

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

D13399
G/cb

_____AD3d_____

Submitted - December 1, 2006

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
ROBERT A. LIFSON
JOSEPH COVELLO, JJ.

2005-11299

DECISION & ORDER

In the Matter of Christine G. (Anonymous).
Administration for Children's Services, respondent;
Herbie G. (Anonymous), appellant.

(Docket No. N4042/05)

In the Matter of Michelle G. (Anonymous).
Administration for Children's Services, respondent;
Herbie G. (Anonymous), appellant.

(Docket No. N4043/05)

Carol Kahn, New York, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Edward F.X. Hart and
Marta Ross of counsel), for respondent.

Steven Banks, New York, N.Y. (Tamara Steckler and John A. Newbery of counsel),
Law Guardian for the children.

In related child protective proceedings pursuant to Family Court Act article 10, the father appeals from an order of the Family Court, Queens County (Friedman, J.), dated November 1, 2005, which, after a hearing, determined that he had violated the terms of a temporary order of protection of the same court dated September 12, 2005, and committed him to the New York City Department of Corrections until April 15, 2006.

January 9, 2007

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MATTER OF G. (ANONYMOUS), CHRISTINE

ORDERED that the order is affirmed, without costs or disbursements.

The father contends that the Family Court erred in ordering his incarceration for a period of less than six months upon a finding that he willfully and without just cause violated an order of protection. This issue has not been rendered academic by reason of the expiration of the period of incarceration (*see Matter of Bickwid v Deutsch*, 87 NY2d 862; *Matter of Zullo v Hom*, 10 AD3d 614, 616). However, the father's contentions are without merit. The petitioner established by a fair preponderance of the evidence that the father violated the order of protection, as the record showed that, after having been apprised repeatedly by the Family Court that the order of protection required that he stay at least 250 feet away from the mother and two daughters, the father approached the mother and children three times, on one occasion coming as close as four or five feet to the mother. Thus, the Family Court properly determined that the father violated the order of protection (*see* Family Court Act § 1072; *Matter of Sarmuksnis v Priest*, 21 AD3d 381, 382; *Matter of Department of Social Servs. [Sasha Q.]*, 228 AD2d 677, 677-678; *Matter of Fulton County Dept. of Social Servs. v Leon MM*, 207 AD2d 576, 576-577), and in ordering him incarcerated for a period of less than six months (*see* Family Court Act § 1072; *Matter of Fulton County Dept. of Social Servs. v Leon MM*, *supra*).

SCHMIDT, J.P., SANTUCCI, LIFSON and COVELLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court