

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**1261**

**CAF 08-01357**

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND GORSKI, JJ.

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IN THE MATTER OF MICHAEL JACOBS,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

KATHLEEN CHADWICK, RESPONDENT-RESPONDENT.

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ELIZABETH A. SAMMONS, WILLIAMSON, FOR PETITIONER-APPELLANT.

TYSON BLUE, MACEDON, FOR RESPONDENT-RESPONDENT.

NANCY M. LORD, LAW GUARDIAN, LYONS, FOR MICHAELA J.

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Appeal from an order of the Family Court, Wayne County (John B. Nesbitt, J.), entered January 16, 2008 in a proceeding pursuant to Family Court Act article 6. The order denied the petition.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner father appeals from an order denying his petition seeking visitation with the parties' daughter. Contrary to the contention of the father, Family Court properly based its determination on the mental health evaluation of the child, concluding that forced visitation with the father, who is incarcerated, would be harmful to the child's emotional and psychological well-being and thus would not be in the best interests of the child (*see Matter of Christina F.F. v Stephen T.C.*, 48 AD3d 1112, *lv denied* 10 NY3d 710). During the course of this proceeding, the father was incarcerated based upon his conviction of assault in the first degree, arising from his having attacked and beaten the child's older sister. The record establishes that the father had engaged in a pattern of domestic violence in the presence of the child who is the subject of this appeal, that she suffered from posttraumatic stress disorder, and that she did not wish to visit the father (*see Matter of Piowar v Glosek*, 53 AD3d 1121).

Entered: November 13, 2009

Patricia L. Morgan  
Clerk of the Court