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Informational Letter

Transmittal:	12-OCFS-INF-06
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	August 30, 2012
Subject:	Termination of Parental Rights' Effect on Continuing Contact of Birth Parent and Child
Suggested Distribution:	Directors of Social Services Adoption Supervisors Planning Coordinators Staff Development Coordinators
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Attachments:	No
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Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			SSL §384-b SSL §383-c		<i>Matter of Hailey ZZ</i> . (85 AD3d 1265 [3d Dept 2011]); <i>Matter of Kahlil S.</i> (35 AD3d 1164 [4th Dept 2006])

I. Purpose

The purpose of this Informational Letter (INF) is to provide information to local departments of social services (LDSS) and voluntary authorized agencies regarding a recent NYS Court of Appeals decision in the *Matter of Hailey ZZ* (official citation not yet available). The Court of Appeals ruled that the family court may not order continuing contact between a parent and a child once the parent’s rights have been involuntarily terminated pursuant to Social Services Law (SSL) §384-b.

II. Background

Prior to the *Matter of Hailey ZZ* Court of Appeals decision, there was a conflict within the Appellate Divisions on whether the Family Court could direct continuing contact between parent and child once parental rights had been terminated pursuant to SSL §384-b. The First and Third Departments did not allow the Family Court to order parental contact after any termination of parental rights made pursuant to SSL §384-b. The Second Department allowed post-termination contact where parental rights were terminated on the grounds of mental illness and mental retardation when it was in the best interests of the child, and did not unduly burden the adoptive parents, but not where the termination was based on abandonment. The Fourth Department, in the controversial case *Matter of Kahlil S.* (35 AD3d 1164 [4th Dept 2006]), authorized post-termination contact in cases where the parent’s rights were terminated under SSL §384-b for mental illness or mental retardation or after a finding of permanent neglect.

In the *Matter of Hailey ZZ*, the child had entered care from her mother’s home while her father was incarcerated. The LDSS filed petitions against both parents, seeking orders adjudicating Hailey to be permanently neglected, terminating parental rights and committing her guardianship and custody to the LDSS. Hailey’s mother surrendered her parental rights and signed a post-adoption visitation agreement. The LDSS withdrew its petition against the mother, and proceeded with the fact-finding hearing against the father. The lower court determined that the LDSS had made the requisite diligent efforts and that the father had failed to plan for Hailey’s future for more than one year after she came into the LDSS’s care. Therefore, the lower court adjudicated Hailey to be permanently neglected by the father and terminated the

father's parental rights, denying the father's request for continuing visitation. In doing so, the judge noted that Third Department precedent did not allow for a court to mandate continuing contact between a parent and child after parental rights have been involuntarily terminated pursuant to SSL §384-b. The Appellate Division affirmed the lower court, and the Court of Appeals granted the father leave to appeal.

In the *Matter of Hailey ZZ*, the Court of Appeals, referencing a number of its previous decisions, emphasized that the concept of open adoption is clearly contemplated under the voluntary surrender provisions of SSL §383-c, but that SSL §384-b terminates all parental duties, responsibilities and rights. The Court also noted that judicially requiring post-termination contact may be seen as threatening to the integrity of the adoptive family and that such delicate social policy matters are best left to the Legislature. Therefore, the Court concluded that, absent legislative warrant, the Family Court was not authorized to include post-termination contact between parent and child as a condition of a dispositional order pursuant to §384-b of the SSL. Accordingly, the Court affirmed the order of the Third Department Appellate Division, which concluded that "the request for post termination visitation was properly denied as unavailable in a contested termination proceeding."

A copy of the Court of Appeals decision can be read at: <http://law.justia.com/cases/new-york/court-of-appeals/2012/103.html>

III. Program Implications

The NYS Court of Appeals has decided that Family Courts in New York do not have the authority to direct continuing contact between a parent and a child once parental rights are involuntarily terminated pursuant to SSL §384-b. However, parental contact can continue to be part of the voluntary surrender instrument executed pursuant to SSL §383-c.

/s/ Nancy W. Martinez

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