

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

669

CAF 21-01535

PRESENT: WHALEN, P.J., LINDLEY, OGDEN, NOWAK, AND DELCONTE, JJ.

IN THE MATTER OF LIAM M.A.

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

ROBERT A., RESPONDENT-APPELLANT.
(APPEAL NO. 1.)

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

REBECCA HOFFMAN, BUFFALO, FOR PETITIONER-RESPONDENT.

JENNIFER M. LORENZ, ORCHARD PARK, ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), dated May 25, 2021, in a proceeding pursuant to Social Services Law section 383-c. The order denied respondent's motion to vacate a prior conditional judicial surrender order with respect to the subject child.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: In these proceedings pursuant to Social Services Law § 383-c, respondent father appeals in appeal Nos. 1, 2, and 3 from an order and two corrected orders denying his motions seeking to vacate the conditional judicial surrenders that he executed with respect to the three subject children. Initially, with respect to appeal No. 1, Family Court denied the motion at issue in that appeal as moot on the ground that the child who is the subject of that motion has been adopted (*see generally Matter of Jaxon S. [Jason S.]*, 170 AD3d 1687, 1688 [4th Dept 2019]). Inasmuch as the father does not raise any issue in his brief with respect to that dispositive determination, he is deemed to have abandoned any contention with respect to the propriety thereof (*see Liberty Maintenance, Inc. v Alliant Ins. Servs., Inc.*, 215 AD3d 1248, 1248 [4th Dept 2023]; *see generally Matter of Rohrbach v Monaco*, 173 AD3d 1774, 1774 [4th Dept 2019]; *Ciesinski v Town of Aurora*, 202 AD2d 984, 984 [4th Dept 1994]). In light of our determination, we do not address defendant's contentions with respect to appeal No. 1 (*see Liberty Maintenance, Inc.*, 215 AD3d at 1248). With respect to appeal Nos. 2 and 3, we conclude that defendant's contentions are either unreserved or lack merit for the reasons that follow.

The father's contention that the surrenders should be vacated because the court did not inform him of certain consequences of the surrenders pursuant to Social Services Law § 383-c (3) (b) is not preserved for our review inasmuch as the father did not raise that ground in support of his motions (see *Matter of Omia M. [Tykia B.]*, 144 AD3d 1637, 1637 [4th Dept 2016]).

Contrary to the father's further contention, the court properly denied the motions without a hearing because the motions "lacked a legal basis upon which [the c]ourt may have rescinded the judicial surrenders" (*Matter of Brittany R. [Annemarie R.]*, 130 AD3d 1271, 1272 [3d Dept 2015], *lv dismissed* 26 NY3d 996 [2015]). "It is well settled that, in the absence of 'fraud, duress or coercion in the execution or inducement of a surrender[,] [n]o action or proceeding may be maintained by the surrendering parent . . . to revoke or annul such surrender' " (*Omia M.*, 144 AD3d at 1637, quoting Social Services Law § 383-c [6] [d]; see *Brittany R.*, 130 AD3d at 1271). In his motions, the father alleged that certain relatives of the subject children were threatened by a foster parent that they would not see the subject children again if they testified on the father's behalf at a hearing that had been scheduled on petitions seeking the termination of his parental rights with respect to those and other children. However, the father was not aware of those alleged threats at the time he executed the surrenders and they therefore cannot be a valid basis for his contention that he was coerced into signing the surrenders. The father's further allegation that petitioner's caseworker told the father that he faced having his parental rights terminated at the conclusion of the scheduled termination of parental rights hearing was also not a valid basis for vacatur of the surrenders. " '[I]nforming a parent of an accurate, albeit unpleasant, event is not coercion' " (*Matter of Jenny A. v Cayuga County Dept. of Health & Human Servs.*, 50 AD3d 1583, 1583 [4th Dept 2008], *lv dismissed* 11 NY3d 809 [2008]). Moreover, the father indicated during the colloquy with respect to the surrenders that no one was forcing him or threatening him to sign the surrenders (see *Matter of Jason F.A. [Francisco A.]*, 151 AD3d 958, 959 [2d Dept 2017]).

The father's primary allegation in support of the motions was that petitioner failed to meet a material condition of the surrenders with respect to visitation. The court properly noted, however, that the father's remedy with respect to that allegation was to file a petition or petitions pursuant to Family Court Act § 1055-a for enforcement of the surrenders' terms, not to file motions to vacate the surrenders (see *Matter of Sabrina H.*, 245 AD2d 1134, 1134-1135 [4th Dept 1997]). We reject the father's alternative contention that the court should have sua sponte treated his motions as ones for enforcement.