

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D12234  
O/cb

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Submitted - September 7, 2006

ANITA R. FLORIO, J.P.  
GABRIEL M. KRAUSMAN  
DANIEL F. LUCIANO  
PETER B. SKELOS, JJ.

2005-10598

DECISION & ORDER

In the Matter of Neil M. Siskind, petitioner, v  
Courtney A. Schael, appellant; Roberta Nancy  
Kaufman, Law Guardian for the child,  
nonparty-respondent.

(Index No. V-07484/03/05E)

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Galasso Langione, & Botter, LLP, Garden City, N.Y. (Peter J. Galasso of counsel),  
for appellant.

Roberta Nancy Kaufman, Hickville, N.Y., Law Guardian for the child nonparty-  
respondent.

In a child custody proceeding pursuant to Family Court Act article 6, the mother  
appeals from an order of the Family Court, Nassau County (Jaeger, J.), dated October 18, 2005,  
which, after a hearing, found her in contempt for her willful failure to comply with a prior order of  
the same court dated October 6, 2005, directing her to pay her share of the Law Guardian's fee, and  
ordered her incarceration.

ORDERED that the order is affirmed, with costs.

The Family Court properly found the mother in contempt, and ordered her  
incarceration, for failing to pay her share of the Law Guardian's fee as directed in an order of the  
same court dated October 6, 2005 (*see* Family Ct Act § 156; Judiciary Law § 753[A]). There was  
no dispute that the mother failed to pay the Law Guardian. Proof of noncompliance with the order  
established a prima facie case of criminal contempt, shifting the burden to the mother to establish

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good cause for noncompliance, thereby negating the inference of wilfulness (*see Ferraro v Ferraro*, 272 AD2d 510). Here, the mother had in her possession a bank check for the entire amount owed to the Law Guardian, which belied any claim of an inability to pay (*see Matter of Gerzack v Gerzack*, 87 AD2d 612). Contrary to her contentions, the Family Court gave the mother a reasonable opportunity to pay the amount owed (*see Stempler v Stempler*, 200 AD2d 733).

The mother's remaining contentions are without merit.

FLORIO, J.P., KRAUSMAN, LUCIANO and SKELOS, JJ., concur.

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2005-10598

DECISION & ORDER ON MOTION

In the Matter of Neil M. Siskind, petitioner, v  
Courtney A. Schael, appellant; Roberta Nancy  
Kaufman, nonparty-respondent.

(Index No. V-07484/03/05E)

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Motion by the nonparty-respondent on an appeal from an order of the Family Court, Nassau County, dated October 18, 2005, to strike portions of the appellant's brief on the ground that it raises issues that are not properly before this court. By decision and order on motion of this court dated May 11, 2006, the motion was held in abeyance, and referred to the Justices hearing the appeal for determination upon the argument or submission of the appeal.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the submission of the appeal, it is

ORDERED that those branches of the motion which are to strike Points III and V of the appellant's brief are granted; and it is further,

ORDERED that the motion is otherwise denied.

FLORIO, J.P., KRAUSMAN, LUCIANO and SKELOS, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

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