

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

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CAF 10-01473

PRESENT: CENTRA, J.P., CARNI, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

IN THE MATTER OF CATHERINE MYERS,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

RICHARD J. TRACY, RESPONDENT-APPELLANT.

SUSAN P. REINECKE, CLARENCE, FOR RESPONDENT-APPELLANT.

PAUL R. DIDIO, BUFFALO, FOR PETITIONER-RESPONDENT.

Appeal from an order of the Family Court, Erie County (Patricia A. Maxwell, J.), entered June 1, 2010 in a proceeding pursuant to Family Court Act article 4. The order confirmed the determination of the Support Magistrate.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Respondent father appeals from an order confirming the Support Magistrate's determination that he willfully failed to obey a child support order and imposing a suspended sentence of 90 days in jail. The Support Magistrate's finding of a willful violation of the support order was based upon admissions made by the father in open court when the parties entered into a settlement agreement. Because the father consented to the order confirming the Support Magistrate's determination, including his recommended sentence, the appeal must be dismissed. It is well settled that "[n]o appeal lies from an order entered by consent upon the stipulation of the appealing party" (*Matter of Starz v Tissiera*, 206 AD2d 432; see *Matter of Adney v Morton*, 68 AD3d 1742; *Matter of Culton v Culton*, 2 AD3d 1446). In any event, we note that the father's sole contention on appeal that he was denied effective assistance of counsel is based largely on matters dehors the record and thus should be raised by way of a motion to vacate the order in Family Court (see generally *Matter of Commissioner of Social Servs. of Rensselaer County [Faresta] v Faresta*, 11 AD3d 750).

Entered: March 16, 2012

Frances E. Cafarell
Clerk of the Court