

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

D23946  
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Submitted - June 11, 2009

ROBERT A. SPOLZINO, J.P.  
FRED T. SANTUCCI  
ANITA R. FLORIO  
PLUMMER E. LOTT, JJ.

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2008-04757

DECISION & ORDER

In the Matter of Herbert McMillian, appellant,  
v Mae Rizzo, respondent.

(Docket No. V-10492-02)

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Tennille M. Tatum-Evans, New York, N.Y., for appellant, and appellant pro se.

In a visitation proceeding pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Queens County (Negron, Ct. Atty. Ref.), dated April 21, 2008, which dismissed his petition. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738) and moves to be relieved of the assignment to prosecute the appeal.

ORDERED that the appeal is dismissed as academic, without costs or disbursements; and it is further,

ORDERED that assigned counsel's application for leave to withdraw as counsel is dismissed as academic.

The Family Court can direct visitation only with minor children, who are defined under the Family Court Act as "person[s] who [have] not attained the age of eighteen years" (Family Ct Act § 119; *see* Family Ct Act § 651; *Matter of Lozada v Pinto*, 7 AD3d 801, 801). Inasmuch as the subject child is now over 18 years of age, the appeal must be dismissed as academic (*see Matter of McGovern v Lynch*, 62 AD3d 712; *Matter of Metcalf v Odums*, 35 AD3d 865, 866; *Matter of Lozada*

August 25, 2009

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*v Pinto*, 7 AD3d at 801; *Matter of Lisnitzer v Lisnitzer*, 119 AD2d 576, 576; *cf. Matter of Kmea J.*, 54 AD3d 376, 376).

SPOLZINO, J.P., SANTUCCI, FLORIO and LOTT, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court