

**Matter of Genesee County Dept. of Social Servs. v
A.B.**

2016 NY Slip Op 32739(U)

March 11, 2016

Family Court, Genesee County

Docket Number: B-00918-15

Judge: Eric R. Adams

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK

COUNTY OF GENESEE

FAMILY COURT

In the Matter of

**GENESEE COUNTY DEPARTMENT
OF SOCIAL SERVICES,**

Petitioner

-against-

**Docket No.: B-00918-15
File #: 7951**

CODY A.B.,

Respondent.

MEMORANDUM OF DECISION

Genesee County Department of Social Services (GCDSS) brings this application seeking a determination that Respondent, Cody A.B., has abandoned the child, C.B., born October 5, 2014. The petition alleges Respondent evinced an intent to forego his parental rights by failing to visit or otherwise communicate with the child or his custodian, the Petitioner herein, for a period of six months immediately preceding the filing of the petition herein.

C. was born addicted to drugs on October 5, 2014, in Rochester, N.Y. Custody of C. was subsequently granted to Petitioner, GCDSS on October 9, 2014. He has remained in the care and custody of Petitioner since that date. The current petition was filed November 6, 2015.

Social Services Law §384-b(4)(b) provides an order committing guardianship and

custody of a child shall be granted only where the parent, whose consent to adoption would otherwise be required, “abandoned such child for a period of six months immediately prior to the date on which the petition is filed in the court.” Therefore the relevant period applicable to the within petition is from May 6, 2015, to the date of filing.

Petitioner presented three witnesses. Ms. M. was the assigned caseworker throughout the relevant period. Ms. K. was involved in the proceeding as a parent educator, and Ms. J. M. is a worker in the Support Collection Unit of the Petitioner.

Ms. M. testified that she was the assigned caseworker from May 6 to November 6, 2015. She stated throughout that period Respondent neither visited nor communicated with C. at any time. Additionally, neither she nor the foster parents, with whom she had regular contact, received any cards, letters, gifts, or any other form of communication for C. from Respondent. Ms. M. testified she received four voice mail messages, on May 11 and 27, June 12 and July 15, of 2015, left by Respondent seeking a visit with C. While Ms. M. testified she never spoke with Respondent she set up a visit in response to each call and confirmed the visit with a letter to Respondent and a voice message to the number designated by Respondent. In each instance, Respondent failed to appear for the scheduled visit. Ms. M. testified she did not deny any request by Respondent for a visit nor did she ever refuse to allow or discourage Respondent from communicating with C.

Ms. K. is a parent educator assigned to work with Respondent. She also testified that she received no contact of any form from Respondent and was unaware of any form of communication between Respondent and C.. Ms. J.M. testified that a child support order was entered in June, 2015, directing Respondent to pay \$18.00 per week for C.’s support. She reported the sum of \$291.45 was collected from Respondent which was received

between June 18 and August 3, 2015, pursuant to a wage deduction order issued by this Court.

Respondent testified on his own behalf. He acknowledges he had no visits with C. from May 6 to November 6, 2015. He testified he was unable to visit due to his employment as a ride attendant at a local amusement park. Respondent offered no corroboration of his work schedule and on cross examination acknowledged his employment ended in early August, 2015. While he indicated he subsequently obtained employment at a restaurant he presented no corroborative evidence nor was that employment revealed to the Support Collection Unit at the Department of Social Services. Respondent confirmed the testimony of Ms. M. as to the exchange of phone messages. He testified he also went to GCDSS to meet with Ms. M. but was unable to specify dates or times. He was unable to see Ms. M. because he was told she was not in the building, however, he was unable to identify with whom he spoke. Respondent acknowledged his attempts to see Ms. M. were made without prior notice to her. Respondent offered little evidence to explain his lack of visits except his employment at Darien Lake. That employment ended in early August. The credible evidence establishes Respondent's efforts consisted of a few phone calls that resulted in the scheduling of four visits for all of which Respondent failed to appear without notice to Petitioner. The only other connection with C. was child support collected by wage deduction over a period of approximately seven weeks.

The Court finds, upon clear and convincing evidence, that Respondent failed to visit with or to communicate with the child from May 6 to November 6, 2015. Further, the Court finds the telephone communication between Respondent and Petitioner's caseworker

between May 11 and July 15, 2015, to be both sporadic and unsubstantial and does not rise to the level to defeat an otherwise viable claim of abandonment Matter of Angela N.S. 100 A.D.3d 1381 (4th Dept., 2012).

Payment by a parent toward the support of a child of a fair and reasonable sum, according to the parent's means, shall be deemed a substantial communication by such parent with the child or person having legal custody of the child. Domestic Relations Law §111(6)(d). Collection of child support pursuant to wage deduction does not, in and of itself, establish payment is involuntary. Matter of Devin F. 41 A.D.3d 1197 (4th Dept., 2007). Even where support payments are inconsistent, if current at the time of hearing, payment has been deemed voluntary. Matter of Anthony S. 291 A.D.2d 702 (3d Dept., 2002). However, Ms. J.M. testified there existed a support order of eighteen dollars weekly and that no payments had been received from August 3, 2015, to the time of trial on February 11, 2016. No evidence was presented that this support obligation was ever terminated or suspended. Additionally, Respondent testified to a period of employment at a local restaurant after leaving his job at Darien Lake. The evidence implies that employment was "off the books" and Respondent did not notify the Support Collection Unit. Respondent did not voluntarily remit any of the money earned at this additional employment toward C.'s support. Under the circumstances of this case the funds paid pursuant to the wage deduction order do not constitute communication with the child or Petitioner sufficient to defeat the claim of abandonment. Matter of Melerina M. 118 A.D.3d 1505 (4th Dept., 2014). Upon clear and convincing evidence, the Court finds Respondent abandoned the child, C.

Upon a determination that a Respondent has abandoned his child a dispositional

hearing is not required. In re Kenneth D. 12 A.D.3d 1183 (4th Dept., 2004). C. is nearly eighteen months of age and he has never resided in Respondent's home or in his care. Respondent is a convicted felon and, at the time of trial, was incarcerated and awaiting trial on multiple felony charges. It is clear Respondent's ability to assume a parental role is years into the future, if ever. The child is in a potential adoptive placement and it is clearly in his best interests that Respondent's parental rights, and they hereby are, terminated to allow C. to solidify the only parent/child relationship he has ever known. Guardianship and custody of C. is granted to Petitioner, GCDSS.

Counsel for Petitioner, GCDSS is to submit an order in accordance with this decision.

Dated: March 11, 2016

HON. ERIC R. ADAMS
Family Court Judge