

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

1368

CAF 09-02494

PRESENT: MARTOCHE, J.P., CENTRA, CARNI, LINDLEY, AND PINE, JJ.

IN THE MATTER OF JENNIFER ALESSIO,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

HAROLD BURCH, RESPONDENT-RESPONDENT.

ALAN BIRNHOLZ, EAST AMHERST, FOR PETITIONER-APPELLANT.

Appeal from an order of the Family Court, Erie County (Rosalie Bailey, J.), entered November 19, 2009 in a proceeding pursuant to Family Court Act article 8. The order dismissed the petition.

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, Erie County, for a new hearing on the petition.

Memorandum: Petitioner appeals from an order dismissing her family offense petition pursuant to Family Court Act article 8 based on Family Court's determination that petitioner's testimony at the hearing on the petition was not credible. We agree with petitioner that, because the transcript of the hearing includes only one page of her direct examination, meaningful appellate review of the pivotal basis for the court's determination, i.e., that petitioner was not credible, is not possible (see *White v Fischer*, 73 AD3d 1372, 1373; see also *Matter of Cobrin [Telecom Consulting Group NE Corp.-Commissioner of Labor]*, 36 AD3d 1166, 1166-1167). We therefore are compelled to reverse the order and remit the matter for a new hearing on the petition (see *Weckstein v Breitbart*, 111 AD2d 6, 8; see generally *Matter of Jordal v Jordal*, 193 AD2d 1102).

Entered: November 12, 2010

Patricia L. Morgan
Clerk of the Court