

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

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_____AD3d_____

Submitted - September 11, 2007

HOWARD MILLER, J.P.
PETER B. SKELOS
JOSEPH COVELLO
WILLIAM E. McCARTHY, JJ.

2007-01212

DECISION & ORDER

In the Matter of Neil Gebaide, respondent,
v Susan Gebaide, appellant.

(Docket No. V-5717-02)

Law Offices of John P. DiMascio & Associates, LLP, Garden City, N.Y. (Theresa A. Spinillo of counsel), for appellant.

Jaspan Schlesinger Hoffman LLP, Garden City, N.Y. (Alan K. Hirschhorn and Lisa M. Golden of counsel), for respondent.

In a proceeding pursuant to Family Court Act article 6, the mother appeals, as limited by her brief, from so much of an order of the Family Court, Nassau County (Phillips, Ct. Atty. Ref.), dated December 18, 2006, as, upon vacating an order of the same court dated November 27, 2006, granting her motion for an award of counsel fees upon the father's default, denied, without a hearing, her motion for counsel fees.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

The Family Court has the power to award counsel fees in a custody matter pursuant to Domestic Relations Law § 237(b) (*see Matter of Sullivan v Sullivan*, 40 AD3d 865; *Matter of Belle v DeMilia*, 19 AD3d 691, 691-692). The court should award counsel fees, in its discretion, as "justice requires, having regard to the circumstances of the case and of the respective parties" (Domestic Relations Law § 237[b]; *see Matter of Sullivan v Sullivan*, 40 AD3d 865; *Matter of Grald v Grald*, 33 AD3d 922, 923; *Matter of Dalessandro v O'Brien*, 285 AD2d 592, 593). Considering

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all of the circumstances of this case, the Family Court providently exercised its discretion in denying, without a hearing, the mother's motion for an award of counsel fees.

MILLER, J.P., SKELOS, COVELLO 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