

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

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_____AD3d_____

Argued - May 16, 2011

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

2010-11205

DECISION & ORDER

In the Matter of Diego F. (Anonymous).
Magno V. (Anonymous), petitioner-respondent;
Fanny Balseca, et al., respondents, Board of Education
of the Hicksville Union Free School District,
intervenor-appellant.

(Docket No. G-8744-10)

Guercio & Guercio, LLP, Farmingdale, N.Y. (Christopher F. Mestecky of counsel),
for intervenor-appellant.

In a guardianship proceeding pursuant to Family Court Act article 6, the Board of Education of the Hicksville Union Free School District appeals from an order of the Family Court, Nassau County (Stack, J.), dated October 14, 2010, which, upon a decision of the same court dated October 13, 2010, granted the petition of Magno V. for guardianship of the subject child. The notice of appeal from the decision is deemed a notice of appeal from the order (*see* CPLR 5512[a]).

ORDERED that the order is reversed, on the facts and in the exercise of discretion, without costs or disbursements, the petition is denied, and the proceeding is dismissed.

The Family Court improvidently exercised its discretion in granting the petition for guardianship. The record fails to show that the subject child's best interest would be served by granting the guardianship (*compare Matter of Alamgir A.*, 81 AD3d 937, 938; *Matter of Trudy-Ann W. v Joan W.*, 73 AD3d 793, 794; *cf. Matter of Proios*, 111 Misc 2d 252).

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

ENTER:


Matthew G. Kiernan

Clerk of the Court

May 31, 2011

MATTER OF F. (ANONYMOUS), DIEGO