

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

Decided and Entered: June 8, 2006

97641

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In the Matter of BETTY J.  
SUTTON,

Respondent,

v

MEMORANDUM AND ORDER

SHANE MUNDY,

Appellant.

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Calendar Date: November 17, 2005

Before: Mercure, J.P., Peters, Mugglin, Rose and Kane, JJ.

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Kara M. O'Connor, New York City, for appellant.

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Kane, J.

Appeal from an order of the Family Court of Chenango County (Campbell, J.), entered July 26, 2004, which, inter alia, granted petitioner's application, in a proceeding pursuant to Family Ct Act article 4, to find respondent in willful violation of a prior order of support and placed respondent on probation.

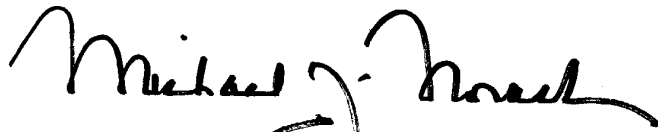
When this matter was previously before this Court, we withheld decision and remitted to Family Court for a hearing or determination regarding respondent's July 7, 2003 motion to dismiss (24 AD3d 1128 [2005]). That motion alleged that the court lacked personal jurisdiction over respondent because proper service of the summons was never effected. Family Court (Sullivan, J.) entered an order on April 11, 2006 stating that after hearing testimony on May 25, 2004, the motion was denied without prejudice. The May 25 transcript reveals that the testimony related to the merits of the petition and never addressed service. In fact, in response to the clerk's reminder

that a motion was pending, the court stated on the record that it did not see any pending motions in the court file. Because the court did not consider the motion on the merits when it was made, or upon our remittal for that specific purpose, we must again remit and order the court to hold a hearing and develop a record regarding whether proper service of the summons was effected upon respondent.

Mercure, J.P., Peters, Mugglin and Rose, JJ., concur.

ORDERED that the decision is withheld, and matter remitted to the Family Court of Chenango County for further proceedings not inconsistent with this Court's decision.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, looping initial "M".

Michael J. Novack  
Clerk of the Court