

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

1140

CAF 10-01607

PRESENT: FAHEY, J.P., CARNI, SCONIERS, GORSKI, AND MARTOCHE, JJ.

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IN THE MATTER OF ANDREW D. AYEN,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

KIMBERLY S. SAIN AND CHRISTINA MCCONNELL,  
RESPONDENTS-RESPONDENTS.

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BETZJITOMIR & BAXTER, LLP, BATH (SUSAN BETZJITOMIR OF COUNSEL), FOR  
PETITIONER-APPELLANT.

PALOMA A. CAPANNA, PENFIELD, FOR RESPONDENT-RESPONDENT CHRISTINA  
MCCONNELL.

KIMBERLY A. WOOD, ATTORNEY FOR THE CHILD, WATERTOWN, FOR MELERINA M.M.

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Appeal from an order of the Family Court, Jefferson County (Richard V. Hunt, J.), entered July 13, 2010 in a proceeding pursuant to Family Court Act article 6. The order denied and dismissed the petition.

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

Memorandum: In this proceeding pursuant to Family Court Act article 6, petitioner father appeals from an order dismissing his petition seeking visitation with his daughter at the facility where he is incarcerated. Although we note at the outset that the notice of appeal recites an incorrect entry date for the order contained in the record and from which the father purports to appeal, we nevertheless exercise our discretion to treat the notice of appeal as valid inasmuch as all of the father's contentions on appeal concern the order contained in the record (*see Matter of Nicole J.R. v Jason M.R.*, 81 AD3d 1450, 1451, *lv denied* 17 NY3d 701; *see generally* CPLR 5520 [c]). The father failed to preserve for our review his contention that he was deprived of a fair hearing based on judicial misconduct (*see generally Matter of Dove v Rose*, 71 AD3d 1411, 1412; *Matter of August ZZ.*, 42 AD3d 745, 747). We reject the further contention of the father that he was denied effective assistance of counsel. "The [father] failed to demonstrate that [he] was prejudiced by the alleged deficiencies in [his] attorney's performance" (*Matter of Nagi T. v Magdia T.*, 48 AD3d 1061, 1062). Indeed, many of those alleged deficiencies were strategic decisions by the father's attorney that will not be second-guessed by this Court (*see Matter of Katherine D. v*

*Lawrence D.*, 32 AD3d 1350, 1351-1352, *lv denied* 7 NY3d 717), and "the record reflects that [his] attorney 'provided meaningful and competent representation' " (*Nagi T.*, 48 AD3d at 1062).

Entered: November 10, 2011

Patricia L. Morgan  
Clerk of the Court