

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

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**CAF 08-01246**

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, AND GREEN, JJ.

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IN THE MATTER OF EDDIE COREY WALKER, JR.,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

TEESHA D. BOWMAN, RESPONDENT-RESPONDENT.

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (ROBERT P. RICKERT OF  
COUNSEL), FOR PETITIONER-APPELLANT.

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Appeal from an order of the Family Court, Onondaga County (George M. Raus, Jr., R.), entered May 19, 2008 in a proceeding pursuant to Family Court Act article 6. The order dismissed the petition seeking visitation for lack of jurisdiction.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the petition is reinstated and the matter is remitted to Family Court, Onondaga County, for further proceedings on the petition.

Memorandum: Petitioner father appeals from an order in which Family Court sua sponte dismissed the petition for "lack of jurisdiction." We note at the outset that, because the order did not determine a motion made on notice, it is not appealable as of right (*see Sholes v Meagher*, 100 NY2d 333, 335; *Matter of Mary L.R. v Vernon B.*, 48 AD3d 1088, *lv denied* 10 NY3d 710). Although the father did not seek leave to appeal, under the circumstances of this case we treat the notice of appeal as an application for leave to appeal, and we grant the application in the interest of justice (*see Hurd v Hurd*, 66 AD3d 1492; *Milton v 305/72 Owners Corp.*, 19 AD3d 133, *lv denied* 7 NY3d 778; *see generally* CPLR 5701 [c]).

The evidence in the record establishes that the father did not sign the stipulation referring the matter to a referee to hear and determine the matter. "We agree with the father that, because he refused to consent to the authority of [a referee] to hear and determine the matter, the [Referee] lacked jurisdiction to dismiss the petition" (*Matter of David S.S. v Mia B.M.*, 48 AD3d 1246, 1246; *see Matter of Osmundson v Held-Cummings*, 306 AD2d 950, 950-951). We therefore reverse the order, reinstate the petition and remit the matter to Family Court for further proceedings on the petition.

Entered: February 11, 2010

Patricia L. Morgan  
Clerk of the Court