

## Abandonment- First Department

Case/Statute Name	Case Summary/Important Facts	Procedural History
<p><u>Matter of Bibianamiet L.-M. v. Miledy L.N.</u>, 71 A.D.3d 402, 897 N.Y.S.2d 39, 2010 NY Slip Op 1683 (2010).</p> <p><a href="#">click here</a></p>	<p><b>Parents’ failure to contact or visit their children for six months constitutes abandonment and is not excused by a social worker’s alleged rude and disrespectful behavior or failure to schedule visits.</b> The First Department concurred with the Family Court that the parents’ motion to reopen a default termination against them was properly dismissed. The parents did not provide a reasonable excuse for failing to appear and claimed they had confused the date with another date on a matter concerning a young child but they had used such an excuse before and had clearly been in court on two dates when the fact finding date for the TPR was decided. Further they had no meritorious defense to the abandonment. The fact that the mother claimed that the caseworker did not respect her and was rude does not substantiate a claim that the mother was prevented or discouraged from contacting the children. Also her claim that the agency did not offer her appropriate referrals is also insufficient as 39 diligent efforts is not an issue in abandonment proceedings. The father’s allegations also did not merit reopening the default. He merely claimed that visits were not scheduled and were required to be supervised.</p>	<p>Order, Family Court, Bronx County, following failure to appear at the fact-finding and dispositional hearings, denying parents' motion to vacate a dispositional order terminating parental rights on ground of abandonment and committing CHILDREN'S CUSTODY to ACS for the purpose of adoption, unanimously affirmed, without costs.</p>

## Abandonment- Second Department

Case/Statute Name	Case Summary/Important Facts	Procedural History
<p><u>Saul A.F.H. v. Ivan L.M.</u>, 118 A.D.3d 878, 988 N.Y.S.2d</p>	<p><b>Appellate Division has broad power to make its own factual determinations on SIJS petition.</b> Petitioner filed to be appointed guardian of his cousins Karen and Rommel and that the Court make specific findings that would allow them to petition the USCIS for special immigrant juvenile status.</p>	<p>In a guardianship proceeding pursuant to Family Court Act article 6, the petitioner appeals from an order of the Family Court, Nassau County which denied his motion specific findings that would enable the subject children to petition</p>

<p>230 (2014).</p> <p><a href="#">click here</a></p>	<p>The Family Court denied the petitions and this court, the Appellate Division, Second Department, upon appeal reverses and grants the petitions. Pursuant to 8 USC §1101(a)(27)(J), a “special immigrant” is a resident alien who is, inter alia, under 21 years of age, unmarried, and “declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States. The court determined that reunification with the children’s father was not viable due to abandonment, and it was not in the best interest of the children to be returned to El Salvador.</p>	<p>USCIS for SIJS, and dismissed the guardianship petitions.</p> <p>Order reversed, and petition reinstated and granted appointing petitioner guardian of subject children.</p>
<p><u>In re Amandeep S.</u>, 44 Misc. 3d 1201(A) (N.Y. Fam. Ct. 2014).</p> <p><a href="#">click here</a></p>	<p><b>Failure to support or maintain contact with a child constitutes abandonment.</b> A 17-year-old child came into the country with his father, while his mother stayed behind. The father kicked the child out of the house, leaving the child without a home or any resources. The father moved elsewhere in the county, without telling the child or leaving contact information. The father has not contacted the child in three years, nor provided any support. The court concluded that the father’s lack of contact constituted abandonment.</p>	<p>Uncontested guardianship proceeding commenced under article 6 of the Family Court Act, seeking an order of guardianship and "special findings" enabling child to petition USCIS for SIJS.</p> <p>Motion granted.</p>
<p><u>Matter of C. Children</u>, 4 Misc. 3d 363, 780 N.Y.S.2d 476 (App. Term 2004).</p>	<p><b>A child need not be in foster care for entire six-month period prior to date of abandonment petition where the parent has had no contact with the child.</b> On April 18, 2003, a mother left her children with their grandmother and she did not return for them. On May 5, 2003, the children were placed in foster care under the custody and control of a child welfare agency, but allowed to live with their grandmother. On October 23, 2003, the child welfare agency filed an action in family court, seeking an order declaring that the children's mother had abandoned them. The family court held that (1) N.Y. Soc. Serv. Law § 384-b applied to children in foster care, and the agency had standing under § 384-b to bring its action; (2) nothing in N.Y. Soc. Serv. Law § 384-b required the children to be in foster care for six months before the agency filed its petition, and the court would hear the agency's petition because the act which formed the basis for its allegation that the children's mother abandoned her children occurred more than six months before the agency filed its petition; and (3) the children were abandoned within the meaning of N.Y. Soc. Serv. Law § 384-b(4)(b) and (5)(a) because their mother failed to visit them or communicate with them for more than six months. The court found that the children were abandoned within the meaning of New York's Social Services</p>	<p>Petition of child welfare agency seeking order declaring children abandoned, granted by Family Court, Kings County.</p>

	Law.	
<u>In re Vunk</u> , 127 Misc. 2d 828, 487 N.Y.S.2d 490 (App. Term 1985).	<b>Parents' intent to abandon child can be inferred by conduct.</b> The county agency argued that the father had abandoned the minor child by failing to visit or communicate with the minor child in any fashion for the required six-month period immediately preceding the filing of petition by the county agency. The father argued that the county agency had filed its petition prior to the completion of the six-month period and that the county agency had failed to prove the requisite lack of intent to forego his parental rights and obligations. The father argued that his lack of contact was due to parole problems and his misunderstanding as to the minor child's status. The court noted that the unexplained absence of contact was a sufficient predicate for a finding of abandonment because the law provided that a parent's intent was inferred from his conduct. The court listened to the evidence and found that the petition was not prematurely filed. The court further disbelieved the father's asserted reasons for the lack of contact. Thus, the court concluded that the father's lack of any contact constituted clear and convincing evidence that the father had abandoned the minor child.	Petition, pursuant to Social Services Law Section 384-b, of Suffolk County Department of Social Services seeking an order of guardianship and custody upon the ground of abandonment, granted.
<u>In re Comm'r of Soc. Services</u> , 84 Misc. 2d 253, 376 N.Y.S.2d 387 (App. Term 1975).	<b>Parent's conduct, rather than intent, determines whether child has been abandoned.</b> The mother voluntarily placed her children with the department of social services but visited only sporadically and increasingly infrequently for the next three years and not at all for a year prior to commencement of the action. The commissioner filed an action seeking the permanent termination of parental rights on grounds of abandonment and permanent neglect. Although the mother argued that she had no intent to abandon the children, the Family Court ruled that it is a parent's conduct that controls whether a child has been abandoned. The court found that DSS had made diligent efforts to encourage and strengthen the parental relationship, but the mother had failed for a period of more than one year following the placement of the children to substantially, continuously, and repeatedly to maintain contact with or plan for the future of the children even though she was physically and financially able to do so. The court adjourned the permanent termination of parental rights proceeding filed by the commissioner against the mother, for the purpose of conducting a dispositional hearing pursuant to the Family Court Act.	Petition of Commissioner of Social Services of Ulster County, pursuant to article 6 of the Family Court Act, seeking finding of permanent neglect, granted.

## Abandonment- Third Department

Case/Statute Name	Case Summary/Important Facts	Procedural History
<p><u>Matter of Dustin JJ. (Clyde KK.)</u>, 114 A.D.3d 1050, 981 N.Y.S.2d 177, 2014 NY Slip Op 1225 (2014).</p> <p><a href="#">click here</a></p>	<p><b>Father’s incarceration during part of the six months preceding filing of abandonment petition did not excuse failure to contact child.</b> Although the father, who was incarcerated for two months during the six-month period prior to DSS filing an abandonment petition, the court held the father failed to demonstrate that either his incarceration or his allegedly limited access to a telephone so permeated his life as to make contact with his child or the Department of Social Services during the relevant time period infeasible. The child was found to be abandoned and parental rights terminated.</p> <p><b>A dispositional hearing is not required if abandonment is established.</b> Following a fact-finding hearing, if the child is deemed abandoned, parental rights may be terminated without the necessity of holding a dispositional hearing.</p>	<p>Appeal from an order of the Family Court of Broome County, which granted petitioner's application, in a proceeding pursuant to Social Services Law § 384-b, to adjudicate the child abandoned, and terminate respondent's parental rights.</p> <p>Following a fact-finding hearing, the Family Court granted the application.</p> <p>Appellate Division affirmed.</p>
<p><u>Matter of Carter A. (Jason A.)</u>, 111 A.D.3d 1181, 977 N.Y.S.2d 415, 2013 NY Slip Op 7891 (2013).</p> <p><a href="#">click here</a></p>	<p><b>Two visits within the six-month period preceding filing does not preclude finding of abandonment.</b> Pursuant to Social Services Law § 384-b, DSS filed an application seeking a finding that a father had abandoned his child, and terminating his parental rights. During the six months preceding the filing of the petition, the father had visited the child only twice but did not maintain any other contact with the child or DSS. The father did not send any letters, gifts, or cards to the child at any time, nor did the father demonstrate that he had taken any actions to remedy the problems that led to the abandonment finding. The Family Court found the child to be abandoned, and a suspended judgment would not be in the child's best interests. Parental rights were terminated.</p>	<p>Appeal from an order of the Family Court of Cortland County, which granted petitioner's application, in a proceeding pursuant to Social Services Law § 384-b, to adjudicate the child abandoned, and terminate respondent's parental rights.</p> <p>Appellate Division affirmed.</p>
<p><u>Matter of Le'Airra CC. v. Christopher</u></p>	<p><b>Father’s incarceration does not preclude finding of abandonment.</b> The father was incarcerated at the time of the child’s birth and remained</p>	<p>Appeal from an order of the Family Court of Albany County (Maney, J.), which granted petitioner's application, in a</p>

<p><u>DD.</u>, 79 A.D.3d 1203, 911 N.Y.S.2d 699, 2010 NY Slip Op 8827 (2010).</p> <p><a href="#">click here</a></p>	<p>incarcerated throughout the proceedings. A petition was filed seeking a finding of abandonment and termination of parental rights. The petition alleged that during the 6-month period immediately preceding the filing, the respondent did not attempt to contact his child. The father requested and read monthly status letters about the child but did not contact the child or her caseworker. Although there were apparently some restrictions on respondent's telephone use due to his incarceration, the Family Court found that he presented no credible evidence explaining why, during the relevant period, he was unable to call the caseworker, who testified that she would have accepted collect calls.</p> <p>Judge ruled abandonment and termination of parental rights.</p>	<p>proceeding pursuant to <u>Social Services Law § 384-b</u>, to adjudicate the child abandoned, and terminate respondent's parental rights.</p> <p>Appellate Division affirmed.</p>
<p><u>Matter of Jackie B. v. Dennis B.</u>, 75 A.D.3d 692, 903 N.Y.S.2d 612, 2010 NY Slip Op 5830 (2010).</p> <p><a href="#">click here</a></p>	<p><b>Father's incarceration does not preclude finding of abandonment.</b> The father was incarcerated during most of the six-month period prior to the filing of a petition seeking a finding of abandonment and terminating parental rights. During the time he was incarcerated the father did not contact the child or the child's caseworker even though he received a letter outlining his responsibility to do so.</p> <p>The burden is upon the parent to prove an inability to maintain contact or that he or she was prevented or discouraged from doing so by the petitioning agency. The father testified that he believed he was prohibited from having any contact with his son while incarcerated. However, he provided no explanation for the basis of this belief. The Family Court found that the father did not prove an inability to contact the child. The child was adjudicated abandoned and parental rights were terminated.</p>	<p>Respondent father appealed an order by the Family Court of Albany County (New York) granting petitioner agency's Social Services Law § 384-b(5)(a) application to adjudicate his child abandoned, and terminating his parental rights. The order was affirmed.</p>
<p><u>Matter of Mahogany Z. v. Wayne O.</u>, 72 A.D.3d 1171, 897 N.Y.S.2d 313, 2010 NY Slip Op 2705 (2010).</p> <p><a href="#">click here</a></p>	<p><b>Child's adoption does not render appeal of abandonment adjudication moot.</b> The Third Department reviewed an abandonment termination from Family Court. The child's attorney argued that the appeal was moot as the child had been adopted. The Third Department ruled that an adjudication of abandonment carries a serious stigma and should be reviewed regardless of the adoption having already occurred.</p> <p><b>Child Welfare Agency is not responsible for contacting parents to schedule visits.</b> The Third Department then found that the proof of the father's</p>	<p>Appeal from an order of the Family Court of Albany County, which granted petitioner's application, in a proceeding pursuant to Social Services Law § 384-b, to adjudicate respondent's child to be abandoned, and terminated respondent's parental rights.</p> <p>In this case, respondent was found to have abandoned and not neglected the child, but a different result is not warranted given that a finding of neglect may be premised upon abandonment (<i>see</i> Family Ct Act § 1012 [f] [ii]; <i>Matter of Shaniqua L.</i>, 193</p>

	<p>abandonment was clear and convincing. The father was aware of the child and visited her once at birth. He did not interact with the child or DCYF during the 6 months preceding the TPR filing. The father claimed that DCYF did not make enough effort to involve him – but the appellate court found that the agency is not required to show diligent efforts to involve the parent. Further, DCYF did in fact make diligent efforts to seek him out and made multiple efforts to contact him at the location where he lived with no response. Following a finding of abandonment, parental rights were terminated. The Appellate Division noted that the court need not hold a dispositional hearing when abandonment is established.</p> <p>NOTE: The Appellate Division did not comment on what they would have ruled regarding the adoption had they in fact overturned the TPR. Regulations require that local DSS not consent to the adoption of any foster child while an appeal is pending and DRL requires the consent of the agency before the court can finalize an adoption.</p>	<p>AD2d 370, 371, 597 NYS2d 301 [1993]). While this appeal is not moot, our review of the merits discloses no reason to disturb Family Court's determination.</p>
<p><u>Matter of Michaela PP.</u>, 72 A.D.3d 1430, 900 N.Y.S.2d 166, 2010 NY Slip Op 3509 (2010).</p>	<p><b>Father's poor relationship with caseworker does not excuse failure to exercise visitation rights.</b> After children were placed in foster care the father was offered weekly visitation but only attempted to see the children twice in the 6-month period prior to the filing of a petition seeking an adjudication of abandonment and termination of parental rights. The two times he did visit were at non-scheduled times. He claimed a bad relationship with the worker kept him from exercising visitation. The Family Court found that the children were abandoned and parental rights were terminated. The Appellate Division agreed that these attempted contacts at visitation were too sporadic and infrequent to defeat the finding of abandonment.</p>	<p>Appeal from an order of the Family Court of Broome County, which granted petitioner's application, in a proceeding pursuant to <a href="#">Social Services Law § 384-b</a>, to adjudicate children abandoned, and terminate respondent's parental rights. Ordered that the order is affirmed, without costs.</p>
<p><u>In re Kaitlyn E.</u>, 75 A.D.3d 695, 904 N.Y.S.2d 562 (2010).  <a href="#">click here</a></p>	<p><b>Mother's claim that caseworker discouraged visits rejected.</b> The Third Department affirmed Family Court's termination of a mother's rights. The child had gone into care when the mother was arrested at 4AM after being found by law enforcement with the baby in a car. The baby was naked, screaming and not in a car seat. There was a man in the car whose pants were unzipped and there was cocaine in the car. Ultimately two termination petitions were filed alleging permanent neglect as well as abandonment. The mother did not visit or communicate with the child for the 6 months preceding the filing of</p>	<p>Appeal from an order of the Family Court of Warren County, which, among other things, granted petitioner's application, in two proceedings pursuant to <a href="#">Social Services Law § 384-b</a>, to adjudicate the child abandoned and terminate respondent's parental rights.</p>

	<p>the petition. The mother claimed DSS discouraged visitation. However, DSS established that the caseworker made many attempts to reach mother by phone, sent letters and provided her with a visitation schedule. When the mother stopped visiting, she was urged to contact the caseworker to set up a new schedule. The lower court adjudicated the child abandoned and terminated parental rights.</p>	
<p><u>Matter of Tiffany RR. v. Paul RR.</u>, 44 A.D.3d 1126, 843 N.Y.S.2d 477, 2007 NY Slip Op 7790 (2007).</p>	<p><b>Order of protection prohibiting father from having any contact with child does not excuse failure to contact DSS about child.</b> When the child was one month old, she suffered from a fracture to her arm while in the father's care. As a result of this incident, the child was adjudicated to be an abused child and placed in DSS care and custody. While the father testified that he did not contact DSS because he believed the order of protection prohibited it, he readily admitted that he read the order and agreed that it did not expressly prohibit him from having contact with DSS. The Family Court found that the order itself—which simply states that the father “shall be barred from any and all contact with the child”—was narrow and unambiguous and did not relieve the father of his clear obligation to contact DSS about the child. The child was adjudicated abandoned and father’s parental rights were terminated.</p>	<p>Respondent father appealed an order by the Family Court of Saratoga County (New York) that granted a Social Services Law § 384-b application by petitioner department of social services (DSS) to adjudicate his daughter an abandoned child, and terminated his parental rights.</p> <p>The order was affirmed.</p>
<p><u>In re Devin XX.</u>, 20 A.D.3d 639, 797 N.Y.S.2d 661 (2005).</p>	<p><b>Incomplete attempts to contact a child while personally incarcerated are not enough to defeat finding of abandonment.</b> The child was placed in foster care following his birth upon his mother's surrender of her parental rights. The mother informed the father, then incarcerated, that his child had been born. The child was placed with a foster family. In January 2004, a petition was filed to terminate the father’s parental rights on the ground of abandonment. During the six months prior to the filing, father’s sole contact with the child was one phone call with the caseworker requesting visitation. Following a fact-finding hearing, Family Court found that the father had abandoned the child and terminated his parental rights. The Appellate Division affirmed, holding that one phone call to the caseworker was not enough to defeat a claim of abandonment.</p>	<p>Appeal from an order of the Family Court of Chemung County, which granted petitioner's application, in a proceeding pursuant to Social Services Law § 384–b, to adjudicate respondent's child to be abandoned, and terminated respondent's parental rights.</p>
<p><u>In re Peter "F"</u>, 281 A.D.2d 821, 721 N.Y.S.2d 879 (2001).</p>	<p><b>DSS is not required to prove that parent’s failure to contact child for six months was without good cause.</b> After being found to have derivatively neglected his son, respondent father was permitted only supervised visitation. Subsequently the child was removed from his mother's custody and placed in foster care. After the father visited the son only four times in a 16-month</p>	<p>Respondent father challenged Family Court, Ulster County (New York), order granting petitioner agency's application to terminate his parental rights, pursuant to N.Y. Soc. Serv. Law § 384-b, on grounds of abandonment.</p>

	<p>period, DSS petitioned for termination of the father’s parental rights based on abandonment. The testimony of the foster care caseworker established that the father visited his son a total of four times in 16 months and initiated only sporadic telephone contact with the caseworker during that same period. The father claimed that he called the caseworker numerous times and left voice mail messages which were never returned, that he did not receive letters or other written communications from the caseworker despite filing change of address cards with the post office when he moved for a period of time to different addresses, and that a hernia operation physically prohibited his visits. These claims were contradicted by the testimony of the caseworker and the documentary evidence she provided and by the father’s own testimony. The Family Court granted the petition.</p> <p>On appeal the father argued that the mere absence of contact with the child is not sufficient to establish abandonment but requires a showing by DSS that the father’s lack of contact was without good cause. The Appellate Division held that DSS had no such obligation, and affirmed.</p>	<p>The court affirmed the order. There was plenty of evidence supporting the trial court's determination that respondent failed to overcome petitioner's prima facie showing that respondent's lack of contact with his son evinced an intent to abandon him.</p>
<p><u>In re Regina WW</u>, 182 A.D.2d 920, 582 N.Y.S.2d 535 (1992).</p> <p><a href="#">click here</a></p>	<p><b>Parent’s incarceration does not preclude a finding of abandonment.</b> Although the father was notified that his child was in foster care, he made no effort to contact either DSS or the child's foster mother in the six months preceding the filing of a petition to adjudicate the child abandoned and terminate parental rights. The father was incarcerated during the six-month period. The Court held that in the absence of proof that father was prohibited from contacting the child or DSS while incarcerated, the failure to contact was not excused. The child was adjudicated abandoned and parental rights were terminated.</p> <p>The Appellate Division affirmed.</p>	<p>Appeal from an order of the Family Court of Sullivan County, which granted petitioner's application, in a proceeding pursuant to Social Services Law § 384–b, to adjudicate Regina “WW” an abandoned child, and terminated respondent's parental rights.</p>
<p><u>Corey L v. Martin L</u>, 45 N.Y.2d 383, 408 N.Y.S.2d 439, 380 N.E.2d 266 (1978).</p>	<p><b>Father’s infrequent visits during period of contentious adoption proceedings do not constitute abandonment.</b> The mother and stepfather argued that the natural father abandoned the child and that his consent was not required in an adoption proceeding. The natural father had only visited the child two or three times from the time he was discharged from military service until the adoption papers were served. The Family Court terminated parental rights and allowed the stepfather to adopt the child.</p> <p>Upon appeal, the Appellate Division held that infrequent contact during the period starting when the adoption papers were served on the father until the court hearing date should not be considered as part of the period of</p>	<p>Appeal from Appellate Division order affirming an order of the Family Court, Chenango County, granting mother’s petition to adjudicate child abandoned by the father, consenting to adoption by the stepfather, and dismissing father’s petition for custody or visitation.</p> <p>The Court of Appeals reversed the order, dismissed the adoption petition, and remitted to Family Court for further proceedings on the father’s application for custody or visitation.</p>

	<p>abandonment due to the contentious relationship of the parties during that time. The court further held that the heavy burden on the mother and stepfather to terminate the rights of the natural father through adoption had not been satisfied on the record presented to it. N.Y. Dom. Rel. Law §11, authorizes but does not mandate a finding that infrequent contacts with a child constitutes abandonment. The best interests of the child could not act as a substitute for the finding of abandonment. The order that the natural father abandoned his child was reversed, the petition for adoption was dismissed, and the matter was remitted for further proceedings on the natural father's application for custody or visitation.</p>	
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## Abandonment- Fourth Department

<b>Case/Statute Name</b>	<b>Case Summary/Important Facts</b>	<b>Procedural History</b>
<p><u>In re Maddison B.</u>, 74 A.D.3d 1856, 902 N.Y.S.2d 471 (2010).</p>	<p><b>One visit and one phone call in six-month period constitutes abandonment.</b> A mother's parental rights were terminated on grounds of abandonment. During the six-month period preceding filing of the application, the mother visited the child once and called on the phone once.</p>	<p>Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered June 25, 2009 in a proceeding pursuant to Social Services Law § 384-b. The order, among other things, terminated respondent's parental rights.</p>

## Abandonment Cases

<b>Case/Statute Name</b>	<b>Case Summary/Important Facts</b>	<b>Procedural History</b>
<p><u>In re Shannon Linda T.</u>, 87 Misc. 2d 744, 386</p>	<p><b>Six weeks of contact in six years, followed by four telephone calls, were sufficiently "infrequent" and "insubstantial" to establish abandonment.</b> The child's biological father and mother were married but separated prior to the</p>	<p>Petitioner is seeking to adopt his wife's daughter by a previous marriage without the consent of the child's father on grounds of abandonment.</p>

<p>N.Y.S.2d 726 (App. Term 1976).</p>	<p>birth of their daughter. The mother brought a support proceeding, but the order for child support was terminated after the parties agreed that the father was to have stayed out of their lives. Four years later the father and mother met by coincidence. They dated a few times, during which the father saw his child. The following year, the mother married the stepfather, who began proceedings to adopt the child without her father's consent, alleging that he had abandoned her. The court found that the child's father had abandoned her and ordered an investigation to determine whether granting the adoption was in the child's moral and temporal interest. The court held that in the context of the father's total abdication of parental prerogatives throughout the child's life, six weeks of contact in six years, followed by four telephone calls, were both "infrequent" and "insubstantial" within the intendment of N.Y. Dom. Rel. Law § 111, and were nothing more than the attention that might be given by a benignly interested stranger and not that of a parent. The court found that the child's biological father had abandoned his child and granted the stepfather the right to adopt the child without her natural father's consent.</p>	<p>The Family Court, Schenectady County, adjudicated the child abandoned and granted the right to adopt without natural father's consent.</p>
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