

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

D23953
G/prt

_____AD3d_____

Submitted - June 22, 2009

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
MARK C. DILLON
JOSEPH COVELLO, JJ.

2008-08634
2008-08937

DECISION & ORDER

In the Matter of Brian G. Reilly, respondent,
v Carole A. Reilly, appellant.

(Docket No. V-01823-01)

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

Brian G. Reilly, Fishkill, N.Y., respondent pro se.

Amy L. Colvin, Halesite, N.Y., attorney for the child.

In a proceeding pursuant to Family Court Act article 6, the mother appeals (1) from an order of the Family Court, Dutchess County (Amodeo, J.), dated September 15, 2008, which denied her motion, denominated as one for leave to renew that branch of her prior motion which was for an award of an attorney's fee, but which was, in actuality, one for leave to reargue, and (2), as limited by her brief, from so much of an order of the same court, also dated September 15, 2008, as denied her motion for an award of an attorney's fee pursuant to 22 NYCRR 130-1.1.

ORDERED that the appeal from the first order dated September 15, 2008, is dismissed, without costs or disbursements; and it is further,

ORDERED that the second order dated September 15, 2008, is affirmed insofar as appealed from, without costs or disbursements.

An order denying a motion for leave to reargue is not appealable (*see e.g. Maroney v Hawkins*, 50 AD3d 862, 863).

July 14, 2009

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MATTER OF REILLY v REILLY

Contrary to the mother's contention, the Family Court providently exercised its discretion in denying her motion for an award of an attorney's fee pursuant to 22 NYCRR 130-1.1 (see *Matter of Gold v Gold*, 53 AD3d 485, 488; *Harris v Hallberg*, 36 AD3d 857, 859).

The remaining contention of the attorney for the child is not properly before us on this appeal.

SPOLZINO, J.P., SKELOS, DILLON and COVELLO, 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