

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

M247757  
E/rr

REINALDO E. RIVERA, J.P.  
SANDRA L. SGROI  
SYLVIA O. HINDS-RADIX  
ANGELA G. IANNACCI, JJ.

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2018-00113, 2018-00114

DECISION & ORDER ON MOTION

In the Matter of Guadalupe Vidal Martinez,  
petitioner-respondent, v Everado Isrrael  
Martinez, respondent.

(Docket No. O-5595-16)

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On the Court's own motion, it is

ORDERED that the decision and order on motion of this Court dated March 15, 2018, in the above-entitled case is recalled and vacated, and the following decision and order on motion is substituted therefor:

Appeals from two orders of the Family Court, Queens County, both dated November 15, 2017. By order to show cause dated January 29, 2018, the parties were directed to show cause before this Court why an order should or should not be made and entered dismissing the appeals in the above-entitled proceeding on the ground that Edwin A. Gonzalez, identified as the appellant on the notice of appeal, was not aggrieved by the orders dated November 15, 2017.

Now, upon the order to show cause and the papers filed in response thereto, it is

ORDERED that on the Court's own motion, the notice of appeal is deemed to have been filed by Everado Isrrael Martinez, as the proper party appellant (*see* CPLR 2001; *Matter of Tagliaferri v Weiler*, 1 NY3d 605); and it is further,

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

ORDERED that pursuant to § 670.4(a) of the rules of this Court (22 NYCRR 670.4[a]), the appeals in the above-entitled proceeding 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

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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 appellant 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 appeals; 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 it has been ordered and paid for, the date thereof, and the date by which the transcript is expected; or
- (4) if the appellant is indigent and cannot afford to obtain the minutes or perfect the appeals, a motion in this Court for leave to prosecute the appeals as a poor person and for the assignment of counsel, pursuant to the requirements of CPLR 1101. Such a motion must be supported by an affidavit from the appellant, stating either that he or she qualified for assigned counsel upon application to the Family Court and that his or her financial status has not changed since that time, or that he or she had retained counsel or appeared pro se in the Family Court, and listing his or her assets and income; or
- (5) an affidavit or an affirmation withdrawing the appeals; and it is further,

ORDERED that if none of the actions described in (1), (2), (3), (4), or (5) above has been taken within 30 days of the date of this decision and order on motion, the Clerk of this Court shall issue an order to all parties to the appeals to show cause why the appeals should or should not be dismissed.

RIVERA, J.P., SGROI, HINDS-RADIX and IANNACCI, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court

The Case Manager assigned to this case is Ms. Vazquez. Please contact her at 718-722-6488 with any questions.

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