

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: July 2, 2026

CV-25-0457

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In the Matter of WANYE D.,  
Alleged to be an Abandoned  
Child.

SCHENECTADY COUNTY  
DEPARTMENT OF SOCIAL  
SERVICES,

MEMORANDUM AND ORDER

Respondent;

QUINCY D.,

Appellant.

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Calendar Date: May 26, 2026

Before: Reynolds Fitzgerald, J.P., Ceresia, McShan, Mackey and Ryba, JJ.

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*Michelle I. Rosien*, Philmont, for appellant.

*Christopher H. Gardner*, County Attorney, Schenectady (*Dylan J. Reilly* of counsel), for respondent.

*Karen R. Crandall*, Schenectady, attorney for the child.

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McShan, J.

Appeals from an order and a supplemental order of the Family Court of Schenectady County (Mark Blanchfield, J.), entered December 19, 2024 and February 28, 2025, which granted petitioner's application, in a proceeding pursuant to Social Services

Law § 384-b, to adjudicate the subject child to be abandoned, and terminated respondent's parental rights.

Respondent (hereinafter the father) is the father of the subject child (born in 2019) who had previously been in the care of the child's mother.<sup>1</sup> In November 2022, in resolution of a pending neglect proceeding, the child's mother consented to the removal of the child and the child was placed in petitioner's care and custody before later being placed in pre-adoptive foster care in or around April 2023. Meanwhile, petitioner filed a neglect petition against the father, alleging, among other things, that he was the person legally responsible for the child and had failed to plan for the child's care. At the conclusion of a fact-finding hearing, Family Court determined that those specific charges were founded and deemed the child neglected.

In April 2024, petitioner commenced this abandonment proceeding, alleging that the father had failed to have meaningful contact with the child for a six-month period prior to filing, spanning from October 4, 2023 to April 4, 2023 (hereinafter the relevant period). At the conclusion of a two-day fact-finding hearing, at which the father proceeded pro se, Family Court granted the petition. In a dispositional order, issued without a hearing, Family Court, among other things, terminated respondent's parental rights.<sup>2 3</sup> The father appeals from both orders.<sup>4</sup>

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<sup>1</sup> Pursuant to a 2021 custody order, entered on consent, the parties shared joint legal custody of the child with primary physical custody to the mother.

<sup>2</sup> The father's appeal from the December 2024 fact-finding order must be dismissed "as no appeal lies from a nondispositional order in a termination of parental rights proceeding" (*Matter of Ariana AA. [Luis AA.]*, 241 AD3d 1629, 1630 n [3d Dept 2025]; see Family Ct Act § 1112 [a]). Nevertheless, respondent's timely appeal from the February 2025 dispositional order terminating his parental rights "brings up for review the determinations made in the fact-finding order" (*Matter of Kayson R. [Christina S.]*, 166 AD3d 1346, 1346 n 2 [3d Dept 2018] [internal quotation marks and citation omitted]).

<sup>3</sup> While this abandonment proceeding was pending, the mother consented to a finding of permanent neglect and ultimately surrendered her parental rights.

<sup>4</sup> On appeal, the attorney for the child argues in favor of Family Court's disposition.

We affirm. "A finding of abandonment is warranted when it is established by clear and convincing evidence that the parent failed to visit or communicate with the child or the petitioning agency during the six-month period immediately prior to the filing of the abandonment petition, although able to do so and not prevented or discouraged from doing so by petitioner" (*Matter of Ariana AA. [Luis AA.]*, 241 AD3d 1629, 1630 [3d Dept 2025] [internal quotation marks and citations omitted]; see *Matter of Dreyson HH. [Michael GG.]*, 243 AD3d 1190, 1192 [3d Dept 2025]). "Once it is established that a parent failed to maintain sufficient contact with a child for the statutory period of six months, the burden shifts to the parent to establish that he or she maintained sufficient contact, was unable to do so, or was discouraged or prevented from doing so by the petitioner" (*Matter of Ciara FF. [Robert FF.]*, 235 AD3d 1162, 1163 [3d Dept 2025] [internal quotation marks and citations omitted]; see *Matter of Tiyani AA. [Yani Z.]*, 232 AD3d 1147, 1149 [3d Dept 2024]). In reviewing Family Court's determination in an abandonment proceeding, we give considerable deference to its credibility determinations (see *Matter of Kamariana SS. [Anthony SS.]*, 227 AD3d 1166, 1168-1169 [3d Dept 2024], *lv denied* 42 NY3d 903 [2024]; *Matter of David UU. [Jeanie UU.]*, 206 AD3d 1502, 1505 [3d Dept 2022]).

At the fact-finding hearing, petitioner's caseworker testified that she met the father at the child's doctor's appointment two days prior to the relevant period and advised him of his visitation rights with the child. Expounding upon that, petitioner's caseworker explained that she followed up by sending a letter to the father in November 2023 advising him that the child was in foster care and that he had a right, among other things, to visit the child. Despite having been advised of same, petitioner's caseworker testified that the father had no in-person or virtual contact with the child for the relevant period, nor did he send any gifts or letters. She further explained that the father made no attempt to reach out to her about scheduling visitation, and the only contacts she did have were a brief appearance by the father on a November 2023 virtual service plan meeting with the foster care agency that had placed the child, and a March 2024 email correspondence from the mother, copying the father, regarding a tax issue. Buttressing that testimony, a caseworker at the foster care agency testified that she did not have contact with the father during the relevant period aside from the virtual November 2023 service plan review meeting and a single contact in March 2024 inquiring about weekend visitation. The father was advised that the agency was not open on weekends, but he could facilitate visits on weekdays, which the father declined due to his work schedule.

According to the father, he had a weekend visit with the child in December 2023 facilitated with a prior foster care agency and the foster mother but gave inconsistent

testimony about whether he had advised petitioner about the visit. Further, he testified to a supervised visit during the relevant period that was arranged with a prior caseworker but could not explain the conflict with that account and the fact that said caseworker had retired prior to the time of the alleged visit. Family Court ultimately credited the caseworkers' testimony rather than the father's, a determination that is entitled to deference. Moreover, even crediting the father's account that such visits occurred, they are insufficient to defeat the finding of abandonment, as they are fairly characterized as insubstantial, "sporadic and infrequent" (*Matter of Carter A. [Jason A.]*, 111 AD3d 1181, 1183 [3d Dept 2013] [internal quotation marks and citation omitted], *lv denied* 22 NY3d 862 [2014]; *see Matter of Dimitris J. [Sarah J.]*, 141 AD3d 768, 770-771 [3d Dept 2016]; *see also Matter of Quannie T. [Miayjah R.]*, 226 AD3d 1119, 1121 [3d Dept 2024], *lv denied* 42 NY3d 912 [2025]; *Matter of Richard JJ. [Jennifer II.]*, 218 AD3d 875, 877 [3d Dept 2023], *lv denied* 40 NY3d 906 [2023]). The credited proof therefore shifted "the burden . . . to the father to demonstrate that he was unable to maintain contact with the child or, if able, was prevented or discouraged from doing so by petitioner" (*Matter of Jayce G. [Daniel H.]*, 229 AD3d 857, 858-859 [3d Dept 2024] [internal quotation marks, brackets and citations omitted]).

The father failed to do so. The proof introduced at the fact-finding hearing readily established that the father was provided with contact information and advised of his right to visit with the child, and the father conceded that he was aware of same. Noting that the father's closing statement highlighted his tense relationship with petitioner, there is no evidence in the record that petitioner undertook any actions that prevented or discouraged contact with the child during the relevant period. The father's argument that petitioner failed to engage in diligent efforts to facilitate contact between him and the child also fails as petitioner was under no such obligation (*see Matter of Dreyson HH. [Michael GG.]*, 243 AD3d at 1193; *Matter of Ciara FF. [Robert FF.]*, 235 AD3d at 1164; *Matter of Kamariana SS. [Anthony SS.]*, 227 AD3d at 1167).<sup>5</sup> Accordingly, "[a]s the record fully

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<sup>5</sup> The father contends that a visitation plan should have been established at a dispositional hearing; however, his failure to request such a hearing despite a request from Family Court for written submissions on the issue renders that contention unpreserved (*see Matter of Darius L. [Daniel L.]*, 222 AD3d 1259, 1261 [3d Dept 2023]; *Matter of Mahogany Z. [Wayne O.]*, 72 AD3d 1171, 1173 [3d Dept 2010], *lv denied* 14 NY3d 714 [2010]). In any event, a dispositional hearing is not statutorily required in an abandonment proceeding (*see Matter of Micah L. [Rachel L.]*, 192 AD3d 1344, 1347 n 2 [3d Dept 2021]; *Matter of Mahogany Z. [Wayne O.]*, 72 AD3d at 1173).

supports Family Court's determination that [the father] was able to communicate with the child or petitioner and to visit him and was not prevented or discouraged from doing so by petitioner, we discern no basis upon which to disturb the court's determination that [he] abandoned the child" (*Matter of Dimitris J. [Sarah J.]*, 141 AD3d at 771 [internal citation omitted]; see *Matter of Tiyani AA. [Yani Z.]*, 232 AD3d at 1150; *Matter of Jayce G. [Daniel H.]*, 229 AD3d at 859; *Matter of Richard JJ. [Jennifer II.]*, 218 AD3d 875, 877 [3d Dept 2023], *lv denied* 40 NY3d 906 [2023]; *Matter of Derick L. [Michael L.]*, 166 AD3d 1325, 1328 [3d Dept 2018], *lv denied* 32 NY3d 915 [2019]).

Turning to the father's contention that Family Court erred in permitting him to proceed pro se, "[a] party to a Family Court proceeding who has the right to be represented by counsel may only proceed without counsel if that party has validly waived his or her right to representation" (*Matter of Saber v Saccone*, 192 AD3d 1400, 1402-1403 [3d Dept 2021] [internal quotation marks and citations omitted], *lvs denied* 37 NY3d 909 [2021], 37 NY3d 909 [2021]; see *Matter of Farah B.P. [Dana Z.P.]*, 226 AD3d 905, 906 [2d Dept 2024]). "The hearing court must perform a searching inquiry to determine whether a party is aware of the dangers and disadvantages of proceeding without counsel, which might include inquiry into the party's age, education, occupation, previous exposure to legal procedures and other relevant factors bearing on a competent, intelligent, voluntary waiver" (*Matter of Angela H. v St. Lawrence County Dept. of Social Servs.*, 180 AD3d 1143, 1145 [3d Dept 2020] [internal quotation marks, brackets and citations omitted]; see *Matter of Danyel J. [LeeAnn B.]*, 227 AD3d 1484, 1485 [4th Dept 2024], *lv denied* 42 NY3d 906 [2024]). Family Court, noting that the father had represented himself in a prior proceeding, informed him of the consequences of the proceeding and thoroughly advised him of the pitfalls of continuing pro se, including the fact that he would not be treated differently than those parties that were represented by counsel. On that, the court advised the father that his adversaries in this matter were attorneys with legal training which could put him at a significant disadvantage at trial and, although the father claimed to know the relevant laws and rules, opposing counsel was likely to be more proficient. Family Court further advised the father that he had a right to standby counsel to assist him and could change his mind and ask for counsel at any time.<sup>6</sup> Despite those warnings, the father indicated that he was thinking clearly and was not forced into his decision. On these circumstances, we find no error in Family Court permitting the father to proceed pro se (see *Matter of Cecile D. [Kassia D.]*, 189

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<sup>6</sup> After the hearing, the father advised that he wanted to be assigned counsel and that he wanted a different attorney than the one previously assigned in a prior proceeding. Family Court obliged that request.

AD3d 1036, 1037-1038 [2d Dept 2020], *lvs denied* 36 NY3d 911 [2021]; *Matter of Dakota F. [Angela H.]*, 180 AD3d 1149, 1151 [3d Dept 2020]; *Matter of Lillian SS. [Brian SS.]*, 146 AD3d 1088, 1094-1095 [3d Dept 2017], *lvs denied* 29 NY3d 919 [2017], 29 NY3d 992 [2017]).

The father's remaining argument that Family Court harbored bias against him, as evidenced in its fact-finding order, is unavailing, as there is no indication that the court based its findings pertaining to credibility or abandonment on any improper basis, nor is there any indication that the court had predetermined the outcome of the case (*see Matter of Baby Girl Z. [Yaroslava Z.]*, 140 AD3d 893, 894-895 [2d Dept 2016]; *Matter of Bowe v Bowe*, 124 AD3d 645, 646 [2d Dept 2015]; *see also Memole v Memole*, 63 AD3d 1324, 1326-1327 [3d Dept 2009]). Accordingly, we find no basis to direct that any future proceedings be assigned to a different judge (*compare Matter of Varner v Glass*, 130 AD3d 1215, 1216-1217 [3d Dept 2015]).

Reynolds Fitzgerald, J.P., Ceresia, Mackey and Ryba, JJ., concur.

ORDERED that the appeal from the order entered December 19, 2024 is dismissed, without costs.

ORDERED that the order entered February 28, 2025 is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive style with a large, stylized 'R' and 'M'.

Robert D. Mayberger  
Clerk of the Court