

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

D18463
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_____AD3d_____

Submitted - February 21, 2008

A. GAIL PRUDENTI, P.J.
HOWARD MILLER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2007-00587
2007-02330

DECISION & ORDER

In the Matter of Brian G. Reilly, respondent,
v Carole A. Reilly, appellant.

(Docket No. V-1823-01)

Carol Kahn, New York, N.Y., for appellant, and appellant pro se.

Brian G. Reilly, Fishkill, N.Y., respondent pro se.

Diane P. Foley, Wappingers Falls, N.Y., attorney for the child.

In a proceeding pursuant to Family Court Act article 6, the mother appeals from (1) an order of the Family Court, Dutchess County (Amodeo, J.), dated January 29, 2007, which, upon the consent of the parties, inter alia, established a new visitation schedule for the father, and (2) an order of the same court dated November 27, 2006, which denied her motion for an award of an attorney's fee pursuant to 22 NYCRR 130-1.1.

ORDERED that the appeal from the order dated January 29, 2007, is dismissed, without costs or disbursements; and it is further,

ORDERED that the order dated November 27, 2006, is affirmed, without costs or disbursements.

Where, as here, an order recites that it is made on consent, it is not appealable (*see Matter of Gittens v Chin-On*, 19 AD3d 596; *Matter of Polyak v Toyber*, 2 AD3d 642; *Matter of*

March 25, 2008

Page 1.

MATTER OF REILLY v REILLY

Brouwer v Pacicca, 291 AD2d 448, 449). To the extent that the appellant challenges the recitation of consent as it appears on the order dated January 29, 2007, her remedy is to move in Family Court to vacate or resettle the order (see *Matter of Polyak v Toyber*, 2 AD3d at 642-643; *Matter of Ras v Rupp*, 295 AD2d 892, 893; *Matter of Brouwer v Pacicca*, 291 AD2d at 449; *Nayman v Remsen Apts.*, 125 AD2d 378, 382).

Since the mother moved for an award of an attorney's fee pursuant to 22 NYCRR 130-1.1, her contention that she is entitled to such an award pursuant to Domestic Relations Law § 237(b) is not properly before this Court. Moreover, her contention is based on matter that is dehors the record.

PRUDENTI, P.J., MILLER, DILLON and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court