

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

Decided and Entered: July 2, 2026

CV-25-0829

In the Matter of CALOGERO JJ.,
Alleged to be an Abandoned
Child.

ULSTER COUNTY DEPARTMENT
OF SOCIAL SERVICES,
Respondent;

MEMORANDUM AND ORDER

DONOVAN L.,
Appellant.

Calendar Date: May 28, 2026

Before: Garry, P.J., Fisher, Mackey, Corcoran and Ryba, JJ.

Ivy M. Schildkraut, Rock Hill, for appellant.

Ulster County Department of Social Services, Kingston (*Rebecca L. Balzac* of counsel), for respondent.

Betty J. Potenza, Milton, attorney for the child.

Mackey, J.

Appeal from an order of the Family Court of Ulster County (Sarah Rakov, J.), entered April 15, 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 2018). Shortly after the child's birth, the child was placed in foster care, where he has resided with the same foster parents and his half brother since July 2019.¹ In December 2023, a foster care caseworker was assigned to the child and, soon thereafter, repeatedly attempted to establish contact with the father without success. Around the same time, the father petitioned for custody of the child, which petition was later dismissed for failure to appear and prosecute. The caseworker later discovered that the father had been incarcerated and eventually established contact with him in July 2024, at which time the father did not express any interest in contacting the child. Petitioner then filed the instant abandonment petition seeking to terminate the father's parental rights based upon his failure to develop a plan for reunification or to attempt or express interest in contact with the child, despite having been repeatedly offered services to do so. Following a fact-finding hearing, Family Court granted petitioner's application and terminated the father's parental rights. The father appeals.

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 Joseph D. [Joseph PP.]*, 193 AD3d 1290, 1291 [3d Dept 2021] [internal quotation marks and citations omitted]; accord *Matter of Ariana AA. [Luis AA.]*, 241 AD3d 1629, 1630 [3d Dept 2025]). Upon demonstrating 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 Jaxon UU. [Tammy I.-Nicole H.]*, 193 AD3d 1269, 1271 [3d Dept 2021] [internal quotation marks, brackets and citations omitted]). "Parents are presumed able to visit and communicate with their children and, although incarcerated parents may be unable to visit, they are still presumed able to communicate with their children absent proof to the contrary" (*Matter of Ciara FF. [Robert FF.]*, 235 AD3d 1162, 1163 [3d Dept 2025] [internal quotation marks and citations omitted]). "In the context of an abandonment proceeding, the agency is under no obligation to exercise diligent efforts to encourage a parent to establish a relationship with his or her child" (*id.* [internal quotation marks and citations omitted]; see *Matter of Kamariana SS. [Anthony SS.]*, 227 AD3d 1166, 1167 [3d Dept 2024], *lv denied* 42 NY3d 903 [2024]).

¹ The mother's parental rights were terminated by an order entered in August 2024 based upon a finding of permanent neglect.

At the outset, we find no merit in the father's contention that he was deprived of his due process rights based upon Family Court's decision to proceed in the matter despite his absence. Although a parent has a constitutional right "to be present throughout a proceeding implicating the termination of parental rights," we emphasize that "[t]his right to be present, however, is not absolute and must be balanced with the child[]'s right to a prompt and permanent adjudication" (*Matter of Dakota W. [Kimberly X.]*, 189 AD3d 2004, 2005 [3d Dept 2020] [internal quotation marks and citations omitted], *lv denied* 36 NY3d 911 [2021]). At an August 2024 hearing, at which the father and his counsel were present, Family Court scheduled a fact-finding hearing for December 2024, and informed the father that his presence was required. At the scheduled hearing date, respondent failed to appear and his counsel informed the court that he had been unable to make contact with the father and was unaware of his current location, and the court then proceeded with the hearing. Inasmuch as the father was on notice of the hearing and failed to appear without explanation to his counsel or the court, and as he was nevertheless represented by counsel at that hearing, Family Court did not err in continuing with the proceeding in the father's absence, especially considering the child's right to a prompt adjudication of this matter (*see id.*; *Matter of Jasper QQ.*, 64 AD3d 1017, 1019 [3d Dept 2009], *lv denied* 13 NY3d 706 [2009]; *compare Matter of Chloe N. [Joshua N.]*, 143 AD3d 1114, 1116 [3d Dept 2016]).

Insofar as the father contends that Family Court erred in granting the petition, the father does not dispute that he never attempted to visit, send gifts to or communicate with the child during the relevant time period. At the fact-finding hearing, the child's caseworker testified that she had repeatedly attempted to contact the father but received no response. After learning of the father's incarceration, the caseworker was finally able to physically visit with the father – on her third attempt in July 2024 – who expressed that he was not willing to sign a conditional surrender of his parental rights, but also did not make any further inquiry about the child. Upon this record, we find that petitioner demonstrated by clear and convincing evidence the father's failure to contact the child during the requisite time period (*see Matter of Ariana AA. [Luis AA.]*, 241 AD3d at 1630-1631; *Matter of Kamariana SS. [Anthony SS.]*, 227 AD3d at 1168). The burden thus shifted to the father, who in turn failed to present any evidence to establish that he maintained contact with the child or was prevented or discouraged from doing so by petitioner (*see Matter of Dreyson HH. [Michael GG.]*, 243 AD3d 1190, 1193 [3d Dept 2025]; *Matter of Ciara FF. [Robert FF.]*, 235 AD3d at 1163-1164; *Matter of Zakariya HH. [Ahmed II.]*, 192 AD3d 1361, 1363 [3d Dept 2021], *lv denied* 37 NY3d 905 [2021]). Upon this record, "there is no basis upon which to disturb Family Court's decision to terminate the [father's] parental rights to the child on the ground of abandonment" (*Matter of Quannie T. [Miajah R.]*, 226 AD3d 1119, 1122 [3d Dept 2024], *lv denied* 42

NY3d 912 [2025]; *see Matter of Ariana AA. [Luis AA.]*, 241 AD3d at 1630-1631; *Matter of Ciara FF. [Robert FF.]*, 235 AD3d at 1164; *Matter of Micah L. [Rachel L.]*, 192 AD3d 1344, 1346 [3d Dept 2021]).

The father's remaining contentions, to the extent not expressly addressed herein, have been examined and found to be lacking in merit.

Garry, P.J., Fisher, Corcoran and Ryba, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court