

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

D16765
O/kmg

_____AD3d_____

Submitted - October 11, 2007

A. GAIL PRUDENTI, P.J.
STEVEN W. FISHER
MARK C. DILLON
THOMAS A. DICKERSON, JJ.

2006-11101

DECISION & ORDER

In the Matter of Tanisea F. (Anonymous).
Administration for Children's Services, appellant;
Wayne F. (Anonymous), respondent.

(Docket No. 04538/06)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and Susan B. Eisner of counsel), for appellant.

Steven Banks, New York, N.Y. (Gary Solomon of counsel), Law Guardian for the child.

In a child protective proceeding pursuant to Family Court Act article 10, the petitioner appeals from an order of the Family Court, Queens County (Salinitro, J.), dated November 2, 2006, which directed it to pay the father's attorney's fee arising from an October 26, 2006, court appearance wherein it was not ready to proceed with a scheduled permanency planning hearing.

ORDERED that the order is reversed, on the facts and in the exercise of discretion, without costs or disbursements.

The Family Court improvidently exercised its discretion in directing the Administration for Children's Services (hereinafter ACS) to pay the father's attorney's fee arising from an October 26, 2006, court appearance wherein ACS was not ready to proceed with a scheduled permanency planning hearing. An award of an attorney's fee is not justified where, as here, the ACS attorney's conduct was not "frivolous" as defined in 22 NYCRR 130-1.1(a) (*cf. Brocklebank v City of Lockport*,

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198 AD2d 906), and the ACS attorney did not fail to appear as defined in 22 NYCRR 130-2.1 (*see Matter of Premo v Breslin*, 89 NY2d 995, 997). In any event, the Family Court imposed the sanction without giving the ACS attorney any opportunity to be heard on the question of whether, and to what extent, sanctions were appropriate (*see* 22 NYCRR 130-1.1[d]; 130-2.1[d]).

PRUDENTI, P.J., FISHER, DILLON and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court