

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

M72158
E/sl

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2008-00989

DECISION & ORDER ON MOTION

In the Matter of Lesly Remy, appellant,
v Francine Mitchell, respondent.

(Docket No. F-00825-92)

Motion by the appellant pro se to recall and vacate a decision and order on motion of this court dated May 5, 2008, which dismissed an appeal from an order of the Family Court, Queens County, dated October 3, 2007, on the ground that the order was not appealable until objections had been filed and reviewed (*see* Family Ct Act § 439[e]), to reinstate the appeal, and for leave to prosecute the appeal as a poor person.

Upon the papers filed in support of the motion and no papers having been filed in opposition or in relation thereto, it is

ORDERED that the branch of the motion which is to recall and vacate the decision and order on motion of this court dated May 5, 2008, and to reinstate the appeal is granted, the decision and order on motion of this court dated May 5, 2008, is recalled and vacated; and it is further,

ORDERED that the branch of the motion which is for leave to prosecute the appeal on the original papers is denied as unnecessary, and the appeal will be heard on the original papers (including a certified transcript of the proceedings, if any) and on the briefs of the appellant, the respondent, and the Law Guardian, if any. The parties are directed to file nine copies of their respective briefs and to serve one copy on each other (22 NYCRR 670.9[d][1][ii]; Family Ct Act § 1116); and it is further,

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ORDERED that the branches of the motion which are to waive the filing fee and for free transcripts are denied.

MASTRO, J.P., DILLON, ENG and BELEN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court