

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

D23088
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_____AD3d_____

Argued - April 2, 2009

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

2008-09505

DECISION & ORDER

In the Matter of Brian Z. (Anonymous),
respondent; Presentment Agency, appellant.

(Docket No. D-17298-08)

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

Steven Banks, New York, N.Y. (Tamara Steckler and Marcia Egger of counsel), 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 11, 2008, which, after a hearing, granted that branch of the respondent's 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 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 that the "rock [allegedly thrown by the respondent] would have been violating the laws of physics to travel in the manner in which it's described in the supporting [sworn statement]" or that the "[sworn statement] does not speak of multiple rocks." Thus, the Family Court erred in dismissing the petition on the ground that it was facially insufficient, a conclusion supported only by the court's erroneous

May 5, 2009

Page 1.

MATTER OF Z. (ANONYMOUS), BRIAN

determination that the subject incident could not have occurred in the manner described in the sworn statement.

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, flowing style.

James Edward Pelzer
Clerk of the Court