

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

D28655
C/ct

_____AD3d_____

Submitted - October 4, 2010

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2009-09967

DECISION & ORDER

In the Matter of Barbara A. Berg, respondent, v
Vincent P. Mantia, respondent-respondent; Lewis
S. Calderon, attorney for the children, nonparty-
appellant.

(Docket No. O-8989-09)

Lewis S. Calderon, Jamaica, N.Y., attorney for the children, nonparty-appellant pro
se.

In a family offense proceeding pursuant to Family Court Act article 8, the attorney for
the children appeals from an order of the Family Court, Queens County (O'Connor, J.), dated
September 22, 2009, which, after a hearing, dismissed the petition.

ORDERED that the appeal from so much of the order as dismissed so much of the
petition as alleged that the father committed family offenses against the mother is dismissed, without
costs or disbursements, as the nonparty-appellant is not aggrieved by that part of the order (*see* CPLR
5511); and it is further,

ORDERED that the order is reversed insofar as reviewed, on the law, without costs
or disbursements, so much of the petition as alleged that the father committed family offenses against
the subject children is reinstated, and the matter is remitted to the Family Court, Queens County, for
further proceedings in accordance herewith.

The mother commenced this family offense proceeding alleging, inter alia, that the
respondent, who is her husband and the father of their three children, committed specific family
offenses against her and the children during an incident that occurred on April 10, 2009. At a hearing

October 19, 2010

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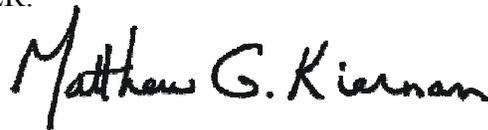
MATTER OF BERG v MANTIA

on the petition, after the mother rested her case on behalf of herself and the children, the Family Court determined that the subject children had not been named as parties to the petition, and, therefore, did not consider the sufficiency of the evidence as to family offenses committed by the father against the children. The Family Court further determined that the evidence failed to establish, prima facie, that a family offense was committed by the father against the mother, and dismissed the petition. The attorney for the children appeals. The mother has not appealed.

Contrary to the Family Court's determination, upon the record presented, the mother properly commenced the proceeding on behalf of herself and the three children (*see* Family Ct Act §§ 821, 822; *Matter of Bibecu v Ackey*, 56 AD3d 971,972; *Matter of Hamm-Jones v Jones*, 14 AD3d 956, 959). Therefore, the Family Court erred in failing to consider the evidence of the family offenses committed against the children. Accordingly, the matter must be remitted to the Family Court, Queens County, to give the father an opportunity to present evidence on his behalf, if he be so advised, and then for a determination by the Family Court of so much of the petition as was brought on behalf of the children.

RIVERA, J.P., ANGIOLILLO, CHAMBERS and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court