

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

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CAF 12-01975

PRESENT: SCUDDER, P.J., SMITH, CARNI, LINDLEY, AND DEJOSEPH, JJ.

IN THE MATTER OF PAULINE KEICHER, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

DONALD SCHEIFLA, RESPONDENT-RESPONDENT.

EVELYNE A. O'SULLIVAN, EAST AMHERST, FOR PETITIONER-APPELLANT.

BERNADETTE M. HOPPE, BUFFALO, FOR RESPONDENT-RESPONDENT.

Appeal from an order of the Family Court, Erie County (Rosalie Bailey, J.), entered October 1, 2012 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 affirmed without costs.

Memorandum: Petitioner brought a petition in March 2012 pursuant to Family Court Act article 8 alleging that respondent committed various family offenses. Family Court granted respondent's motion to dismiss the petition, without prejudice, pursuant to CPLR 3211 (a) (7). We affirm. The court determined that, because the petition failed to specify when the alleged incidents occurred, the court was unable to ascertain whether the allegations were the subject of a December 2011 hearing following which the court dismissed the petition for failure to prove the allegations by a preponderance of the evidence. Any allegations concerning events that were the subject of the 2011 hearing were barred by collateral estoppel (*see Maybaum v Maybaum*, 89 AD3d 692, 695), and thus the petition would have been properly dismissed to that extent. We are unable to review the propriety of the court's decision, however, because petitioner failed to include in the record on appeal either the petition that was the subject of the 2011 hearing or the transcript of that hearing. Petitioner, "as the appellant, submitted this appeal on an incomplete record and must suffer the consequences" (*Matter of Santoshia L.*, 202 AD2d 1027, 1028).

Entered: June 12, 2015

Frances E. Cafarell
Clerk of the Court