

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

D33258
W/prt

_____AD3d_____

Argued - November 7, 2011

REINALDO E. RIVERA, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2010-09155

DECISION & ORDER

In the Matter of Rachel Fulmer, appellant, v
Michael Buxenbaum, Jr., respondent.

(Docket No. F-19547-07)

Judith Ellen Stone, Merrick, N.Y., for appellant.

Karen M. Caggiano, Shirley, N.Y., for respondent.

In a proceeding pursuant to Family Court Act article 5, the mother appeals from an order of the Family Court, Suffolk County (Freundlich, J.), dated August 13, 2010, which denied her application to vacate an order of filiation of the same court (Fields, S.M.), dated January 3, 2008, adjudging the respondent to be the father of the subject child.

ORDERED that the order dated August 13, 2010, is affirmed, without costs or disbursements.

An order of filiation may be vacated on the grounds of “fraud, misrepresentation, or other misconduct of an adverse party” (CPLR 5015[a][3]; *see Matter of Jose F.R. v Reina C.A.*, 46 AD3d 564). The Family Court properly denied the mother’s application to vacate the order of filiation entered in the instant proceeding because she failed to make a prima facie showing of fraud, misrepresentation, or other misconduct (*see CPLR 5015[a][3]; Matter of Vernon J. v Sandra M.*, 36 AD3d 912).

The mother’s remaining contentions are without merit.

RIVERA, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

December 13, 2011

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MATTER OF FULMER v BUXENBAUM

2010-09155

DECISION & ORDER ON MOTION

In the Matter of Rachel Fulmer, appellant, v
Michael Buxenbaum, Jr., respondent.

(Docket No. F-19547-07)

Motion by the appellant on an appeal from an order of the Family Court, Suffolk County, dated August 13, 2010, inter alia, to strike the respondent's brief on the ground that it refers to matter de hors the record and contains misstatements of fact or, in the alternative, to strike stated portions of the brief. By decision and order on motion of this Court dated September 1, 2011, the motion was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the argument of the appeal, it is,

ORDERED that the motion is denied.

RIVERA, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court