

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 27, 2005

97721

In the Matter of DAVID A.
MARTIN,
Respondent,

v

MEMORANDUM AND ORDER

LISA L. (PICKERING) ROLLEY,
Appellant.

Calendar Date: September 12, 2005

Before: Cardona, P.J., Mercure, Carpinello, Mugglin and
Lahtinen, JJ.

Thomas G. Soucia, Franklin County Department of Social
Services, Malone, for appellant.

David E. LaPlant, Malone, for respondent.

Cardona, P.J.

Appeal from an order of the Family Court of Franklin County (Potter, J.), entered August 25, 2004, which, inter alia, granted petitioner's application, in a proceeding pursuant to Family Ct Act article 4, to direct respondent to reimburse petitioner for certain child-care expenses.

The parties are the parents of one child, of whom respondent has primary custody. In 2003, petitioner commenced this proceeding alleging that respondent had violated the parties' order of support by refusing to reimburse him for her pro rata share of the work-related child-care expenses that he

incurred while the child was in his care.¹ Following a hearing, a Support Magistrate determined that, although not specifically provided for in either the parties' support order or the Child Support Standards Act (see Family Ct Act § 413 [1] [c] [4]), respondent was nevertheless required to reimburse petitioner for his work-related child-care expenses in the interest of equity. That determination was ultimately confirmed by Family Court by order entered August 25, 2004. Respondent now appeals.

By order entered April 22, 2005, Family Court, among other things, vacated the August 2004 order from which respondent appeals. Inasmuch as an appeal from an order which has been vacated is precluded, the instant appeal must be dismissed (see Scally v Scally, 151 AD2d 869, 871 [1989]; Matter of Schweig v Waltzer, 279 App Div 990 [1952]; see also Clissuras v Concord Vil. Owners, 210 AD2d 370, 372 [1994], appeals dismissed 85 NY2d 1028 [1995], 86 NY2d 881 [1995]).

Mercure, Carpinello, Mugglin and Lahtinen, JJ., concur.

¹ It appears as though respondent also commenced a proceeding seeking reimbursement from petitioner for certain medical expenses incurred while the child was in her care. That petition was dismissed by Family Court and is not the subject of this appeal.

ORDERED that the appeal is dismissed, without costs.

ENTER:



Michael J. Novack
Clerk of the Court