

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

D30625  
H/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 11, 2011

WILLIAM F. MASTRO, J.P.  
MARK C. DILLON  
RUTH C. BALKIN  
ROBERT J. MILLER, JJ.

---

2010-10576

DECISION & ORDER

In the Matter of Roselyn S. (Anonymous).  
Administration for Children's Services, respondent;  
Rachel H. (Anonymous), appellant.

(Docket No. N-13136-09)

---

Lauren Shapiro, Brooklyn, N.Y. (Sungso Lee, Jessica Marcus, and Joshua L. Seifert,  
of counsel), for appellant.

In a child neglect proceeding pursuant to Family Court Act article 10, the mother appeals from an order of the Family Court, Kings County (McElrath, J.), dated October 20, 2010, which, upon her failure to appear at a dispositional hearing, in effect, directed her to appear for that hearing.

ORDERED that the order is reversed, on the law, without costs or disbursements.

The Family Court improperly relied on Family Court Act § 1037(a) by, in effect, directing the mother to appear at a dispositional hearing. That section, which, among other things, permits the Family Court, under certain circumstances, to compel a respondent's "initial appearance" in a Family Court Act article 10 proceeding (Family Ct Act §§ 1033-a, 1033-b), was inapplicable, since the mother had already appeared before the Family Court and accepted service of the petition (*see* Family Ct Act § 1037[a]; *cf.* Family Ct Act § 153).

MASTRO, J.P., DILLON, BALKIN and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court

March 29, 2011

MATTER OF S. (ANONYMOUS), ROSELYN