

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Matter of Martin v. Martin

121 A.D.3d 693 (2d Dep't 2014) · No. 2013-07847 · Decided October 1, 2014

SUMMARY

The Appellate Division, Second Department, reviewed an appeal in a child custody proceeding after the father failed to appear at a hearing and the Family Court denied his attorney's request for an adjournment. The court dismissed the appeal except to the extent it challenged the denial of the adjournment and affirmed that ruling, finding no improvident exercise of discretion.

OPINION

PER CURIAM.

Matter of Martin v Martin (2014 NY Slip Op 06589) Matter of Martin v Martin 2014 NY Slip Op 06589 Decided on October 1, 2014 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on October 1, 2014 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

THOMAS A. DICKERSON JEFFREY A. COHEN COLLEEN D. DUFFY, JJ. 2013-07847 (Docket No. V-4519-12) [*1] In the Matter of Jeffrey Martin, petitioner-respondent, v Heather Martin, respondent, Danny Wayne Karnes, Jr., appellant. Del Atwell, East Hampton, N.Y., for appellant. Randy I. Siper, Montgomery, N.Y., for petitioner-respondent. Dawn M. Shammas, Harrison, N.Y., attorney for the child.

DECISION & ORDER In a child custody proceeding pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Orange County (Woods, J.), entered June 24, 2013, which, upon his failure to appear at a hearing, and upon the denial of his attorney's application for an adjournment, following an inquest, granted the maternal grandfather's petition for custody of the subject child.

ORDERED that the appeal from the order is dismissed except insofar as it brings up for review the denial of the father's application for an adjournment (see CPLR 5511); and it is further, **ORDERED** that the order is affirmed insofar as reviewed, without costs or disbursements. Since the order appealed from was made upon the appellant's failure to appear, review is limited to matters which were the subject of contest below, namely, the denial of the adjournment request of

the appellant's attorney (see *Matter of Sacks v Abraham*, 114 AD3d 799, 800; *Matter of Kalantarov v Kalantarov*, 109 AD3d 471; *Matter of Naomi KK. v Natasha LL.*, 80 AD3d 834).

Under the facts of this case, the Family Court did not improvidently exercise its discretion in denying the application made by the appellant's attorney for an adjournment (see *Matter of Sacks v Abraham*, 114 AD3d 799; *Matter of Kalantararov v Kalantarov*, 109 AD3d at 471). DILLON, J.P., DICKERSON, COHEN and DUFFY, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court