

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

D14392  
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Argued - February 13, 2007

HOWARD MILLER, J.P.  
ROBERT A. SPOLZINO  
GLORIA GOLDSTEIN  
WILLIAM E. McCARTHY, JJ.

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2006-06215

DECISION & ORDER

In the Matter of Ben Scott, appellant, v  
Lena Jackson, respondent.

(Docket Nos. V-06937-05, V-06938-05, V-06939-05,  
V-29416-04, V-29417-04, V-29418-04)

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

Carol Sherman, Brooklyn, N.Y. (Janet Neustaetter and Barbara H. Dildine of  
counsel), Law Guardian for the child.

In related visitation proceedings pursuant to Family Court Act article 6, the father  
appeals from an order of the Family Court, Kings County (O’Shea, J.), dated May 31, 2006, which,  
without a hearing, in effect, granted the mother's motion to dismiss the proceedings for lack of  
continuing jurisdiction pursuant to Domestic Relations Law § 76-a.

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

It is undisputed that the mother and the child have resided in Connecticut since  
September 2002. The father nevertheless argues that the Family Court retained “exclusive,  
continuing jurisdiction” (Domestic Relations Law § 76-a) with respect to these visitation proceedings,  
which were commenced on October 15, 2005, on the basis of either a temporary order of protection  
that was issued by the same court (Yuskevich, Ct. Atty. Ref.) on February 13, 2002, or a permanent  
order of protection issued in a criminal action by the Supreme Court, Kings County (Lott, J.), on June  
17, 2003. Pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (hereinafter  
UCCJEA) (*see* Domestic Relations Law § 75-a et seq.), a New York court that has issued an initial

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custody determination retains exclusive, continuing jurisdiction with respect to issues of custody and visitation, except in certain circumstances specified in the statute (*see* Domestic Relations Law § 76-a[1][a], [b]). Contrary to the father's argument, however, neither of the orders of protection constitutes an initial custody determination upon which exclusive, continuing jurisdiction may be predicated. For the purpose of the UCCJEA, the term "child custody determination" means "a judgment, decree or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child" (*see* Domestic Relations Law § 75-a[3]). Neither the temporary order of protection nor the permanent order of protection took any such action. As a result, neither order can provide a basis for exclusive, continuing jurisdiction to support the petitions here. Therefore, the Family Court, in effect, correctly dismissed the proceedings for lack of jurisdiction.

MILLER, J.P., SPOLZINO, GOLDSTEIN and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court