

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

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C/kmb

_____AD3d_____

Submitted - May 16, 2011

MARK C. DILLON, J.P.
ARIEL E. BELEN
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-00528

DECISION & ORDER

In the Matter of Kieverett Garner, appellant, v
Judith Garner, respondent.

(Docket No. V-1589-02)

Zvi Ostrin, New York, N.Y., for appellant.

Ronna Gordon-Galchus, Bayside, N.Y., for respondent.

Jennifer E. Reddin-Eliou, Fresh Meadows, N.Y., attorney for the child.

In a proceeding pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Queens County (Seiden, Ct. Atty. Ref.), dated December 1, 2009, which, after a hearing, dismissed his petition, in effect, to modify a prior order of custody and visitation dated November 18, 2004, awarding custody of the subject child to the mother and visitation to the father, so as to award him sole custody of the subject child.

ORDERED that the matter is remitted to the Family Court, Queens County, for a reconstruction hearing with respect to those proceedings conducted in the above-entitled case before Court Attorney Referee Francine Seiden on July 29, 2009, which cannot be transcribed, and thereafter report to this Court with all convenient speed, and the appeal is held in abeyance in the interim.

The petitioner father contends that the Family Court failed to take the appropriate measures to protect his right to assigned counsel pursuant to Family Court Act § 262(a) (*see generally Matter of Casey N.*, 59 AD3d 625). However, the issue cannot be resolved on the record

October 4, 2011

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provided to this Court since it does not contain a transcript for the proceedings held on July 29, 2009. Accordingly, we remit the matter to the Family Court, Queens County, for a reconstruction hearing with respect to those proceedings conducted in the above-entitled case before Court Attorney Referee Francine Seiden on July 29, 2009, which cannot be transcribed, and the appeal is held in abeyance in the interim (*see Matter of Hall v Ladson*, 18 AD3d 753; *Matter of Olson v Olson*, 8 AD3d 285; accord CPLR 5525[d]; cf. *Matter of Remy v Mitchell*, 60 AD3d 860, 860; *Matter of Jordal v Jordal*, 193 AD2d 1102).

DILLON, J.P., BELEN, SGROI and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court