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

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_____AD3d_____ Submitted - November 19, 2012

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
SYLVIA HINDS-RADIX, JJ.

2011-11011 DECISION & ORDER

In the Matter of Antonio C. Cunha, respondent, v Rosa E. Urias, appellant.

(Docket No. V-8968-10)

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

Jessica Sin, Little Neck, N.Y., attorney for the child.

In a custody and visitation proceeding pursuant to Family Court Act article 6, the mother appeals from an order of commitment of the Family Court, Nassau County (Eisman, J.), dated November 21, 2011, which, after a hearing, in effect, adjudged her to be in contempt of court and committed her to the custody of the Nassau County Correctional Facility for a term of imprisonment of six months. By decision and order on motion dated December 14, 2011, this Court stayed enforcement of the order of commitment, pending hearing and determination of the appeal.

ORDERED that the order of commitment is modified, on the facts and in the exercise of discretion, by deleting the provision thereof committing the mother to the custody of the Nassau County Correctional Facility for a term of imprisonment of six months, and substituting therefor a provision committing the mother to the custody of the Nassau County Correctional Facility for a term of imprisonment of 30 days; as so modified, the order of commitment is affirmed, without costs or disbursements, and the matter is remitted to the Family Court, Nassau County, for the issuance of an amended order of commitment in accordance herewith.

By contesting the father's contempt petition on the merits without objecting that it did not comply with the notice and warning requirements of Judiciary Law § 756, the mother waived

any objections to the validity of the petition based upon those requirements (*see Matter of Rappaport*, 58 NY2d 725, 726; *Matter of Laland v Edmond*, 13 AD3d 451; *Matter of Restivo v Cincu*, 11 AD3d 621).

Moreover, contrary to the mother's contention, the Family Court properly, in effect, adjudicated her in contempt for willfully failing to obey the visitation provision of a prior order (*see Matter of McCormick v Axelrod*, 59 NY2d 574, 583). However, under the circumstances of this case, the punishment imposed was excessive to the extent indicated herein (*see Matter of Rjeoutski v Mavrina*, _____AD3d_____, 2012 NY Slip Op 08018 [2d Dept 2012]).

The mother's remaining contentions are either without merit or unpreserved for appellate review.

RIVERA, J.P., BALKIN, LEVENTHAL and HINDS-RADIX, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court