

CAN A PARENT BE FOUND TO HAVE ABANDONED A CHILD EVEN IF THERE WAS SOME CONTACT IN THE MOST RECENT SIX MONTHS?

By Margaret A. Burt 4/03

Insubstantial contact by the parent during the 6 months of alleged abandonment may still allow for a termination of parental rights. The courts have found abandonment terminations appropriate in the following situations:

Matter of Loretta Lynn W., 149 AD2d 928 (4th Dept. 1989)

Father's one time appearance at UCR after invitation by agency was not enough to defeat abandonment

Matter of Crawford, 153 AD2d 108 (1st Dept. 1990)

One letter written to agency asking for the child on the day before the six month period was not enough to defeat abandonment petition against father

Matter of Leabert V., 174 AD2d 883, 571 NYS2d 166 (3rd Dept. 1991)

"Minimal contacts" not enough to defeat abandonment, particularly when parent failed to appear at a any scheduled visitation

Matter of Juaniqua Paulette E., 178 AD2d 476, 576 NYS2d 819 (2nd Dept. 1991)

Mother's "incidental" and "non-initiated" contact during period not enough to defeat abandonment

Matter of Lindsay E., 177 AD2d 276, 576 NYS2d 15 (1st Dept. 1991)

Even if father had sent one letter during period in question, would not be enough attempted contact to defeat abandonment

Matter of Alexander "V"., 179 AD2d 913, 578 NYS2d 708 (3rd Dept. 1992)

Father had filed two petitions for visitation during abandonment period but failed to appear in court on either petition - no defense

Matter of Christopher Rene T., 189 AD2d 692, 592 NYS2d 712 (1st Dept. 1993)

Negligible phone contact by mother during the period not enough to defeat abandonment

Matter of Gina RR., 197 AD2d 757, 602 NYS2d 731 (3rd Dept. 1993)

Even if caseworker had told father on one occasion that he could not visit child, would not have been enough to defeat abandonment petition as it would be only one isolated attempt to see child

Matter of Anthony M., 195 AD2d 315, 600 NYS2d 37 (1st Dept. 1993)

Father was incarcerated, had not seen child in 2 years, claimed that he could not locate child, had waited a year to try to locate, gave up when encountered slightest obstacle

Matter of Amanda 602 NYS2d 461 (4th Dept. 1993)

Father's only contacts were birthday and Christmas cards - not enough to defeat abandonment

Matter of Ateshia Diamond K., 598 NYS2d 260 (2nd Dept. 1993)

Lack of service on father of extension not a defense - did not discourage or prevent him from attempting contact

Matter of Michael W., 191 AD2d 287, 595 NYS2d 30 (1st Dept. 1993)

Mother's one contact with the agency in the six months not enough to defeat abandonment

Matter of Jocelyn Marie A., 189 AD2d 702, 592 NYS2d 719 (1st Dept. 1993)

Father tried to see child three times but only when mother (also his own child) was visiting, caseworker told him he could only visit when mother was not present - this was not discouragement of visitation

Matter of Cecilia A., 199 AD2d 582, 604 NYS2d 327 (3rd Dept. 1993)

Out of state parents had tried to get children back through other state's DSS but abandonment where contact with local agency was sporadic and unsubstantial

Matter of Mitchell Kirkland P., 607 NYS2d 931, 201 AD2d 381 (1st Dept. 1994)

Incarcerated father's one letter to agency during period not enough

Matter of Jeremy TT., 206 AD2d 632 (3rd Dept. 1994)

Out of state father who called child only once and made "minimal" inquiries through a grandmother - not enough

Matter of Crystal C., 219 AD2d 601, 631 NYS2d 376 (2nd Dept. 1995)

Mother's one phone call to caseworker not enough to defeat, even in situation where mother had been involved in inpatient treatment

Matter of Male M., 210 AD2d 137, 621 NYS2d 850 (1st Dept. 1994)

Mother had only made one phone call during the period - not enough - agency told father that he could not visit until he got a filiation order which he never did - no defense - was not "discouraging visitation"

Matter of Michelle S., 652 NYS2d 118 (3rd Dept. 1996)

Mother only had one contact of any significance, had moved out of county

Matter of Paul S., 170 Misc2d 750, 652 NYS2d 204 (Family Court, Queens County 1996)

Abandonment even though there had been an order of no contact with the children - father had never tried to get order lifted, never asked about children, never contacted the agency about the children, never appeared in court for any extensions

Matter of Antwan Malik F., 647 NYS2d 376 (1st Dept. 1996)

Incarcerated mother's claim that she did not know child was in foster care, not enough - mother

thought child was with a friend but had only minimally attempted to contact friend

Matter of Tasha B., 658 NYS2d 525 (3rd Dept. 1997)

Father's one phone call and two office visits to caseworker during six months were "too sporadic and insubstantial" to provide a defense to abandonment - caseworkers refusal to set up visits given that father had not seen child in over a year and a half was not discouragement by agency - caseworker had told father to file a petition in Family Court for visitation which he did not do

Matter of Nahiem G., 241 AD2d 632, 659 NYS2d 950 (3rd Dept. 1997)

Father's one appearance in court where he made no inquiry of the child's welfare - not enough to defeat abandonment

Matter of J. Scott P., 665 NYS2d 199 (4th Dept. 1997)

Even though order of protection in place that denied father access to children - still abandonment as he never inquired as to them nor seek to have order modified

Matter of Candice K., 666 NYS2d 1006 (4th Dept. 1997)

Father had still abandoned even though he saw the children "on occasion" on the street as they passed by his home

Matter of Stephanie N., 245 AD2d 74, 666 NYS2d 124 (1st Dept. 1997)

Incarcerated father did not contact child or agency - fact that foster family had told him that contact must first be made with agency was not a defense as he thereafter never attempted to contact agency

Matter of FM., NYLJ 12/5/97 at 38 (Family Court, Rockland County 1997)

In final three weeks of the six month period, father attempts to see child solely because of court appearance, child refuses on two arranged occasions to visit with parent - no defense to abandonment - limited insufficient and tardy attempts

Matter of Precious Trenee O., 678 NYS2d 12 (1st Dept. 1998)

Incarcerated father's lack of knowledge of foster home's address or phone number no defense where he could have contacted agency

Matter of Christina S., 674 NYS2d 550 (4th Dept. 1998)

Caseworker told father he could visit if he was sober - father may have thought she meant that he had to be in a substance abuse problem - even if he misunderstood, still no defense to abandonment

Matter of Oneka O., 672 NYS2d 316 (1st Dept. 1998)

Incarcerated father only made one phone call while in prison - not enough - fact that agency had a goal of adoption early on did not mean they had prevented or discouraged visits

Matter of Shaiane W., 678 NYS2d 172 (3rd Dept. 1998)

Father's one contact with caseworker after child support petition filed was not enough to defeat abandonment

Matter of Charles U., 678 NYS2d 824 (3rd Dept. 1998)

Father did communicate with worker and had also sent worker two letters - worker told father to file a paternity petition, father attempted to file the petition but it was dismissed when he did not provide mother's address for service - not enough contact - only "sporadic and isolated" - no real attempts such as cards, gifts, child support

Matter of Erica C., 683 NYS2d 262 (1st Dept. 1998)

Incarcerated, illiterate mother attempts only one contact with agency - not sufficient to defeat abandonment

Matter of Cody Michael B., 685 NYS2d 733 (1st Dept. 1999)

Father writes one letter during six month period for express purpose of defeating abandonment - not enough

Matter of MM., 688 NYS2d 707 (3rd Dept. 1999)

Mother had two brief chance encounters with child and foster mother on the street during the six months - not sufficient to defeat

Matter of Baby Boy B., 690 NYS2d 568 (1st Dept. 1999)

Even if incarcerated mother had attempted to call agency five times during the six months - that would not have been sufficient to defeat the abandonment termination

Matter of Phillip S., NYLJ 8/10/99 at 26 (Family Court, Suffolk County 1999)

Father showing at one UCR and unsubstantiated claims of paying child support - not enough to defeat abandonment

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Matter of Barbara Luisa A., #2481 11/30/99 (1st Dept. 1999)

Mother attempted only one visit - was late and missed the children, never asked about them or offered any plan for them - abandonment granted

Matter of Jackie Sherette C., 703 NYS2d 116 (1st Dept. 2000)

Father claimed that he called agency 3 times and that agency said they would send map and tickets for visits but nothing was sent - abandonment was granted

Matter of Omar RR., 703 NYS2d 604 (3rd Dept. 2000)

Mother made contact 3 times - one phone call to caseworker about unrelated matter, sounded intoxicated; one contact at court when she plead to neglect and told caseworker that she did not want to visit; one phone call where mother asked for visits and sounded intoxicated- caseworker told her no visit unless she had urine sample that she was not intoxicated - this was not denial of

visits - mother's attempts did not defeat abandonment

Matter of Female W., 706 NYS2d 98 (1st Dept. 2000)

Mother alleged phone contacts with agency and two contacts with foster mother - "too minimal and half hearted"

Matter of Matthew YY., 274 AD2d 685, 710 NYS2d 460 (3rd Dept. 2000)

Incarcerated father wrote back two letters to caseworker who tried to contact him - made no plans for the children - abandonment found

Matter of Arianna SS., 275 AD2d 498, 711 NYS2d 622 (3rd Dept. 2000)

Incarcerated father's attorney made one call to determine that child had been born, no other contacts - abandonment granted

Matter of Elizabeth S., 713 NYS2d 408 (4th Dept. 2000)

One letter by incarcerated mother - not enough

Matter of Xena X., 719 NYS2d 721 (3rd Dept. 2001)

Abandonment **precluded** where father had obtained a visitation order, contacted caseworker on at least 4 occasions to seek visitation - caseworker would not tell father where child was, phone number of foster parents, told him he had to have assessments or could not have visits

Matter of Nahja I., 279 AD2d 666, 717 NYS2d 807 (3rd Dept. 2001)

In response to caseworker contact, incarcerated father wrote for information regarding establishing paternity which caseworker then provided - no further communication - abandonment granted

Matter of Pasquale U., 279 AD2D 906, 720 NYS2d 581 (3rd Dept. 2001)

Incarcerated father claimed he had sent one letter to agency and one to court, also claimed he had asked in court for visits - abandonment found - isolated attempts, little effort to contact agency or son

Matter of Chantelle TT., 721 NYS2d 417 (3rd Dept. 2001)

Mother had phoned once for visit and did not show - did visit once and talked on phone twice but all these occurred when child was visited grandmother and grandmother had initiated contact; mother did file in court to seek return of child but only during last month of 6 months in question - even though quite a bit of actual contact, court still found abandonment

Matter of Peter F., 721 NYS2d 879 (3rd Dept. 2001)

Father only visited 4 times in 17 months, only phoned sporadically to agency (he claimed he had phoned more, was provided opportunity to seek phone records to prove that but couldn't produce any proof) - although father actually appeared in court during key six months, he "incredibly" did not ask to see the child or even ask the caseworker how the child was doing

Matter of Stephan Sidney W., 724 NYS2d 57 (1st Dept. 2001)

Father's alleged 2 contacts with agency and one with child would not have been enough to defeat

abandonment

Matter of Ayanna Lanee 724 NYS2d 78 (2nd Dept. 2001)

Father's TPR upheld even though one visit with child during 6 months

Matter of Michael B. 284 AD2d 946, 726 NYS2d 508 (4th Dept. 2001)

One telephone message left with worker not enough to defeat abandonment

Matter of June D. 732 NYS2d 324 (4th Dept. 2001)

Father refused to visit child until agency gave him another worker, agency would not change workers, father abandoned

Matter of Alkreen J. 288 AD2d 785, 733 NYS2d 306 (3rd Dept. 2001)

Incarcerated father sending cards and letters to the children by sending them to mother when he knew children were in foster care was not enough

Matter of Kerry J. 732 NYS2d 430 (2nd Dept. 2001)

Even if incarcerated father had called agency 3 times and had sent occasional letters and gifts - not enough

In Re Salma M. 294 AD2d 198, 744 NYS2d 3 (1st Dept. 2002)

Incarcerated father had written to children regularly before the 6 months in question and then did not write or contact within the 6 months - abandonment - he obviously could have written given that he did before

In Re Andre W. 298 AD2d 206, 748 NYS2d 720 (1st Dept. 2002)

Maternal grandmother making calls to agency not attributable to mother who abandons as she did not communicate herself

Matter of Jovantly U. 298 AD2d 641, 749 NYS2d 103 (3rd Dept. 2002)

Father knew children were in care in 1999 but no attempt to contact until 2000 and then left 2 phone messages with worker during 6 months in question. Worker returned calls but father did not call back. Father filed a visitation petition in the month before the abandonment TPR was filed but then did not appear, claiming he was in rehab. Not enough to defeat abandonment

In Re Miguel C. 749 NYS2d 728 (1st Dept. 2002)

Father claimed he called foster home twice during the 6 months - not enough

In Re LaToya 758 NYS2d 804 (1st Dept. 2003)

Sporadic and minimal attempts to visit child not enough

Matter of Gabrielle HH. 722 NYS 2d 643 (Court of Appeals 2003)

Even with court order to not contact child directly or indirectly, father still abandoned as did not

contact agency about child and knew that he could contact agency

Matter of Annette B. 4 NY3d 509 (Court of Appeals 2005)

Father still abandoned even though he did not know where mother had moved with child, did not know child was in foster care and agency did not contact him - he did not make an effort to find child even after being served with the TPR petition

Matter of Kerriane AA. 767 NYS2d 308 (3rd Dept. 2003)

One phone call not enough

Matter of Kimberly Y. 779 NYS2d 369 (2nd 2004)

Sporadic and insubstantial contact is not enough

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