

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

M87549  
S/sl

STEVEN W. FISHER, J.P.  
MARK C. DILLON  
DANIEL D. ANGIOLILLO  
ARIEL E. BELEN, JJ.

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2008-07517

DECISION & ORDER ON MOTION

In the Matter of Brian Desroches, appellant,  
v Nikki Desroches, respondent.

(Docket Nos. V-943-07, V-944-07, V-945-07,  
V-1947-07, V-1948-07, V-1949-07)

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On the court's own motion, it is

ORDERED that its decision and order on motion dated May 13, 2009, in the above-entitled appeal is recalled and vacated, and the following decision and order on motion is substituted therefor:

Motion by the appellant to recall and vacate so much of a decision and order on motion of this court dated January 27, 2009, as dismissed an appeal from an order of the Family Court, Rockland County, dated July 8, 2008, on the ground that the attorney assigned to perfect the appeal on behalf of the appellant the attorney was unable to contact the appellant.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

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

ORDERED that so much of the decision and order on motion of this court dated January 27, 2009, as dismissed the instant appeal, is recalled and vacated; and it is further,

June 4, 2009

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ORDERED that pursuant to Family Court Act §§ 1118 and 1120, and upon the certification of Mitchell J. Canter, Esq., dated November 7, 2008, the following named attorney is assigned as counsel to prosecute the appeal:

*Edward Cigna, Esq.  
148 So. Liberty Drive  
Stony Point, New York 10980  
(845) 942-4300*

and it is further,

ORDERED that, pursuant to § 670.4(a) of the Rules of this court (22 NYCRR 670.4[a]), the appeal in the above-entitled proceeding shall be perfected either within 60 days after the receipt by the assigned counsel of the transcripts of the minutes of the proceedings in the Family Court, and the assigned counsel shall notify this court by letter of the date the transcripts are received, or, in cases where there are no minutes of proceedings to be transcribed, within 60 days of the date of this scheduling order; and it is further,

ORDERED that within 30 days after the date of this scheduling order, the assigned counsel shall file in the office of the Clerk of this court one of the following:

- (1) an affidavit or affirmation stating that there are no minutes of any Family Court proceeding to be transcribed for the appeal; or
- (2) if there are such minutes, an affidavit or affirmation that the transcripts have been received, and indicating the date received; or
- (3) if the transcripts have not been received, an affidavit or affirmation stating that the order of this court dated January 23, 2008, has been served upon the clerk of the court from which the appeal is taken, the date thereof, and the date by which the transcripts are expected; or
- (4) an affidavit or an affirmation withdrawing the appeal; and it is further,

ORDERED that if none of the above actions described in (1), (2), (3), or (4) above, has been taken within 30 days of the date of this scheduling order, the Clerk of the court shall issue an order to all parties to the appeal to show cause why the appeal should or should not be dismissed; and it is further,

ORDERED that the assigned counsel is directed to serve a copy of this order, as well as a copy of an order on certification of this court dated November 26, 2008, granting poor person

relief to the appellant, upon the clerk of the court from which the appeal is taken.

FISHER, J.P., DILLON, ANGIOLILLO 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

The Case Manager assigned to this case is Mr. Rose. Please contact him at 718-722-6487 with any questions.