

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

D27985
H/kmg

_____AD3d_____

Submitted - June 7, 2010

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
THOMAS A. DICKERSON
JOHN M. LEVENTHAL, JJ.

2009-10429

DECISION & ORDER

In the Matter of Richard B. Dorf, petitioner, v
Ruth E. Alvalle, appellant; attorney for the child,
nonparty-respondent.

(Docket No. V-783/07/09J)

Bryan L. Salamone & Associates, P.C., Melville, N.Y. (Philip A. Kusnetz of counsel),
for appellant.

Paraskevi Zarkadas, P.C., Centereach, N.Y., for petitioner.

In a proceeding pursuant to Family Court Act article 6, the mother appeals, as limited by her brief, from so much of an order of the Family Court, Suffolk County (Tarantino, Jr., J.), dated November 10, 2009, as, after a hearing, in effect, granted that branch of the motion of the attorney for the child which was to hold her in contempt for violating a prior order dated May 20, 2008, on the ground that she violated the terms and conditions thereof, and committed her to the Suffolk County Jail for a term of 10 days. By decision and order on motion dated December 4, 2009, enforcement of the order appealed from was stayed pending hearing and determination of the appeal.

ORDERED that the order dated November 10, 2009, is reversed insofar as appealed from, on the law, with costs, and that branch of the motion of the attorney for the child which was to hold the mother in contempt for violating the order dated May 20, 2008, is denied.

The evidence at the hearing did not establish, beyond a reasonable doubt, that the mother willfully violated a prior order of the court by depriving the father of certain visitation time with the parties' child (*see Matter of Rubackin v Rubackin*, 62 AD3d 11, 15; *Matter of Anonymous*

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v Anonymous, 222 AD2d 501). Accordingly, the Family Court erred in holding the mother in contempt and directing that she be incarcerated.

SKELOS, J.P., SANTUCCI, DICKERSON and LEVENTHAL, 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