

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

D28613
C/kmg

_____AD3d_____

MARK C. DILLON, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
SANDRA L. SGROI, JJ.

2010-08349

DECISION & JUDGMENT

In the Matter of Henry Rubio, petitioner,
v Timothy Flaherty, etc., respondent;
Rosemary Torres, also known as Rosemary
Rubio, et al., nonparties.

Stephen David Fink, Forest Hills, N.Y., for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Susan Anspach of counsel),
for respondent.

Nestor Soto, Astoria, N.Y., for nonparty Rosemary Torres, also known as Rosemary
Rubio.

Cheryl L. Krieger-Grella, Jericho, N.Y., nonparty attorney for the child.

Proceeding pursuant to CPLR article 78, inter alia, to prohibit the respondent Timothy Flaherty, a Justice of the Supreme Court, Queens County, from allowing the subject child to return to the State of North Carolina.

ADJUDGED that the petition is denied and the proceeding is dismissed on the merits, without costs or disbursements.

“Because of its extraordinary nature, prohibition is available only where there is a clear legal right, and then only when a court—in cases where judicial authority is challenged—acts or threatens to act either without jurisdiction or in excess of its authorized powers” (*Matter of Holtzman v Goldman*, 71 NY2d 564, 569; see *Matter of Rush v Mordue*, 68 NY2d 348, 352). The petitioner

has failed to demonstrate a clear legal right to the relief sought.

DILLON, J.P., SANTUCCI, BALKIN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court