

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

Decided and Entered: May 11, 2006

98600

In the Matter of JEREMIAH P.
JOHNSON,

Appellant,

v

MEMORANDUM AND ORDER

ANNA T. AHERN,

Respondent.

Calendar Date: March 30, 2006

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

Kathleen M. Spann, Whitney Point, for appellant.

William L. Koslosky, Law Guardian, Utica.

Lahtinen, J.

Appeal from an order of the Family Court of Broome County (Pines, J.), entered June 29, 2005, which dismissed petitioner's application, in a proceeding pursuant to Family Ct Act article 6, to find respondent in willful violation of a prior order.

In December 2004, Family Court awarded petitioner, an inmate, limited visitation with his child (born in 2002) and we recently affirmed that order (Matter of Johnson v Ahern, ___ AD3d ___, 812 NYS2d 187 [2006]). The order provided for one visit in each of the months of January, April, June and November, and transportation arrangements were to be made by petitioner's mother or grandmother. When the child did not visit him in January 2005, petitioner filed a violation petition alleging that respondent willfully violated Family Court's order. Following a hearing, Family Court dismissed the petition. Petitioner

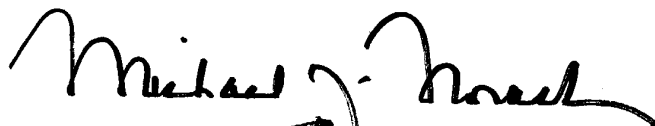
appeals.

Petitioner argues that the evidence at the hearing established that respondent violated a clear mandate in a lawful order and, thus, should have been held in contempt (see generally Matter of Wood v Wood, 8 AD3d 767, 768 [2004]; Labanowski v Labanowski, 4 AD3d 690, 694 [2004]). We are unpersuaded by this argument. The record demonstrates that petitioner's mother was the only person who attempted to contact respondent to effectuate petitioner's visitation, and she acknowledged that her entire efforts included leaving one message on an answering machine where she thought respondent resided in January 2005 and speaking once with respondent's mother in February 2005. Respondent testified that she did not receive the answering machine message, she did nothing to obstruct visitation and she had no way of contacting petitioner's mother because she had an unlisted number that respondent did not know. We discern no reason to reject Family Court's credibility determinations (see Kaczor v Kaczor, 12 AD3d 956, 957 [2004]), and this record fully supports that court's decision to deny the petition. The remaining arguments have been considered and found meritless.

Cardona, P.J., Mercure, Spain and Mugglin, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is fluid and cursive, with a large loop at the end.

Michael J. Novack
Clerk of the Court