

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

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CAF 09-00262

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, AND GREEN, JJ.

IN THE MATTER OF CHARLES N. VAUGHN,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

EARNESTINE LAMBERT, RESPONDENT-RESPONDENT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (GERALD T. BARTH OF
COUNSEL), FOR PETITIONER-APPELLANT.

Appeal from an order of the Family Court, Onondaga County (George M. Raus, Jr., R.), entered November 17, 2008 in a proceeding pursuant to Family Court Act article 6. The order dismissed the petition seeking visitation.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the petition is reinstated and the matter is remitted to Family Court, Onondaga County, for further proceedings on the petition.

Memorandum: Petitioner father appeals from an order dismissing his petition seeking visitation with his daughter. The father is incarcerated and was not present at the court appearance despite the issuance of an order by the Referee directing that he be transported for the appearance on his petition. The Referee summarily dismissed the petition when, upon asking the father's 15-year-old daughter whether she wanted to see or communicate with her father, the daughter responded in the negative. That was error inasmuch as the Referee did not have " 'sufficient information to make a comprehensive assessment of the best interests of the child[]' " (*Matter of Placidi v Sleiertin*, 61 AD3d 1340, 1341; see *Matter of Steven M. v Meghan M.*, 43 AD3d 1349, 1350). We therefore reverse the order, reinstate the petition and remit the matter to Family Court for further proceedings on the petition.

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court