

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

D32817  
Y/kmb

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Submitted - October 21, 2011

WILLIAM F. MASTRO, J.P.  
MARK C. DILLON  
SANDRA L. SGROI  
ROBERT J. MILLER, JJ.

2010-11208

DECISION & ORDER

In the Matter of Dwayne J. B. (Anonymous),  
appellant, v Santos H. (Anonymous), respondent.

(Docket No. P-7947/10)

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Kent V. Moston, Hempstead, N.Y. (Jeremy L. Goldberg and Argun M. Ulgen of counsel), for appellant.

Catherine A. Sheridan, Carle Place, N.Y., attorney for the child.

In a paternity proceeding pursuant to Family Court Act article 5, the petitioner appeals from an order of the Family Court, Nassau County (Eisman, J.), dated October 13, 2010, which, without a hearing, dismissed the petition for lack of standing.

ORDERED that the order is reversed, on the law, without costs or disbursements, the petition is reinstated, and the matter is remitted to the Family Court, Nassau County, for further proceedings in accordance herewith.

The petitioner filed a paternity petition seeking to be declared the father of the subject child, and moved to compel a DNA test. In response to the petition, the mother produced an acknowledgment of paternity signed by her and another man. Based upon the acknowledgment of paternity, the Family Court summarily dismissed the petition on the ground that the petitioner lacked standing to challenge the acknowledgment of paternity since he was not a signatory of that document.

Contrary to the Family Court's determination, a prior acknowledgment of paternity

November 9, 2011

Page 1.

MATTER OF B. (ANONYMOUS) v H. (ANONYMOUS)

made in accordance with Family Court Act § 516-a does not serve as an insuperable bar to a claim of paternity by one who is a stranger to the acknowledgment (*see Matter of James T. H. v Danielle M. K-R.*, 48 AD3d 683; *Matter of Tyrone G. v Fifi N.*, 189 AD2d 8, 14; *cf.* Family Ct Act § 522; *Matter of Cathleen P. v Gary P.*, 63 NY2d 805; *Matter of Costello v Timothy R.*, 109 AD2d 933). Thus, it was error for the Family Court to dismiss the petition summarily for lack of standing. Accordingly, we reinstate the petition and remit the matter to the Family Court, Nassau County, for further proceedings on the petition.

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

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court