

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.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Thomas A. Dickerson, J.; Jeffrey A. Cohen, J.; Colleen D. Duffy, J.
JURISDICTION	New York
DECIDED	October 1, 2014
DOCKET	2013-07847
DISPOSITION	affirmed
PROCEDURAL POSTURE	In a child-custody proceeding under Family Court Act article 6, the father appealed from an order granting the maternal grandfather's custody petition after the father failed to appear at a hearing and the Family Court denied his attorney's request for an adjournment.
STANDARD OF REVIEW	The denial of an application for an adjournment is reviewed for improvident exercise of discretion. Because the order was entered after the appellant failed to appear, appellate review was limited to matters that were contested below.
PRECEDENTIAL VALUE	published
PARTIES	Danny Wayne Karnes, Jr. v. Jeffrey Martin

TOPICS

- child custody
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

family law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the father's appeal from the custody order was reviewable beyond the denial of his attorney's adjournment request after the father failed to appear at the hearing.
2. Whether the Family Court improvidently exercised its discretion by denying the father's attorney's application for an adjournment.

HOLDINGS

1. When an order is made upon an appellant's failure to appear, appellate review is limited to matters that were the subject of contest below, including the denial of an adjournment request.
2. The Family Court did not improvidently exercise its discretion in denying the father's attorney's application for an adjournment.

FACTUAL BACKGROUND

The proceeding concerned custody of the subject child. The father failed to appear at a Family Court hearing, and his attorney requested an adjournment. The Family Court denied the request, conducted an inquest, and granted the maternal grandfather's petition for custody.

PROCEDURAL HISTORY

The Family Court, Orange County, conducted an inquest after the father's failure to appear and granted the maternal grandfather's petition for custody of the child. The father appealed. The Appellate Division dismissed the appeal except to the extent it sought review of the denial of the adjournment request and affirmed the order insofar as reviewed.

DISPOSITION

affirmed

CASES CITED

- Matter of Sacks v. Abraham, 114 A.D.3d 799, 800
- Matter of Kalantarov v. Kalantarov, 109 A.D.3d 471
- Matter of Naomi KK. v. Natasha LL., 80 A.D.3d 834