

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

M88619
E/cb

ROBERT A. SPOLZINO, J.P.
MARK C. DILLON
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2009-02381

DECISION & ORDER ON MOTION

In the Matter of Destinee Rose R.- Mc. (Anonymous).
St. Vincent's Services, Inc., et al., respondents;
Francine R. (Anonymous), appellant.

(Docket No. B-10313-07)

Motion by the appellant for leave to prosecute an appeal from an order of the Family Court, Kings County, dated August 4, 2008, as a poor person, and for the assignment of counsel. Application by St. Vincent's Services, Inc., to dismiss the appeal as untimely taken.

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 motion is granted; and it is further,

ORDERED that 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 stenographer(s) and/or the transcription service(s) is/are required promptly to make and certify two transcripts of the proceedings, if any, in the case of stenographers, both transcripts shall be filed with the clerk of the Family Court, and the clerk of the Family Court shall furnish one of such certified transcripts to the appellant's counsel, without charge; in the case of transcription services, one transcript shall be filed with the clerk of the Family Court and one transcript shall be delivered to the assigned counsel. Assigned counsel is directed to provide copies

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of said transcripts to all of the other parties to the appeal, including the attorney for the child, if any, when counsel serves the appellant's brief upon those parties; and it is further,

ORDERED that pursuant to Family Court Act § 1120 the following named attorney is assigned as counsel to prosecute the appeal:

Edward E. Caesar, Esq.
26 Court Street- Suite 2401
Brooklyn, New York 11242
(718) 246-2712

and it is further,

ORDERED that the assigned counsel shall prosecute the appeal expeditiously in accordance with any scheduling order or orders issued pursuant to § 670.4(a) of the rules of this court (22 NYCRR 670.4[a]); and it is further,

ORDERED that assigned counsel is directed to serve a copy of this order upon the clerk of the court from which the appeal is taken; and it is further,

ORDERED that the application is denied; 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 order; and it is further,

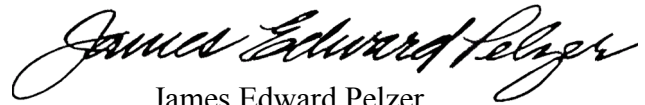
ORDERED that within 30 days after the date of this order, the assigned counsel shall file in the office of the Clerk of this court one of the following:

- (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 this order 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 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.

SPOLZINO, J.P., DILLON, LEVENTHAL and CHAMBERS, 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 Ms. Vazquez. Please contact her at 718-722-6488 with any questions.