

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

D29771  
G/kmb

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Submitted - January 3, 2011

PETER B. SKELOS, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
SANDRA L. SGROI, JJ.

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2009-11771

DECISION & ORDER

Willie Griffin, appellant, v Cynthia Marshall,  
respondent.

(Index No. 11178/06)

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Gaylor & Warmund, LLP, Lynbrook, N.Y. (C. William Gaylor III and Matthew Jay Warmund of counsel), for appellant.

In an action, in effect, to vacate certain orders of the Family Court, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Kramer, J.), dated November 6, 2009, as, sua sponte, vacated a prior order of the same court dated June 9, 2006, and remitted all pending matters to the Family Court, Kings County, for determination.

ORDERED that the appeal from the order is dismissed, without costs or disbursements.

The order appealed from did not determine the plaintiff's motion to clarify a prior order of the same court dated June 9, 2006, but, instead, sua sponte vacated that prior order and remitted all proceedings for determination to the Family Court. Accordingly, the sua sponte order is not appealable as of right because it did not decide a motion made on notice (*see* CPLR 5701[a][2]; *Sholes v Meagher*, 100 NY2d 333, 335; *Evan S. v Joseph R.*, 70 AD3d 668; *Lambert v Schreiber*, 69 AD3d 906; *Davidson v Regan Fund Mgt. Ltd.*, 15 AD3d 172; *Northside Studios v Treccagnoli*,

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262 AD2d 469; *Housberg v Curtin*, 209 AD2d 670, 671), and we decline to grant leave to appeal.

SKELOS, J.P., BALKIN, LEVENTHAL and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court