

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

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REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
HOWARD MILLER, JJ.

2007-04525

DECISION & ORDER ON MOTION

In the Matter of Ann Kelly, respondent,
v Gerald Johnson, appellant.

(Docket No. F-8476/06)

Motion by the appellant on an appeal from an order of the Family Court, Nassau County, dated March 30, 2007, in effect, for summary reversal of the order dated March 30, 2007, and to remit the matter to the Family Court, Nassau County, for a new hearing and determination of the petition. By decision and order on motion dated April 29, 2008, this Court granted the appellant's motion "to re-hear the petition" to the extent of directing a reconstruction hearing of the proceedings that occurred before the Family Court, Nassau County, resulting in the order dated March 30, 2007. By order dated May 19, 2008, the Family Court, Nassau County, determined that reconstruction of the proceedings was not possible.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is granted; and it is further,

ORDERED that the order dated March 30, 2007, is summarily reversed, without costs or disbursements, and the matter is remitted to the Family Court, Nassau County, for a new hearing and determination of the petition.

The appeal is from an order of the Family Court, Nassau County, which granted the petitioner's objection to an order of a Support Magistrate denying her petition to direct the appellant to contribute to the college expenses of the parties' child to the extent of remitting the matter to the

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Support Magistrate to calculate the appellant's share of college expenses. The appellant moved for a new hearing after it was determined that the proceedings that occurred before the Support Magistrate could not be transcribed. This Court granted the motion to the extent of directing a reconstruction hearing. By order dated May 19, 2008, the Family Court, Nassau County, determined that reconstruction of the hearing minutes was not possible, and the appellant now moves, in effect, for summary reversal and to remit the matter to that court for a new hearing and determination of the petition. Under the circumstances, the petitioner is entitled to summary reversal of the order and a new hearing and determination of the petition.

RIVERA, J.P., LIFSON, SANTUCCI and MILLER, 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