

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

1079

CAF 11-01914

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, LINDLEY, AND WHALEN, JJ.

IN THE MATTER OF DARRELL A. GUNN,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

LYNN M. QUINN, RESPONDENT-RESPONDENT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PHILIP ROTHSCHILD OF
COUNSEL), FOR PETITIONER-APPELLANT.

LYNN M. QUINN, RESPONDENT-RESPONDENT PRO SE.

DONALD VANSTRY, ATTORNEY FOR THE CHILD, SYRACUSE, FOR JAYDEN K.Q.

Appeal from an order of the Family Court, Onondaga County (Gina M. Glover, R.), entered September 8, 2011 in a proceeding pursuant to Family Court Act article 6. 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, Onondaga County, for further proceedings on the petition.

Memorandum: Petitioner father appeals from an order dismissing his petition seeking visitation with his son. The Referee dismissed the petition for "lack of jurisdiction." The evidence in the record establishes that respondent mother did not sign the stipulation referring the matter to the Referee to hear and determine the matter. Thus, we agree with the father that the Referee was without jurisdiction to dismiss the petition (*see Matter of Walker v Bowman*, 70 AD3d 1323, 1324; *see also* CPLR 2104). In light of our determination, we need not address the father's remaining contentions.

Entered: November 16, 2012

Frances E. Cafarell
Clerk of the Court