

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

D35460
C/kmb

_____AD3d_____

Submitted - May 31, 2012

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2011-09406

DECISION & ORDER

In the Matter of Mieczystaw Rostkowski,
appellant, v Jan Baginski, respondent.

(Docket No. O-2221-11)

John C. Macklin, New Hyde Park, N.Y., for appellant.

Jonathan Edward Kirchner, P.C., Commack, N.Y., for respondent.

In a family offense proceeding pursuant to Family Court Act article 8, the petitioner appeals from an order of the Family Court, Queens County (Fitzmaurice, J.), dated September 12, 2011, which, after a hearing, dismissed the petition.

ORDERED that the order is affirmed, without costs or disbursements.

The petitioner's contention that the Family Court acted improperly by consolidating his petition with a petition in a related case is without merit. Although it is true that a court may not order consolidation sua sponte (*see* CPLR 602[a]; *AIU Ins. Co. v ELRAC, Inc.*, 269 AD2d 412; *Matter of Amy M.*, 234 AD2d 854, 855), here, there was no consolidation. The individual petitions were left intact. They were merely brought together to be heard on the same day. The captions of the individual petitions remained the same, and different determinations were rendered in separate orders.

Furthermore, contrary to the petitioner's contention, the Family Court did give him

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the opportunity to prove the allegations contained in his petition, but he failed to do so.

RIVERA, J.P., ENG, LOTT and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court