

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

D23983
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_____AD3d_____

Submitted - June 15, 2009

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2008-09976

DECISION & ORDER

In the Matter of Mitchell Singer, appellant,
v Alan Levitt, respondent.

(Index No. 202006/08)

Saltzman Chetkof & Rosenberg, LLP, Garden City, N.Y. (Lee Rosenberg of counsel),
for appellant.

Jill C. Stone, Bellmore, N.Y., for respondent.

Norman P. Brander, Valley Stream, N.Y., attorney for the child.

In a consolidated habeas corpus proceeding and a child custody proceeding pursuant to Family Court Act article 6, the father appeals, as limited by his brief, from so much of an order of the Supreme Court, Nassau County (Falanga, J.), dated October 10, 2008, as denied that branch of his motion which was for summary judgment awarding him custody of the subject child.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs payable to the respondent and the attorney for the child.

Contrary to the father's contention, he was not entitled to summary determination as to custody. Although as between a parent and a nonparent, a parent has a superior right to custody, such right may be lost when certain extraordinary circumstances exist (*see Matter of Wilson v Smith*, 24 AD3d 562; *see also Matter of Bennett v Jeffreys*, 40 NY2d 543, 548). Here, in opposition to the father's motion for summary judgment, the maternal uncle raised triable issues of fact as to whether

August 18, 2009

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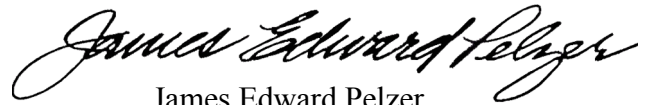
MATTER OF SINGER v LEVITT

those extraordinary circumstances existed (*see Matter of Danzy v Jones-Moore*, 54 AD3d 858). Accordingly, the Supreme Court properly denied the father's motion for summary judgment.

The father's remaining contentions are without merit.

SKELOS, J.P., ANGIOLILLO, BALKIN and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court