

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

D25376  
C/kmg

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Submitted - October 16, 2009

JOSEPH COVELLO, J.P.  
FRED T. SANTUCCI  
CHERYL E. CHAMBERS  
PLUMMER E. LOTT, JJ.

2008-07143

DECISION & ORDER

In the Matter of Harry Norton, on behalf of Tyler  
Harry Norton, appellant, v Jaime Szewczyk, a/k/a  
Jaime Santaniello, respondent.

In the Matter of Harry Norton, appellant,  
v Jaime Szewczyk, a/k/a Jaime Santaniello,  
respondent.

(Docket Nos. V-3956-06/08A, V-3956-06/08B)

Jason Bassett, Central Islip, N.Y, for appellant.

Nanci Hirsch, Hauppauge, N.Y., for respondent.

In a habeas corpus proceeding pursuant to Domestic Relations Law § 70 and a related proceeding pursuant to Family Court Act article 6, in which the father alleges that the mother willfully violated an order of visitation of the Family Court, Suffolk County (Freundlich, J.), dated April 25, 2006, the father appeals from an order of the same court (Tarantino, J.), dated June 30, 2008, which, in effect, dismissed the petitions without prejudice.

ORDERED that the order dated June 30, 2008, is reversed, on the law, without costs or disbursements, the petitions are reinstated, and the matter is remitted to the Family Court, Suffolk County, for further proceedings consistent herewith.

In 2002 the parties' child was born in New York. On April 25, 2006, the Family

December 15, 2009

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MATTER OF HARRY NORTON, on behalf of TYLER HARRY NORTON  
v SZEWCZYK, a/k/a SANTANIELLO  
MATTER OF NORTON v SZEWCZYK, a/k/a SANTANIELLO

Court, Suffolk County, entered an order, upon the parties' stipulation, which gave the mother sole custody of the child and provided the father with "liberal rights of visitation." Thereafter, the mother relocated with the child to Vermont. At some point, the mother married and her husband wanted to adopt the child. In 2008 the mother and her husband commenced an adoption proceeding in the Vermont Probate Court. The father objected to the adoption proceeding, and, on June 25, 2008, he filed a violation petition in the Family Court, Suffolk County, wherein he alleged that the mother's out-of-state move deprived him of his visitation rights. He also filed a petition for a writ of habeas corpus. The Family Court, in effect, dismissed the petitions without prejudice on the basis that Vermont would be a better forum to determine the issues raised in the petitions. We reverse.

Since the initial child custody and visitation order was made by a New York court, the court should not have, in effect, dismissed the petitions without first determining whether it had exclusive, continuing jurisdiction over the visitation issue pursuant to Domestic Relations Law § 76-a(1) (*see Matter of Recard v Polite*, 21 AD3d 379; *Matter of Greenidge v Greenidge*, 16 AD3d 583, 584). Relevant to that determination, the court must consider whether the child and his mother lacked a significant connection with New York, or whether substantial evidence was no longer available in New York concerning the child's care, protection, training, and personal relationships (*see* Domestic Relations Law § 76-a[1][a]). As the parties were not given an opportunity to submit evidence on the issue of jurisdiction, the petitions must be reinstated and the matter remitted to the Family Court, Suffolk County, for a determination on the issue of jurisdiction, and for further proceedings thereafter, if necessary.

COVELLO, J.P., SANTUCCI, CHAMBERS and LOTT, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court