

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

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_____AD3d_____

Submitted - January 3, 2011

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

2009-08551

DECISION & ORDER

In the Matter of Samantha G. (Anonymous).
Administration for Children's Services,
petitioner-respondent; Luis G. (Anonymous),
appellant, et al., respondent.

(Docket No. N-12294-03)

Rayaz N. Khan, Jamaica, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and
Susan Paulson of counsel), for petitioner-respondent.

Sandra M. Munoz, Jamaica, N.Y., attorney for the child.

In a child protective proceeding pursuant to Family Court Act article 10, the father appeals from an order of the Family Court, Queens County (Ramseur, Ct. Atty. Ref.), dated August 3, 2009, which, after a hearing, denied his petition for visitation. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738), in which he moves to be relieved of the assignment to prosecute this appeal.

ORDERED that the order is affirmed, without costs or disbursements.

Under the particular and unusual circumstances of this case, and based upon our independent review of the record, we agree with assigned counsel that there are no nonfrivolous issues which can be raised on appeal (*see Matter of Justina Rose D.*, 28 AD3d 659; *Matter of Paul Michael L.*, 305 AD2d 684; *Matter of Jacque Dominic J.*, 264 AD2d 845; *Matter of LaRose v Wright*, 271 AD2d 610, 611). At the hearing, the appellant adduced no evidence to support his petition for visitation with his daughter, who is now 13 years old. All of the evidence adduced

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compelled the conclusion that visitation between the appellant and the subject child was not in her best interest (*see* Domestic Relations Law § 240; *Debra H. v Janice R.*, 14 NY3d 576, *cert denied* _____US_____, 131 S Ct 908). Accordingly, given the evidence, any determination other than one denying the father's petition for visitation would have been an abuse of discretion as a matter of law, and any argument to the contrary would be frivolous.

Therefore, counsel's application for leave to withdraw as counsel to the father is granted (*see Anders v California*, 386 US 738).

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

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large initial "M".

Matthew G. Kiernan
Clerk of the Court