

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

D30382
Y/kmb

_____AD3d_____

Submitted - February 22, 2011

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
ROBERT J. MILLER, JJ.

2010-02733

DECISION & ORDER

In the Matter of Christine Tumminello, appellant,
v Nicholas Tumminello, respondent.

(Docket No. O-417-10)

Arza Feldman, Uniondale, N.Y. (Steven A. Feldman of counsel), for appellant.

In a family offense proceeding pursuant to Family Court Act article 8, the petitioner appeals from an order of the Family Court, Nassau County (Phillips, Ct. Atty. Ref.), dated February 5, 2010, which, without a hearing, denied the petition and dismissed the proceeding.

ORDERED that the order is reversed, on the law, without costs or disbursements, the petition is reinstated, and the matter is remitted to the Family Court, Nassau County, for further proceedings in accordance herewith.

The petitioner was entitled to be represented by counsel, as she was a party in a Family Court Act article 8 proceeding (*see* Family Ct Act § 262 [a][ii]). Although a party can waive the right to counsel and opt for self-representation, the waiver must be knowing, intelligent, and voluntary (*see Matter of Spencer v Spencer*, 77 AD3d 761; *Matter of Knight v Knight*, 59 AD3d 445; *Matter of McGregor v Bacchus*, 54 AD3d 678; *Matter of Guzzo v Guzzo*, 50 AD3d 687; *Matter of Jetter v Jetter*, 43 AD3d 821). Here, the record is inadequate to demonstrate that the petitioner validly waived her right to counsel. Although the Family Court advised the petitioner of her right to counsel, the Family Court did not inform her of her right to an adjournment to confer with counsel, of her right to have counsel assigned if she was financially unable to obtain representation, and of the

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dangers and disadvantages of proceeding without counsel. Accordingly, the order must be reversed, and the matter remitted to the Family Court, Nassau County, so that the petitioner can either appear with counsel or adequately waive her rights.

ANGIOLILLO, J.P., FLORIO, LEVENTHAL and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court