

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

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M/cb

MARK C. DILLON, J.P.  
ANITA R. FLORIO  
RUTH C. BALKIN  
LEONARD B. AUSTIN, JJ.

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2008-11679

DECISION & ORDER ON MOTION

In the Matter of Daniel Kelly, appellant,  
v Kathleen Kelly, respondent.

(Docket Nos. V-1710-07, V-1711-07)

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Appeal by Daniel Kelly from an order of the Family Court, Richmond County, dated November 25, 2008. By order to show cause dated April 1, 2009, 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 the appeal in the above-entitled proceeding for failure to comply with a scheduling order dated February 26, 2009, issued pursuant to 22 NYCRR 670.4(a)(2). Application by the appellant to withdraw the appeal.

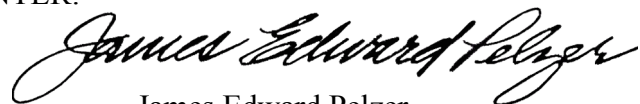
Now, on the court's own motion, and the papers filed in response to the order to show cause, it is

ORDERED that the motion is denied; and it is further,

ORDERED that the application is granted, and the appeal is deemed as withdrawn, without costs or disbursements.

DILLON, J.P., FLORIO, BALKIN and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

May 1, 2009

MATTER OF KELLY v KELLY