

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

D18475
C/hu

_____AD3d_____

Submitted - January 25, 2008

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
ROBERT A. SPOLZINO
THOMAS A. DICKERSON, JJ.

2006-08605
2006-08609
2006-08610

DECISION & ORDER

In the Matter of Traci Iorio, et al., respondents, v
Joseph Hyler, appellant.

(Docket No. O-13144-05)

In the Matter of Joseph Hyler, appellant,
v Traci Iorio, respondent.

(Docket No. V-5772/3-04/05A)

In the Matter of Joseph Hyler, appellant, v
John Iorio, respondent.

(Docket No. V-5772/-3/04/05B)

In the Matter of Joseph Hyler, appellant, v
Traci Iorio, respondent.

(Docket No. V-5772/3-04/05C)

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In the Matter of Joseph Hyler, appellant, v
John Iorio, respondent.

(Docket No. V-5772/3-04/05D)

In the Matter of John Iorio, et al., respondents, v
Joseph Hyler, appellant.

(Docket No. V-5772/3-04/05E)

Helene Migdon Greenberg, Elmsford, N.Y., for appellant.

George E. Reed, Jr., White Plains, N.Y., for respondent Traci Iorio.

Lisa F. Colin, White Plains, N.Y., attorney for the children.

In a family offense proceeding pursuant to Family Court Act article 8, and five related child custody and visitation proceedings pursuant to Family Court Act article 6, Joseph Hyler appeals from (1) an order of the Family Court, Westchester County (Duffy, J.), dated August 7, 2006, which, after a hearing, granted the petition of Joseph Iorio and Traci Iorio to modify an order of the same court dated June 17, 2004, inter alia, awarding sole custody of the subject children to them and granting him unsupervised visitation with the subject children, to the extent of terminating his unsupervised visitation with the subject children, granting him only supervised visitation with the subject children, and directing him to pay the costs and expenses associated with supervised visitation, (2) an order of the same court also dated August 7, 2006, which, upon a finding, after a hearing, that he had committed the family offenses of disorderly conduct and harassment in the second degree, granted Traci Iorio, John Iorio, Jr., and Caitlyn Iorio an order of protection directing him, among other things, to stay away from them until May 22, 2007, and (3) an order of the same court entered August 8, 2006, which, after a hearing, inter alia, dismissed his petitions to modify the order dated June 17, 2004.

ORDERED that the appeals are dismissed, without costs or disbursements.

By order dated June 17, 2004, the Family Court, Westchester County, inter alia, awarded sole custody of the subject children to Joseph Iorio and Traci Iorio, and granted the appellant unsupervised visitation. In the first order appealed from dated August 7, 2006, the June

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17, 2004, order was modified so as to grant the appellant only supervised visitation with the subject children. That order was modified by a subsequent order of the same court entered March 5, 2007, which directed that the appellant have therapeutic supervised visitation with the subject children. On September 18, 2007, the parties and the attorney for the children consented on the record that the appellant have supervised visitation with the subject children. On the same day, the Family Court issued an order directing that the appellant's visitation merely be supervised. Therefore, as the first order dated August 7, 2006, and the order entered August 8, 2006, inter alia, dismissing petitions to modify the order dated June 17, 2004, have been superseded by the order dated September 18, 2007, the appeals from these orders have been rendered academic (*see Matter of Baker v Ratoon*, 251 AD2d 921, 922; *see also Matter of Paoli v Paoli*, 29 AD3d 804).

The appellant has raised no issue with respect to the second order dated August 7, 2006, granting an order of protection against him. Accordingly, he has abandoned the appeal from that order (*see* 22 NYCRR 670.8[e]; *Matter of Rebecca O. v Todd C.*, 309 AD2d 982, 983).

We note that the appellant's arguments regarding the order of the Family Court, Westchester County, entered March 5, 2007, are not properly before this Court, as he did not appeal from that order (*see Matter of Ashley S.*, 129 AD2d 581).

MASTRO, J.P., RIVERA, SPOLZINO and DICKERSON, JJ., concur.

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DECISION & ORDER ON MOTION

In the Matter of Traci Iorio, et al., respondents, v
Joseph Hyler, appellant.

(Docket No. O-13144-05)

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John Iorio, respondent.

(Docket No. V-5772/3-04/05D)

In the Matter of John Iorio, et al., respondents, v
Joseph Hyler, appellant.

(Docket No. V-5772/3-04/05E)

Motion by the respondent Traci Iorio, inter alia, to dismiss appeals from two orders of the Family Court, Westchester County, both dated August 7, 2006, and an order of the same court entered August 8, 2006. By decision and order on motion of this Court dated November 9, 2007, that branch of the motion which was to dismiss the appeals was held in abeyance and was referred to the Justices hearing the appeals for determination upon the argument or submission thereof.

Upon the papers submitted in support of the motion, the papers submitted in opposition thereto, and upon the submission of the appeals, it is

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ORDERED that the branch of the motion which is to dismiss the appeals is denied as academic in light of our determination of the appeals (*see Matter of Iorio v Hyler*, _____AD3d _____ [decided herewith]).

MASTRO, J.P., RIVERA, SPOLZINO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

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