

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

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_____AD3d_____

Submitted - September 6, 2012

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2011-09116

DECISION & ORDER

In the Matter of Chu Man Woo, appellant, v Qiong
Yun Xi, respondent.

(Docket No. O-3882-06)

Lewis S. Calderon, Jamaica, N.Y., for appellant.

Mark Brandys, New York, N.Y., for respondent.

In a family offense proceeding pursuant to Family Court Act article 8, the husband appeals from an order of the Family Court, Kings County (Hepner, J.), dated September 15, 2011, which, after a hearing, dismissed his petition.

ORDERED that the matter is remitted to the Family Court, Kings County, for a reconstruction hearing with respect to those proceedings conducted in the above-entitled case on July 27, 2011, which cannot be transcribed, and thereafter to report to this Court with all convenient speed, and the appeal is held in abeyance in the interim.

The husband contends, among other things, that the Family Court erred in dismissing his family offense petition on the basis that the wife's testimony at the hearing on the petition was credible. However, the issues raised by the husband on appeal cannot be resolved on the record provided to this Court since it does not contain a transcript for the proceedings held on July 27, 2011, which included portions of the wife's testimony. Accordingly, we remit the matter to the Family Court, Kings County, for a reconstruction hearing with respect to those proceedings conducted in the above-entitled case on July 27, 2011, which cannot be transcribed, and the appeal is held in

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abeyance in the interim (*see Matter of Garner v Garner*, 88 AD3d 708, 709; *Matter of Hall v Ladson*, 18 AD3d 753).

DILLON, J.P., DICKERSON, AUSTIN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court