

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

D29390
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_____AD3d_____

Submitted - November 23, 2010

JOSEPH COVELLO, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2010-03499

DECISION & ORDER

In the Matter of David Gore, petitioner, v Kim Gore,
respondent; Douglas Dollinger, nonparty-appellant.

(Docket No. V-3455-09)

Douglas Dollinger, Goshen, N.Y., nonparty-appellant pro se.

Christopher E. Gurda, Middletown, N.Y., for respondent.

In a child custody proceeding pursuant to Family Court Act article 6, Douglas R. Dollinger, the attorney for the mother, appeals from an order of the Family Court, Orange County (Bivona, J.), entered February 23, 2010, which, upon a decision of the same court dated February 3, 2010, granted the petitioner's motion pursuant to 22 NYCRR 130-2.1 for an award of an attorney's fee in the sum of \$1,500 and directed Douglas R. Dollinger to pay that sum.

ORDERED that on the Court's own motion, the notice of appeal dated March 25, 2010, is deemed to be a notice of appeal by Douglas R. Dollinger, the attorney for the mother (*see* CPLR 2001; *Matter of Tagliaferri v Weiler*, 1 NY3d 605); and it is further,

ORDERED that the order is affirmed, with costs.

The Family Court providently exercised its discretion in awarding a reasonable attorney's fee to the father to be paid by the nonparty-appellant, Douglas R. Dollinger, based on the nonparty-appellant's failure to appear for a scheduled trial (*see* 22 NYCRR 130-2.1). Contrary to his assertion on appeal, the nonparty-appellant was afforded a reasonable opportunity to be heard (*see* 22 NYCRR 130-2.1[d]) and the Family Court, after considering all of the attendant circumstances,

December 14, 2010

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properly concluded that the nonparty-appellant's failure to appear on two successive trial dates was without good cause (*see* 22 NYCRR 130-2.1[b]).

COVELLO, J.P., ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court