

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

M77302
E/sl

PETER B. SKELOS, J.P.
DAVID S. RITTER
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

2008-01956, 2008-04134

DECISION & ORDER ON MOTION

In the Matter of Anne McKenna Faraldo,
appellant, v Laura McKenna, respondent.
(Proceeding No. 1)

In the Matter of Anne McKenna Faraldo,
appellant, v Christine Kessler, respondent.
(Proceeding No. 2)

(Docket Nos. O-20899-07, O-20901-07)

By order to show cause dated August 28, 2008, issued pursuant to § 670.4(a)(5) of the rules of this court (22 NYCRR 670.4[a][5]), the parties or their attorneys were directed to show cause before this court why an order should or should not be made and entered dismissing an appeal from an order of the Family Court, Suffolk County, dated January 28, 2008 (Appellate Division Docket No. 2008-04134), in the above-entitled proceeding for failure to comply with a scheduling order dated July 10, 2008, issued pursuant to § 670.4(a)(2) of the rules of this court (22 NYCRR 670.4[a][2]). Motion by the appellant to recall and vacate a decision and order on motion of this court dated August 15, 2008, which dismissed an appeal from an order of the Family Court, Suffolk County, also dated January 28, 2008 (Appellate Division Docket No. 2008-01956), pursuant to 22 NYCRR 670.8(e) for failure to timely perfect, to reinstate that appeal, to consolidate the appeals for poor person relief, and to enlarge the time to perfect the appeals.

Upon the order to show cause and the papers filed in response thereto, and upon the papers filed in support of the appellant's motion and the papers filed in opposition thereto, it is

ORDERED that the motion to dismiss the appeal from the order docketed under Appellate Division Docket No. 2008-04134, is denied; and it is further,

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ORDERED that the branches of the appellant's motion which are to recall and vacate the decision and order on motion dated August 15, 2008, and to reinstate the appeal from the order docketed under Appellate Division Docket No. 2008-01956, are denied; and it is further,

ORDERED that the branches of the appellant's motion which are to consolidate the appeals, for poor person relief with respect to the order docketed under Appellate Division Docket No. 2008-01956, and to enlarge the time to perfect the appeal from the order docketed under Appellate Division Docket No. 2008-01956, are denied as academic; and it is further,

ORDERED that the branch of the appellant's motion which is for leave to prosecute the appeal from the order docketed under Appellate Division Docket No. 2008-04134 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 attorney for the child, 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,

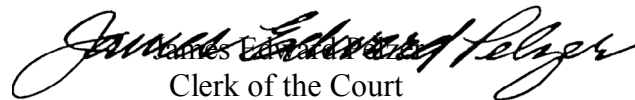
ORDERED that the branches of the appellant's motion which are to waive the filing fee and for free transcripts with respect to the order docketed under Appellate Division Docket No. 2008-04134 are denied; and it is further,

ORDERED that the branch of the appellant's motion which is to enlarge the time to perfect the appeal from the order docketed under Appellate Division Docket No. 2008-04134, is granted, and the appellant's time to perfect that appeal by causing the original papers constituting the record on the appeal to be filed in the office of the Clerk of this court (*see* 22 NYCRR 670.9[d][2]) and by serving and filing her brief on the appeal is enlarged until November 24, 2008; and it is further,

ORDERED that no further enlargement of time shall be granted.

SKELOS, J.P., RITTER, CARNI and DICKERSON, JJ., concur.

ENTER:


James Edward Helger
Clerk of the Court