

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

1031

CAF 10-00645

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND SCONIERS, JJ.

IN THE MATTER OF KIMBERLY MARVIN,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

JEFFREY L. KILMER, RESPONDENT-APPELLANT.

IN THE MATTER OF JEFFREY L. KILMER,
PETITIONER-APPELLANT,

V

KIMBERLY MARVIN, RESPONDENT-RESPONDENT.

ROSEMARIE RICHARDS, GILBERTSVILLE, FOR RESPONDENT-APPELLANT AND
PETITIONER-APPELLANT.

Appeal from an order of the Family Court, Steuben County
(Marianne Furfure, A.J.), entered March 16, 2010. The order, among
other things, held Jeffery L. Kilmer in contempt of court.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: Family Court properly found respondent-petitioner
(father) in contempt of court based upon his willful violation of a
prior order directing the return of the parties' son to the custody of
petitioner-respondent (mother). "A careful review of the evidence,
both direct and circumstantial, fully supports [the court's finding
that the father willfully] violated a clear and unequivocal mandate of
the court" (*Labanowski v Labanowski*, 4 AD3d 690, 694). The evidence
establishes that the father was aware of the terms of the prior order
and, in the court's words, "he put in motion the events which resulted
in the child being removed from [the mother's] home and placed in [the
father's] home" (see *Matter of Daniels v Guntert*, 256 AD2d 940, 942).
We reject the father's further contention that the court erred in
conducting a confidential interview with the parties' daughter (see
generally Matter of Lincoln v Lincoln, 24 NY2d 270, 272) and, in any
event, there is no indication that the court relied on that interview
in rendering its decision herein (see *Matter of Bernelle P.*, 45 NY2d
937, 938).

Entered: October 5, 2012

Frances E. Cafarell
Clerk of the Court