

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

M72086
E/sl

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2007-01875

DECISION & ORDER ON MOTION

Carl A. Scheuering, respondent,
v Nancy Scheuering, appellant.

(Index No. 03-4350)

Motion by the respondent on an appeal from an order of the Supreme Court, Orange County, dated December 19, 2006, for leave to reargue that branch of his motion which was to dismiss the appeal as untimely taken, which was determined by decision and order on motion dated May 1, 2008, or, in the alternative, to enlarge the time to serve and file a brief. Application by the attorney for the child 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 motion and the papers filed in opposition thereto, and upon the application, it is


ORDERED that the branch of the motion which is for leave to reargue is granted and, upon reargument, so much of the decision and order on motion of this court dated May 1, 2008, as determined that branch of the prior motion which was to dismiss the appeal as untimely taken, set forth in the first decretal paragraph of that order, is recalled and vacated, and that branch of the prior motion which was to dismiss the appeal as untimely taken is granted (*see Norstar Bank of Upstate NY v Office Control Sys.*, 78 NY2d 1110); and it is further,

ORDERED that the branch of the motion which is to enlarge the respondent's time to serve and file a brief is denied as academic; and it is further,

ORDERED that the application is denied as academic.

RIVERA, J.P., COVELLO, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

June 27, 2008

SCHEUERING v SCHEUERING