

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

D23087
W/kmg

_____AD3d_____

Argued - April 2, 2009

PETER B. SKELOS, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2008-09502

DECISION & ORDER

In the Matter of Kevin A. (Anonymous),
respondent; Presentment Agency, appellant.

(Docket No. D-17297-08)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Leonard Koerner and
Ronald E. Sternberg of counsel), for appellant.

Richard J. Cardinale, Brooklyn, N.Y., for respondent.

In a juvenile delinquency proceeding pursuant to Family Court Act article 3, the Presentment Agency appeals from an order of the Family Court, Queens County (Bogacz, J.), dated September 15, 2008, which, after a hearing, granted that branch of the respondent's renewed motion which was to dismiss the petition for facial insufficiency, and dismissed the petition without prejudice.

ORDERED that the order is reversed, on the law and on the facts, without costs or disbursements, that branch of the respondent's renewed motion which was to dismiss the petition for facial insufficiency is denied, the petition is reinstated, and the matter is remitted to the Family Court, Queens County, for further proceedings on the petition.

Contrary to the determination of the Family Court, there is no basis to conclude, based upon facts adduced at the hearing held on September 11, 2008, in the companion case of *Matter of Brian Z.* (_____AD3d_____ [Appellate Division Docket No. 2008-09505; decided herewith]), that the sworn statement contained in the petition describing the respondent's conduct would "suggest defiance of the accepted laws of physics, such that [the Family Court should have] dismissed that petition for facial insufficiency." Therefore, it was error for the court to have

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dismissed the petition in the instant proceeding on that basis.

The petitioner's remaining contentions are without merit.

SKELOS, J.P., FLORIO, LEVENTHAL and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court