

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

D23162
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_____AD3d_____

Argued - April 6, 2009

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
LEONARD B. AUSTIN, JJ.

2008-04964

DECISION & ORDER

In the Matter of Mayra C. (Anonymous), respondent,
v Derek C. (Anonymous), appellant.

(Docket No. P-32409-06)

Yasmin Daley Duncan, Brooklyn, N.Y., for appellant.

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

Karen P. Simmons, Brooklyn, N.Y. (Janet Neustaetter and Barbara H. Dildine of counsel), attorney for the child.

In a proceeding pursuant to Family Court Act article 5 to establish paternity and for an award of child support, the putative father appeals from an order of the Family Court, Kings County (Grosvenor, J.), dated April 18, 2008, which denied his objections to an order of the same court (Shamahs, S.M.), dated October 11, 2007, determining, after a hearing, that he is the father of the subject child.

ORDERED that on the Court's own motion, the notice of appeal from the order is deemed to be an application for leave to appeal, and leave to appeal is granted (*see* Family Ct Act § 1112; *Matter of Jane PP. v Paul QQ.*, 64 NY2d 15); and it is further,

ORDERED that the order is affirmed, without costs or disbursements.

Contrary to the appellant's contention, the Family Court properly determined that the doctrine of equitable estoppel was inapplicable under the circumstances of this case (*see Matter of*

May 19, 2009

Page 1.

MATTER OF C. (ANONYMOUS) v C. (ANONYMOUS)

Kump v Basnight, 297 AD2d 639; *Matter of Walker v Covington*, 287 AD2d 572, 572-573). In addition, the record supports the Support Magistrate's conclusion that the petitioner established, by clear and convincing evidence (see *Matter of Commissioner of Social Servs. v Philip De G.*, 59 NY2d 137, 141-142), that the appellant is the father of the subject child (see Family Ct Act § 532[a]; *Matter of Department of Social Servs. v John James H.*, 249 AD2d 545, 546). Accordingly, the Family Court properly denied the appellant's objections to the Support Magistrate's order.

MASTRO, J.P., COVELLO, BALKIN and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court