

267 A.D.2d 620  
Supreme Court, Appellate Division,  
Third Department, New York.

In the Matter of William C. WIEGERT, Appellant,  
v.  
Carol C. WIEGERT, Respondent.

Dec. 9, 1999.

### Synopsis

Former husband sought relief from his child support obligation on grounds that his three child refused to communicate with or visit him. The Family Court, Schenectady County, [Reilly, J.](#), denied former husband's application, and former husband appealed. The Supreme Court, Appellate Division, [Mikoll, J.](#), held that former husband failed to show that refusal of his three children to communicate with or visit him was unjustified.

Affirmed.

West Headnotes (3)

#### [1] Child Support

🔑 [Actions of Child Inconsistent with Maintaining Relation](#)

Although a child of employable age who actively abandons the noncustodial parent by refusing all contact and visitation without justification may be deemed to have forfeited his or her right to support, where it is the parent who causes a breakdown in communication with the child through conduct such as malfeasance, misconduct, neglect or abuse, the child's unwillingness to continue the parent-child relationship is justified and will not be deemed abandonment. [McKinney's Family Court Act § 413, subd. 1\(a\)](#).

[8 Cases that cite this headnote](#)

#### [2] Child Support

🔑 [Actions of Child Inconsistent with Maintaining Relation](#)

A noncustodial parent seeking to suspend child support payments on ground of abandonment has the burden to establish the lack of justification for the child's refusal to maintain contact.

[5 Cases that cite this headnote](#)

#### [3] Child Support

🔑 [Actions of Child Inconsistent with Maintaining Relation](#)

#### Child Support

🔑 [Deprivation of Custody or Visitation Rights](#)

Former husband failed to show that refusal of his three children to communicate with or visit him was unjustified, and thus former husband was not entitled to relief from his child support obligation on ground of abandonment, where former husband had physically and emotionally abused children, and former husband was prohibited from contacting children by court order. [McKinney's Family Court Act § 413, subd. 1\(a\)](#).

[1 Cases that cite this headnote](#)

#### Attorneys and Law Firms

**\*\*597** [Elbert H. Watrous Jr.](#), Public Defender, Schenectady, for appellant.

[Carol Carnese Wiegert](#), Schenectady, respondent in person.

[Robert Bixby](#), Law Guardian, Albany, for Joshua L. Wiegert and others.

Before: [CARDONA](#), P.J., [MIKOLL](#), [CREW III](#), [YESAWICH JR.](#) and [MUGGLIN](#), JJ.

#### Opinion

**\*620** [MIKOLL, J.](#)

Appeal from an order of the Family Court of Schenectady County ([Reilly, J.](#)), entered December 10, 1997, which, *inter alia*, denied petitioner's application, in a proceeding

pursuant to Family Court Act article 4, for modification of a prior support order.

Petitioner and respondent are the parents of three children, born in 1980, 1981 and 1982. Prior to the parties' divorce, respondent obtained a temporary order of protection which prohibited petitioner from contacting respondent or the children based upon allegations of physical and emotional abuse. The default judgment of divorce obtained by respondent in February 1997 on the ground of cruel and inhuman treatment \*621 granted respondent sole custody of the parties' children, established an order of child support and further ordered that the temporary order of protection be made permanent for a period of one year. In the ensuing months petitioner filed several applications seeking various forms of relief, including a petition seeking to be relieved of his child support obligation on the ground that the children \*\*598 had abandoned him by refusing all visitation. Following a hearing, Family Court, *inter alia*, dismissed the petition and established respondent's monthly child support obligation. Respondent appeals.

[1] [2] [3] We affirm. Although a child of employable age who actively abandons the noncustodial parent by refusing all contact and visitation without justification may be deemed to have forfeited his or her right to support (see, Family Ct. Act § 413[1][a]; *Matter of Chamberlin v. Chamberlin*, 240 A.D.2d 908, 658 N.Y.S.2d 751), where it is the parent who causes a breakdown in communication with the child through conduct such as malfeasance, misconduct, neglect or abuse, the child's unwillingness to continue the parent-child relationship is justified and will not be deemed abandonment (see, *Matter of Chamberlin v.*

*Chamberlin, supra; Matter of Alice C. v. Bernard G.C.*, 193 A.D.2d 97, 602 N.Y.S.2d 623). Notably, a noncustodial parent seeking to suspend child support payments has the burden to establish the lack of justification for the child's refusal to maintain contact (see generally, *Matter of Mayer v. Strait*, 251 A.D.2d 713, 673 N.Y.S.2d 777).

Here, petitioner failed to offer any evidence to demonstrate that the children were not justified in refusing to communicate or visit with him. In view of this failure, as well as the circumstances giving rise to the order of protection which had been in place for several months prior to petitioner's application, Supreme Court properly concluded that the children's decision to sever their relationship with petitioner was caused by petitioner's own conduct and did not amount to abandonment (see, *Matter of Marotta v. Fariello*, 207 A.D.2d 450, 615 N.Y.S.2d 758; *Matter of Villota v. Zelenak*, 203 A.D.2d 370, 610 N.Y.S.2d 91).

Petitioner's remaining contentions have been reviewed and found to be lacking in merit.

ORDERED that the order is affirmed, without costs.

CARDONA, P.J., CREW III, YESAWICH JR. and MUGGLIN, JJ., concur.

#### All Citations

267 A.D.2d 620, 699 N.Y.S.2d 597, 1999 N.Y. Slip Op. 10519