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

D31106
C/prt

_____AD3d_____ Submitted - April 15, 2011

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2010-03230 DECISION & ORDER

In the Matter of Ann Marie Messmer, et al.,
respondents, v Joseph William Alvarado,
appellant.

(Docket No. V-10336-09)

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

Patricia Manzo, Jericho, N.Y., attorney for the child.

In a child custody proceeding pursuant to Family Court Act article 6, the father appeals, as limited by his brief, from so much of an order of the Family Court, Nassau County (Bennett, J.), dated March 4, 2010, as, upon the motion of the attorney for the child for a final custody order, and without a hearing, limited his communication with the subject child to two letters per month.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

Contrary to the father's contention, the Family Court providently exercised its discretion in ordering, without a hearing, that the father, who was incarcerated outside of the State of New York, may contact the subject child only by mail twice a month. Under the circumstances, there was a substantial basis in the record for the Family Court's determination (*see Matter of McFarland v Smith,* 53 AD3d 500; *Matter of Hom v Zullo,* 6 AD3d 536).

The father's remaining contentions are without merit.

The contention of the attorney for the child that the father's appeal was rendered academic by a subsequent order is without merit (*cf. Matter of Giousos v Giousos,* 73 AD3d 775).

MASTRO, J.P., BALKIN, LEVENTHAL and BELEN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court