

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

M71537
E/sl

PETER B. SKELOS, J.P.
HOWARD MILLER
EDWARD D. CARNI
CHERYL E. CHAMBERS, JJ.

2007-07736

DECISION & ORDER ON MOTION

In the Matter of Vanessa R. (Anonymous),
respondent; Christopher W. Rivera, petitioner;
Jesus Berrios, appellant.

(File No. G273/06)

Motion by the appellant pro se on an appeal from an order of the Surrogate's Court, Richmond County, dated April 17, 2007, to waive the requirements of 22 NYCRR 670.10.2(f) regarding certification of the record on appeal. Separate motion by the respondent to strike stated portions of the appellant's appendix and brief on the ground that they contain or refer to matter dehors the record. Cross motion by the appellant pro se to enlarge the record, to deem the transcript settled, to direct the respondent to execute an acknowledgment pursuant to Mental Hygiene Law § 81.17, to waive the requirements of 22 NYCRR 670.10.2(f) regarding certification of the record on appeal, and for a preference in the calendaring of the appeal. Application by the respondent pursuant to 22 NYCRR 670.8(d)(2) to enlarge the time to serve and file a brief.

Upon the papers filed in support of the motions and the cross motion, and the papers filed in opposition thereto, and upon the application, it is

ORDERED that the appellant's motion to waive the requirements of 22 NYCRR 670.10.2(f) regarding certification of the record on appeal and that branch of the appellant's cross motion which is for the same relief are granted; and it is further,

ORDERED that the branch of the respondent's motion which is to strike stated portions of the appellant's appendix is granted to the extent that pages A-90 through A-100 of the appellant's appendix are stricken, and on or before July 11, 2008, the appellant shall delete or remove that material from the copies of the appellant's appendix filed in the office of the Clerk of the court, and that branch of the motion is otherwise denied; and it is further,

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ORDERED that the branch of the respondent's motion which is to strike stated portions of the appellant's brief is granted to the extent that the appellant's brief is stricken, and on or before July 11, 2008, the appellant shall serve and file a replacement brief that does not refer to matter dehors the record and that contains supporting references to pages in the appendix (*see* 22 NYCRR 670.10.3[g][2][iv]), and that branch of the motion is otherwise denied; and it is further,

ORDERED that the application is granted and the respondent's time to serve and file a brief is enlarged until August 11, 2008, and the respondent's brief must be served and filed on or before that date; and it is further,


ORDERED that the branch of the appellant's cross motion which is to deem the transcript settled is granted; and it is further,

ORDERED that the branch of the appellant's cross motion which is to direct the respondent to execute an acknowledgment pursuant to Mental Hygiene Law § 81.17 is denied without prejudice to seeking this relief in the Surrogate's Court, Richmond County; and it is further,

ORDERED that the appellant's cross motion is otherwise denied.

SKELOS, J.P., MILLER, CARNI and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court