.]*, 215 AD3d 1254, 1255 [4th Dept 2023] [internal quotation marks omitted]; *cf. Matter of Jarrett P. [Jeremy P.]*, 173 AD3d 1692, 1693 [4th Dept 2019], *lv denied* 34 NY3d 902 [2019]; *Matter of John F. [John F., Jr.]*, 149 AD3d 1581, 1582 [4th Dept 2017]). Additionally, the fact that the father had a paternity petition pending at the time petitioner commenced this proceeding, standing alone, is insufficient to prevent a finding of abandonment, particularly in the absence of any facts establishing that the father was taking other affirmative steps to assert his paternity (*see Dennym K.J.*, 215 AD3d at 1255-1256; *cf. Jarrett P.*, 173 AD3d at 1693; *Matter of Darrell J.D.J. [Kenneth R.]*, 156 AD3d 788, 789-790 [2d Dept 2017]). We further conclude that the father failed to demonstrate that there were circumstances rendering contact with the child or petitioner infeasible or that petitioner prevented or discouraged him from maintaining such contact (*see Matter of Arielle L. [Cassandra B.]*, 238 AD3d 1528, 1529 [4th Dept 2025]; *Dennym K.J.*, 215 AD3d at 1255-1256; *see generally Annette B.*, 4 NY3d at 514).