

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**402**

**CAF 08-00990**

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND GREEN, JJ.

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IN THE MATTER OF ELEGANT R.C.

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ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,  
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

RICHARD C., RESPONDENT-APPELLANT.

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DAVID J. PAJAK, ALDEN, FOR RESPONDENT-APPELLANT.

JOSEPH T. JARZEMBEK, BUFFALO, FOR PETITIONER-RESPONDENT.

DAVID C. SCHOPP, LAW GUARDIAN, THE LEGAL AID BUREAU OF BUFFALO, INC.,  
BUFFALO (CHARLES D. HALVORSEN OF COUNSEL), FOR ELEGANT R.C.

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Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered April 4, 2008 in a proceeding pursuant to Social Services Law § 384-b. The order, among other things, terminated the parental rights of respondent.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the petition is dismissed.

Memorandum: Respondent father appeals from an order terminating his parental rights with respect to his daughter upon a finding that he abandoned her. We agree with the father that petitioner failed to meet its burden of establishing by clear and convincing evidence that he failed to visit his daughter or to communicate with her or petitioner, although able to do so, "for the period of six months immediately prior to the date on which the petition [was] filed" (Social Services Law § 384-b [4] [b]; see § 384-b [5] [a]; cf. *Matter of Annette B.*, 4 NY3d 509, 513-515, *rearg denied* 5 NY3d 783). The petition was filed on September 19, 2007, but petitioner presented evidence concerning the failure of the father to maintain contact with his daughter beginning only on March 26, 2007, which was less than six months prior to the filing of the petition. We thus conclude that reversal is required.

Entered: March 20, 2009

JoAnn M. Wahl  
Clerk of the Court