

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

M245072
SL/

RUTH C. BALKIN, J.P.
LEONARD B. AUSTIN
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2017-08704

DECISION & ORDER ON MOTION

In the Matter of Darren Palmitesta, appellant,
v Elizabeth Palmitesta, respondent.

(Docket Nos. V-4070-12/15G, V-4071-12/15G)

On the Court's own motion, it is

ORDERED that the decision and order on motion of this Court dated January 16, 2018, in the above-entitled case is recalled and vacated, and the following decision and order on motion is substituted therefor:

Appeal by Darren Palmitesta from an order of the Family Court, Nassau County, dated July 31, 2017. By order to show cause dated November 17, 2017, the parties were directed to show cause before this Court why an order should or should not be made and entered dismissing the appeal in the above-entitled proceeding for failure to comply with a scheduling order dated September 15, 2017, pursuant to § 670.4(a)(2) of the rules of this Court (22 NYCRR 670.4[a][2]). Motion by the appellant pro se for leave to prosecute the appeal as a poor person and for the assignment of counsel.

Now, upon the order to show cause and the papers filed in response thereto, and upon the papers filed in support of the appellant's motion and no papers having been filed in opposition or in relation thereto, it is

ORDERED that the motion to dismiss the appeal is denied; and it is further,

ORDERED that the appellant's motion is granted; and it is further,

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ORDERED that the appeal will be heard on the original papers (including a certified transcript of the proceedings, if any) and on the briefs of the appellant, the respondent, and the attorney for the child, if any. The parties are directed to file nine copies of their respective briefs and to serve one copy on each other (22 NYCRR 670.9[d][1][ii]; Family Ct Act § 1116); and it is further,

ORDERED that the stenographer(s) and/or the transcription service(s) is/are required promptly to make and certify two transcripts of the proceedings, if any, except for those minutes previously transcribed and certified (22 NYCRR 671.9); in the case of stenographers, both transcripts shall be filed with the clerk of the Family Court, and the clerk of the Family Court shall furnish one of such certified transcripts to the appellant's assigned counsel, without charge; in the case of transcription services, one transcript shall be filed with the clerk of the Family Court and one transcript shall be delivered to the assigned counsel. Assigned counsel is directed to provide copies of said transcripts to all of the other parties to the appeal, including the attorney for the child, if any, when counsel serves the appellant's brief upon those parties; and it is further,

ORDERED that pursuant to Family Court Act § 1120 the following named attorney is assigned as counsel to prosecute the appeal:

Amy L. Colvin, Esq.
9 Everette Place
Huntington, NY 11743
631-424-8495

and it is further,

ORDERED that the assigned counsel shall prosecute the appeal expeditiously in accordance with any scheduling order or orders issued pursuant to 670.4(a) of the rules of this Court (22 NYCRR 670.4[a]); and it is further,

ORDERED that assigned counsel is directed to serve a copy of this decision and order on motion upon the clerk of the court from which the appeal is taken; and it is further,

ORDERED that pursuant to § 670.4(a) of the rules of this Court (22 NYCRR 670.4[a]), the appeal in the above-entitled proceedings shall be perfected within 60 days after the receipt by the appellant of the transcripts of the minutes of the proceedings in the Family Court, and the appellant shall notify this Court by letter of the date the transcripts are received, or, if there are no minutes of proceedings to be transcribed, within 60 days of the date of this decision and order on motion; and it is further,

ORDERED that pursuant to § 670.4(a) of the rules of this Court (22 NYCRR 670.4[a]), within 30 days after the date of this decision and order on motion, the assigned counsel shall file in the office of the Clerk of this Court one of the following:

(1) an affidavit or affirmation stating that there are no minutes of the Family Court proceedings to be transcribed for the appeal; or

(2) if there are such minutes, an affidavit or affirmation stating that the transcript has been received, and indicating the date that it was received; or

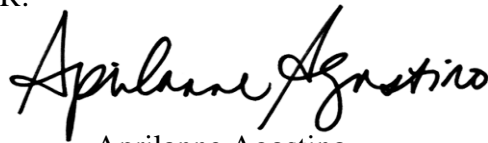
(3) if the transcript has not been received, an affidavit or affirmation stating that this decision and order on motion has been served upon the clerk of the court from which the appeal is taken, the date thereof, and the date by which the transcript is expected; or

(4) an affidavit or an affirmation withdrawing the appeal; and it is further,

ORDERED that if none of the actions described in (1), (2), (3), or (4) above has been taken within 30 days of the date of this decision and order on motion, the Clerk of the Court shall issue an order to all parties to the appeal to show cause why the appeal should or should not be dismissed.

BALKIN, J.P., AUSTIN, ROMAN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court

The Case Manager assigned to this case is Mr. Rose. Please contact him at 718-722-6487 with any questions.