

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

D32558
Y/prt

_____AD3d_____

Submitted - September 30, 2011

WILLIAM F. MASTRO, A.P.J.
DANIEL D. ANGIOLILLO
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2010-09124

DECISION & ORDER ON MOTION

In the Matter of Phillip Hohn, respondent,
v Nancy Guirand, appellant.

(Docket No. O-1559-10)

Martin E. Gotkin, Palisades, N.Y., for appellant, and appellant pro se.

In a family offense proceeding pursuant to Family Court Act article 8, Nancy Guirand appeals from an order of the Family Court, Rockland County (Christopher, J.), dated August 5, 2010, which, after a hearing, upon a finding that she committed the family offense of harassment in the second degree, directed her, inter alia, to stay away from the petitioner for a period of one year. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738), in which he moves for leave to withdraw as counsel for the appellant.

ORDERED that the motion of Martin E. Gotkin for leave to withdraw as counsel for the appellant is granted, and he is directed to turn over all papers in his possession to new counsel assigned herein; and it is further,

ORDERED that Arleen Lewis, P.O. Box 219, Blauvelt, N.Y., 10913, is assigned as counsel to perfect the appeal from the order dated August 5, 2010; and it is further,

ORDERED that the People are directed to furnish a copy of the certified transcript of the proceedings to the new assigned counsel; and it is further,

ORDERED that new counsel shall serve and file a brief on behalf of the appellant within 90 days of the date of this decision and order and the respondent shall serve and file his brief

December 20, 2011

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within 30 days after the brief on behalf of the appellant is served and filed. By prior order on certification of this Court, the appellant was granted leave to prosecute the appeal as a poor person, with the appeal to be heard on the original papers (including a certified transcript of the proceedings) and on the briefs of the parties, who were directed to file nine copies of their respective briefs and to serve one copy on each other.

“In analyzing whether nonfrivolous appellate issues exist, it is essential to appreciate the distinction between a potential appellate argument that is merely meritless or unlikely to prevail and one that is frivolous” (*Matter of Giovanni S. [Jasmine A.]*, ___ AD3d ___, 2011 NY Slip Op 07846, *3-4 [2 Dept 2011]). Here, upon this Court’s independent review of the record, we conclude that a nonfrivolous issue exists as to whether the determination of the Family Court is supported by the weight of the evidence (*see Matter of Sblendorio v D’Agostino*, 60 AD3d 773, 774; *Matter of Hasbrouck v Hasbrouck*, 59 AD3d 621). Since a review of the record by the Appellate Division cannot substitute for “the single-minded advocacy of appellate counsel,” assignment of new counsel is warranted (*People v Casiano*, 67 NY2d 906, 907; *see Matter of Giovanni S. [Jasmine A.]*, ___ AD3d ___, 2011 NY Slip Op 07846, *4 [2d Dept 2011]).

MASTRO, A.P.J., ANGIOLILLO, BELEN and LOTT, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court