STATE OF NEW YORK
SURROGATE'S COURT COUNTY OF ONEIDA

In the Matter of Adoption of a Child Whose First Name Is

RaSHONDAN

File No. X2015-3

In the Matter of Adoption of a Child Whose First Name Is

NIYANNA

File No. X2015-4

Appearances:

For the Petitioners, Samantha Ann Arscott and Patrick Earl Arscott, Jr. — William L. Koslosky, Esq.

For the Respondent, Kashaun Burks — Gustave J. DeTraglia, Jr., Esq., Oneida County Public Defender - Civil

For the Children, RaShondan and Niyanna — Doreen M. St. Thomas, Esq., Court Appointed Attorney for the Children

DECISION & ORDER

SURROGATE GIGLIOTTI:

Petitioners Samantha Ann Arscott (hereinafter "Mother") and Patrick Earl Arscott, Jr. (hereinafter "Stepfather") filed petitions on February 11, 2015 for the private placement adoption of the Mother's biological children, RaShondan (d/o/b July 27, 2007) and Niyanna (d/o/b August 5, 2009) (hereinafter collectively "Children"). Within their petitions, the Mother and Stepfather allege the consent of the Children's biological father, Kashaun Burks (hereinafter "Father"), who was not married to the Mother at the time of the Children's births, is not required because he abandoned the Children for a period of time in excess of six months. (*See* DRL § 111). The

Father contests this allegation, claiming his attempts to visit with the Children were frustrated by the Mother. A hearing was held on October 20, 2015 and continued on January 7, 2016 and February 10, 2016 to address these contentions. The Mother, Father and Stepfather all testified, as well as two non-party witnesses. No documents were received into evidence. Written summations were subsequently submitted by counsel for the Mother and Stepfather, counsel for the Father, and by the court appointed attorney for the Children. In issuing this Decision, the Court reviewed the totality of the evidence received and gave appropriate weight and consideration to the parties' testimony and veracity.

Consent to adoption is required of a father to a child born out-of-wedlock, when that child has been placed with the proposed adoptive parents more than six months after birth, "but only if such father shall have maintained substantial and continuous or repeated contact with the child as manifested by: (i) the payment by the father toward the support of the child of a fair and reasonable sum, according to the father's means, and either (ii) the father's visiting the child at least monthly when physically and financially able to do so and not prevented from doing so by the person or authorized agency having lawful custody of the child, or (iii) the father's regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child or prevented from doing so by the person or authorized agency having lawful custody of the child." (DRL § 111(1)(d)). The burden of showing "substantial and continuous or repeated contact" rests with the father. (*See Matter of Andrew Peter H.T.*, 64 NY2d 1090, 1091 [1985]; *see also Matter of Angelina K. (Eliza W. - Michael K.*), 105 AD3d 1310, 1311 [4th Dept 2013]).

Examining the Father's evidence in this case, the Court first reviews his history of child

support payments. The Father testified that he is subject to a support order that requires him to pay $120.00 every other week. The Court informed the parties at the conclusion of the hearing that it would judicial notice of said order, which is termed a Modification of Order of Support, filed in Oneida County Family Court on December 14, 2011, entered *In the Matter of a Support Proceeding, Samantha A. Waterman v. Kashaun Burks*, File No. 19363, Docket Nos. F-02857-08/11C. The fact that a support order was issued in Family Court is not by itself sufficient grounds upon which to make a finding against the Father. (*See Matter of Devin F.*, 41 AD3d 1197, 1197 [4th Dept 2007] ["The court properly rejected petitioners' contentions that . . . respondent's payments were not made voluntarily because they were made through a wage deduction order."]).

The Father testified he paid his support obligations during times of employment, but had difficulty paying during times of unemployment. He did not file any petitions to be relieved of his child support obligations. Nor did the Mother file a violation petition for missed payments, although the Department of Social Services did so at one point. The Court takes judicial notice of an Order of Disposition, Violation of Support Order, Non-Willful, filed December 16, 2013, entered in *Matter of a Proceeding for the Support under Article 4 of the Family Court Act, Lucille A. Soldato, Commissioner of Social Services, Assignee o/b/o Samantha A. Waterman v. Kashaun Burks*, File No. 19363, Docket No. F-02857-08/13D. According to the Mother during her testimony, the Father is currently in arrears in an amount approximating $1,300.00. She did acknowledge on cross-examination that the Father has attempted to cure his arrears. The Father emphasized that he also made several cash payments directly to the Mother, at her request, in addition to the ordered support payments. The Mother confirmed she requested and received

direct payments from the Father during times when he was unemployed, without informing the Support Collection Unit because she felt the matter had been worked out between her and the Father.

The Court finds the Father has established a sufficient history of child support payments, as well as a reasonable explanation as to why payments were missed during times of unemployment. "The failure to furnish support, though significant, is not determinative and properly may be explained." (*Matter of Corey L. v. Martin L.*, 45 NY2d 383, 390 [1978]). The proof does not suggest the Father ignored his support obligations, but rather made payments during times of employment, made efforts to bring arrears current after times of unemployment, as well as accommodated the Mother's request for direct payments. (*Cf.*, *e.g.*, *Matter of Blake I. (Richard H. - Neimiah I.)*, 136 AD3d 1190, 1191-92 [3d Dept 2016] [finding the biological father failed to show he satisfied the support requirement of DRL § 111(1)(d), when the father never provided financial assistance for the child and failed to offer proof as to why he could not provide same]; *Matter of John Q. v. Erica R.*, 104 AD3d 1097, 1098-99 [3d Dept 2013] [finding the biological father failed to show he satisfied the support requirement of DRL § 111(1)(d), when the father paid a total of $800.00 over the lifetime of his child who was five at the time the adoption petition was filed, and who provided no explanation as to why he could not pay more]; *Matter of Ethan S. (Tarra C. - Jason S.)*, 85 AD3d 1599, 1599-1600 [4th Dept 2011] [finding the biological father failed to show he satisfied the support requirement of DRL § 111(1)(d), when the father did not provide financial assistance for the child for a period of three years preceding the filing of the adoption petition]). Although the Father has held a number of different jobs for short periods of time, insufficient evidence was provided upon which to draw a negative

inference. For example, the Father testified that one of his jobs was seasonal (which the Mother acknowledged). Relative to another job taken close in time to the start of the hearing in this case, his employer recommended that he resolve his family issues first and then return to work. Nor does the evidence suggest the Father made belated attempts to abide by his support obligations only after learning of the adoption petition. (*See*, *e.g.*, *Matter of Taylor O.P.*, 303 AD2d 1024, 1024 [4th Dept 2003]). Instead, the Mother acknowledged that she asked for and received payments outside the construct of the child support order, believing that she and the Father had worked out matters between themselves.

With the Father having satisfied the first prong of DRL § 111(1)(d), the Court then examines whether the Father submitted sufficient proof to satisfy the communication requirement set forth in the statute. Pursuant to a consent order filed in Oneida County Family Court on February 16, 2014, the Father was to have supervised visitation with the Children for a minimum of two hours per week at the Family Nurturing Center (FNC) or under the supervision of an individual agreed upon by the Mother and the Father. The Court takes judicial notice of this order, entered in *Matter of a Proceeding under Article 6 of the Family Court Act, Samantha Waterman v. Kashaun Burks*, File No. 19363, Docket Nos. V-00883-11/I & V-04149-08/13N. Although the order was signed in February 2014, the agreement was reached by the parties in the summer of 2013. FNC is a division of Kids Oneida. At the hearing, the Father called Margaret Kojac as a witness, who has been the supervisor of the visitation program at Kids Oneida for over 20 years.

According to Ms. Kojac, the Father visited with his Children at FNC on the following dates: June 28, 2013; July 7, 2013; July 15, 2013; July 23, 2013; August 17, 2013; August 24,

2013; September 7, 2013; September 28, 2013; October 5, 2013; October 12, 2013; October 27, 2013; November 16, 2013; November 23, 2013; November 30, 2013; December 7, 2013; December 21, 2013; December 28, 2013; January 11, 2014; and January 18, 2014. She indicated these visits each lasted about an hour. Ms. Kojac testified that at some point in January 2014, the Father asked to increase the length of the visits to two hours to conform more closely to the Family Court consent order. Ms. Kojac explained during her testimony that when a parent requests a change of this nature, FNC looks at its schedule, considers the custodial parent's schedule, and then identifies a date and time to begin implementing the change. In this case, FNC had no success with its attempted contacts to reach the Mother. Ms. Kojac said calls were placed to the Mother on January 29, 2014, January 30, 2014 and January 31, 2014. The Mother's answering machine was full so that no message could be left. FNC then sent a letter on February 12, 2014 to explain that staff was trying to arrange a visit. The Mother testified that she never received any phone calls, messages or this particular letter, although Ms. Kojac stated the letter was not returned as undeliverable.

The Mother did testify to having received a letter from FNC in March 2014, which advised her that visits with the Father were suspended. Ms. Kojac explained that due to tardiness and missed visits, FNC put visits "on hold" so that staff could talk to the Father about reliability and perhaps establish a more consistent visitation schedule. While the Mother testified that she never failed to bring the Children for a scheduled visit at FNC, Ms. Kojac indicated both the Mother and the Father had canceled visits for various reasons. She further indicated that while the Father would be late to some visits, he never exceeded the 15-minute leeway time afforded parents.

Equally important, while visits were placed "on hold," the evidence shows the Father did not stop trying to re-establish opportunities to see the Children through FNC. The Father estimated that at least monthly, he placed calls with FNC to arrange visits, as well as tried to contact the Mother by phone and electronic messaging to encourage her to resume visits through FNC. Ms. Kojac confirmed the Father continuously contacted her secretary, Kathy, to set up visits between February 2014 and August 2014. Ms. Kojac eventually became the contact for the file in September 2014, explaining that she knew the visits were not staying on schedule and wanted to better understand the situation. She testified to having received numerous calls from the Father, including close in time to the hearing conducted in this Court, asking to set up times to see the Children. She herself tried to reach the Mother on several occasions, but could not leave a message because the answering machine was full. The Mother testified that her personal cell phone broke in early December 2014, and she did not replace it for a couple of weeks. The Mother, the Father and Ms. Kojac all testified that on those occasions when the Mother could be reached, the Mother's response was that the Father was suspended from visits and thus it was not her responsibility to contact FNC to schedule any. When the Mother and Father could not agree on a visitation schedule, and after the Mother told Ms. Kojac in February or March 2015 that she was seeking to terminate the Father's parental rights, it appears FNC stopped trying to establish visits. The Father then filed a violation petition in Family Court in April 2015, subsequent to the filing of the instant adoption petitions.

In July 2014, the Father learned of the plans by the Mother and Stepfather to file adoption petitions. The Mother and Stepfather presented this information after the Father failed to show for a visit with the Children that same month, which was arranged directly between him and the

Mother. The Father was to meet the Mother with the Children at the Utica Zoo, but he called to cancel about two hours before the agreed-upon time on the basis that he could not get a ride. The Mother testified that the Father lived only two miles from the Zoo, that he never asked her for a ride, and that he should have known ahead of time to arrange for a ride. The Father testified that the Mother had been inflexible as to scheduling and although he asked to arrange the visit for another time, he agreed to her proposal knowing it would be difficult to attend. Following this missed visit, the Mother and Stepfather invited the Father to meet at a Dunkin' Donuts shop. The Mother testified that when the three of them got together, she and the Stepfather told the Father that the Children were affected by the Father's absences. They presented the Father with paperwork to release his parental rights and consent to an open adoption. According to the Mother, the Father became upset and said they had no right to take the Children from him.

Thereafter, the Father visited the Children's school in the fall of 2014 to learn about their progress in class. He set up a conference with his daughter's teacher. He received information from his son's teacher through the mail. He learned the date of his daughter's graduation from Kindergarten in June 2015 and attended the ceremony. He learned his son had been suspended from school by visiting the school office. He testified that he had purchased gifts for the Children, but had not presented them because there has been no visitation at FNC since January 2014. He asked his own mother, who was given access to the Children by the Mother, for progress reports as to how they were doing.

Caselaw indicates that belated attempts to establish "substantial and continuous or repeated contact" with a child by the natural father, once he has learned of a filed or impending adoption petition, may not be enough to satisfy the requirements of DRL § 111(1)(d). (*See*, *e.g.*,

Matter of Zachary N. (Paul N. - Hope N.), 77 AD3d 1116, 1118 [3d Dept 2010] [noting that the timing of the natural mother's modification and violation petitions in Family Court were for the purpose of blocking the adoption and thus carried little weight in the analysis regarding abandonment]). The Court acknowledges the Father intensified his efforts to learn more about his children through their school after learning the Mother and Stepfather wished to file for adoption. Nevertheless, the Court also finds that based upon the Father's testimony and the corroborating testimony of Ms. Kojac, the Father did make repeated and frequent contact with both the Mother and FNC in an effort to re-establish visits long before learning of the Mother's intent regarding adoption. The Father's inability to meet with the Children at FNC after January 2014 is the result of a multitude of factors, none of which demonstrates a lack of interest or intent on the part of the Father to see the Children.

First, the Mother was unresponsive to overtures to re-establish visits. Regardless whether the Mother intentionally ignored the Father and FNC, or was unaware of the efforts being made to reach her, the Mother noted in her testimony that she consistently referred the Father to FNC after visits were suspended, feeling it was not her responsibility to call FNC. The Father dutifully followed her advice.

Second, finding a mutually agreeable time for visits proved difficult. When the Mother did communicate with FNC about scheduling, she placed a priority on ensuring the Children could attend all of their after-school activities while also keeping a bedtime of 7:30 p.m. The Mother testified that she would not agree to the Father's proposed visitation time of 7:00 p.m. because it was too late in the evening. Further complicating scheduling efforts were the facts that the Mother had a full-time job, including some Saturdays, and was attending classes at Mohawk

Valley Community College. While the Father has not had continuous employment, he has held positions that took him out of the area for work and involved overtime.

Third, once the Mother disclosed to Ms. Kojac that she was seeking to terminate the Father's parental rights, Ms. Kojac testified that she removed herself from the situation. Ms. Kojac also testified that she was spending too much time going back and forth between the Father and efforts to reach the Mother.

Regardless whether any one party is at fault for these complexities, or whether the Mother and/or the Father should have been more accommodating in their scheduling preferences, the reality is that after visits with the Father stopped after January 2014, he persistently tried to reinstate same in the months preceding the meeting at Dunkin' Donuts in July 2014. (*Cf. Angelina K.*, 105 AD3d at 1311-12 [crediting lower court findings that father did not exercise his right to court-awarded visitation and thus did not meet the threshold requirements of DRL § 111(1)(d)]; *John Q.*, 104 AD3d at 1099 [affirming lower court findings that father did not satisfy the communication provision of DRL § 111(1)(d) because he had neither seen the child for approximately two years prior to the filing of the adoption petition, nor made an attempt to contact the child's mother or otherwise locate the child]; *Ethan S.*, 85 AD3d at 1599-1600 [finding the father did not meet his burden under DRL § 111(1)(d) because prior to the filing of the adoption petition, he had not seen his child for over two years, did not communicate with the mother and child for approximately 20 months, and then made few and infrequent contacts in the following months]).

Counsel for the Mother and Stepfather argues in his written summation that the Father's failure to file violation petitions regarding visitation is proof of his disinterest in the Children.

The Father was asked at the hearing as to why he did not utilize Family Court as a means of reinstating visits with the Children. He answered that he did not want to damage further the relationship between him and the Mother. He said he also felt that communicating directly with the Mother to set up visitation times would produce a better outcome for the Children. Moreover, it appears to the Court that both the Mother and the Father had developed a pattern of trying to resolve issues between themselves directly, without resort to court intervention. The Father did not file a violation petition when he was afforded only one hour per week with his Children during his initial visits at FNC. The Mother did not file support order violations when the Father fell behind in payments. Consequently, for the Father subsequently to have tried to increase his visitation schedule by contacting the Mother and working through FNC conforms with past practice. The Court finds no negative inferences should be drawn from the Father's decision to handle matters in this way.

Counsel for the Mother and Stepfather also characterizes the Father as indifferent based upon his missed visit at the Utica Zoo. While an unfortunate outcome, the Court does not have sufficient evidence before it to conclude anything about the Father's state of mind when he called the Mother to report he could not get to the Zoo as originally planned. The Mother's speculation that he did not try hard enough to be there provides an insufficient foundation upon which this Court could infer the Father had no interest in seeing the Children. The record does not disclose why the Father could not get a ride to the Zoo, or where he was located at the time of the scheduled visit. The Father testified that he wanted to arrange the visit for a different date and time, but the Mother would not agree. As noted previously, coming to terms on a visitation schedule has been the root cause of many of the problems highlighted in this case. The Father

did meet with the Mother at her request at Dunkin' Donuts after the missed meeting, which suggests he did not intend to cut off lines of communication.

Considering the totality of the evidence, the Court finds the Father has done more than verbalize a subjective intent to see the Children. (*See* DRL § 111(1)(d) ["The subjective intent of the father, whether expressed or otherwise, unsupported by evidence of acts specified in this paragraph manifesting such intent, shall not preclude a determination that the father failed to maintain substantial and continuous or repeated contact with the child."]). The Father's actions, as substantiated by the testimony received at the hearing, show that he made support payments according to his means, provided an explanation as to certain delinquencies in support payments, saw his Children on a routine basis at FNC from June 2013 through January 2014 until he asked for more time with them in accordance with the terms of the visitation order, regularly communicated with FNC about seeing the Children, regularly communicated with the Mother about seeing the Children when FNC had trouble reaching her, and was prevented from seeing the Children in accordance with the terms of the visitation order when a visitation schedule could not be arranged through FNC. (*See Matter of Ian S.*, 110 AD2d 1046, 1047 [4th Dept 1985] ["There is evidence that the economic situation of the father, his transfer to a job in another town, his lack of transportation and his strained relations with the mother leading to her denial of visitation all contributed to the decline in frequency of the visits."]).

In light of this finding, the burden of proof shifts to the Mother and the Stepfather to show by clear and convincing evidence that the Father forfeited his right to contest the adoption of his Children. (*See Andrew Peter H.T.*, 64 NY2d at 1091; *Matter of Hayley*, 289 AD2d 1077, 1077 [4th Dept 2001]; *Matter of Ezri (Kimberly F. - Alba R.)*, 71 AD3d 472, 472 [1st Dept 2010]

[articulating clear and convincing standard]). This standard is not as stringent as the "beyond a reasonable doubt" standard used in criminal cases, but is more strict than the "preponderance of the evidence" standard used typically in civil cases. (*See Matter of Darius B. (Theresa B.)*, 90 AD3d 1510, 1510 [4th Dept 2011]). Clear and convincing evidence "is neither equivocal nor open to opposing presumptions." (*Id*. at 1510 [internal quotation marks and citation omitted]).

Pursuant to DRL § 111(2)(a), consent is not required of a parent "who evinces an intent to forego his or her parental or custodial rights and obligations as manifested by his or her failure for a period of six months to visit the child and communicate with the child or person having legal custody of the child, although able to do so." As defined by the Court of Appeals, "[a]bandonment, as it pertains to adoption, relates to such conduct on the part of a parent as evinces a purposeful ridding of parental obligations and the foregoing of parental rights – a withholding of interest, presence, affection, care and support." (*Corey L.*, 45 NY2d at 391). The questions raised when a court is asked to terminate parental rights are "of constitutional dimension." (*Id*. at 392).

Based on the record before this Court, the Mother and Stepfather have failed to show by clear and convincing evidence that the Father intended to relinquish his parental rights. Regardless whether the six-month time frame as defined by DRL § 111(2)(a) is measured from the filing date of the adoption petitions, or the July 2014 date when the Father first received the Mother's request to terminate his rights voluntarily, the Father has shown an interest in seeing his Children as outlined earlier in this Decision and as evidenced by his regular contact with the Mother and FNC to re-establish visits. The fact that he did not see them is not outcome-determinative. "[W]hile the court must necessarily consider the nature and extent of the parent's

contacts with the child, its determination in such a case must focus on whether the lack of contact manifests the parent's actual *intent* to abandon the child and his own parental position." (*Matter of Madeline S.*, 3 AD3d 13, 18 [1st Dept 2003] [emphasis in original]).

The Court finds the obstacle to the Father seeing his Children was the Mother's unwillingness to contact FNC when asked to do so, and the eventual decision by FNC to withdraw from efforts to schedule visits. Regardless whether the Mother believed she had a responsibility to call or whether FNC acted reasonably in withdrawing from communications involving the Father and the Mother, the fact of the matter is that the Father could not visit with his Children because of these collective actions. Nor does the Court find that the Father's failure to file a violation petition in Family Court until April 2015 is evidence of an intent to abandon his Children. As explained earlier within this Decision, the Father and the Mother had each established a pattern of attempting to resolve issues informally.

Nor is the Court strictly bound to consider the relationship between the Father and the Children as it existed only in the six-month time frame articulated in DRL § 111(2)(a). (*See Madeline S.*, 3 AD3d at 19-20 ["[T]he court must look at more than [the father's] inaction during the period of alleged abandonment, and the mother's efforts to marginalize his position in his daughter's life; we must also consider [the father's] entire relationship with his daughter."]). In contrast to a situation where a father disavows any paternal relationship to a child, here the Father was involved in the Children's lives from the time of their births. According to the Mother's testimony, the Father resided with her and their older child for at least the first 30 months of the child's life. She also said the Father resided with her when their younger child was born, and he stayed in their household for at least several months thereafter. The Father and

Mother ended their relationship about a year after the younger child was born.

The Father testified that he consented to the supervised visits established in the February 2014 Family Court Order because his living situation was in flux and he wanted the Mother to feel comfortable bringing the Children to visits. He maintained a respectable, although not perfect, record of seeing the Children from late June 2013 through January 2014. The Court acknowledges that the decision by FNC to place visits "on hold" does not reflect favorably upon the Father. Yet at the same time visits were suspended, FNC was also attempting to reach the Mother to schedule expanded visits. The Court infers from these actions, as well as Ms. Kojac's testimony, that the suspension was not intended to deny the Father all future visits with the Children. Instead, it appears FNC was trying to establish a "clean slate" by creating a new visitation schedule the Father could better meet.

Looking at the entirety of his actions, the Court finds an uninterrupted interest on the part of the Father to maintain contact with the Children. (*Cf. Matter of Emma K. (Wendy I. - Matthew K.)*, 132 AD3d 1111, 1112 [3d Dept 2015] [affirming finding of abandonment where the father had not seen the children in the five years preceding the filing of the adoption petitions, had not spoken to the children in the four years preceding the filing of the adoption petitions, and did not rebut the presumption of abandonment invoked by this evidence]; *Matter of Brittany S.*, 24 AD3d 1298, 1299 [4th Dept 2005] [affirming finding of abandonment where the mother failed to visit children in the 11 months preceding the filing of the adoption petitions, sent sporadic correspondence to the children in that same time frame, and never contacted the petitioners with whom the children resided]; *Matter of Taylor O.P.*, 303 AD2d 1024, 1024 [4th Dept 2003] [affirming finding of abandonment where the father sent only a card, a letter and a $35 gift in the

11 month period preceding the adoption petition, and waited to bring his child support arrears current until after learning the adoption petition was filed]). This finding however, is not to be interpreted as an endorsement of the Father's parenting abilities or a criticism of the Stepfather's relationship with the Children. Whether a petitioning party in an adoption can take better care of a child is not grounds for a finding of abandonment against the natural parent. (*See Corey L*, 45 NY2d at 391 ["[T]his court has not hesitated to hold that a parent cannot be displaced because somebody else could do a better job of raising the child."] [internal quotation marks omitted]; *Madeline S.*, 3 AD3d at 17 ["[W]e do not strip natural parents of their position simply because there is someone in the child's life more consistent, considerate and responsible."]).

Nor do the preferences of the Children factor into the Court's analysis. The attorney for the Children in this case advised the Court that the Children expressed to her a desire to be adopted by the Stepfather. The attorney for the Children asked that her judgment be substituted in support of a finding of no abandonment by the Father. "[U]nlike a custody determination, parental rights may not be terminated solely because it is perceived to be in the best interest of the child." (*Matter of Sheila G.*, 61 NY2d 368, 387 [1984]; *see also Corey L.*, 45 NY2d at 391 ["The best interests of the child, as such, is not an ingredient of that conduct [evidencing abandonment] and is not involved in this threshold question."]). As such, the Court assigns no weight to the Children's expressed intent or the preference of their attorney. "While promotion of the best interests of the child is essential to ultimate approval of the adoption application, such interests cannot act as a substitute for a finding of abandonment." (*Corey L.*, 45 NY2d at 391).

After careful consideration of all of the testimony received over the course of the hearing, the Court finds that the Father established his right to consent to the adoption petition filed by the

Mother and the Stepfather, and the Mother and Stepfather failed to establish the Father abandoned his Children. Since the Father's consent is necessary to the adoption, and since he opposes same, it is hereby

ORDERED that the adoption petitions filed in the Matter of RaShondan and Matter of Niyanna are hereby DISMISSED.

This constitutes the Decision and Order of the Court.

Dated: June 9, 2016
Utica, New York

ENTER:

HON. LOUIS P. GIGLIOTTI, SURROGATE