

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

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CA 09-01713

PRESENT: SCUDDER, P.J., MARTOCHE, LINDLEY, GREEN, AND GORSKI, JJ.

IN THE MATTER OF ROBERT M. WEICHERT,
PETITIONER-APPELLANT,
ET AL., PETITIONER,

V

MEMORANDUM AND ORDER

NEW YORK STATE DIVISION OF HUMAN RIGHTS,
RESPONDENT,
AND KRISTY MONTANARO, RESPONDENT-RESPONDENT.

ROBERT M. WEICHERT, PETITIONER-APPELLANT PRO SE.

RONALD L. VAN NORSTRAND, SYRACUSE, FOR RESPONDENT-RESPONDENT.

Appeal from an order of the Supreme Court, Onondaga County (Donald A. Greenwood, J.), entered August 5, 2009. The order granted the motion of respondent Kristy Montanaro and held petitioner Robert M. Weichert in civil contempt.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the motion is denied.

Memorandum: Supreme Court erred in holding Robert M. Weichert (petitioner) in civil contempt for failing to pay attorney's fees to Kristy Montanaro (respondent), as directed in a prior money judgment. That judgment was enforceable by execution pursuant to CPLR article 52, and thus holding petitioner in contempt was not an appropriate remedy. "Judiciary Law § 753 (A) (3) generally forbids the use of the court's civil contempt powers to enforce such [a] judgment[] . . . , and none of the exceptions to the general rule are applicable here (see CPLR 5104)" (*Wiebusch v Hayes*, 263 AD2d 389, 390-391; see 4504 *New Utrecht Ave. Corp. v Pita Parlor*, 143 AD2d 171).

Finally, we note that, although petitioner contends that the underlying judgment awarding attorney's fees to respondent was improper, petitioner failed to perfect his appeal from that judgment. Thus, "issues concerning the propriety of th[e] underlying [judgment] are not properly before us" (*Data-Track Account Servs. v Lee*, 291 AD2d 827, 827, *lv dismissed* 98 NY2d 727, *rearg denied* 99 NY2d 532). "Having failed to appeal [from the underlying judgment], petitioner may not disregard [it] with impunity nor may he use the contempt citation to revive any right to appeal or otherwise challenge the underlying [judgment], which right terminated as a result of his

failure to appeal therefrom" (*People ex rel. Sassower v Cunningham*,
112 AD2d 119, 120, *appeal dismissed* 66 NY2d 914).

Entered: May 7, 2010

Patricia L. Morgan
Clerk of the Court