

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

Decided and Entered: February 26, 2009

505106

In the Matter of RICHARD M.
GREEN,

Appellant,

v

MEMORANDUM AND ORDER

NICOLE M. TIERNEY,

Respondent.

Calendar Date: February 11, 2009

Before: Mercure, J.P., Rose, Lahtinen, Malone Jr. and
Kavanagh, JJ.

James A. Mack, Binghamton, for appellant.

A.L. Beth O'Connor, Cortland, for respondent.

Bridget A. O'Connor, Law Guardian, Binghamton.

Lahtinen, J.

Appeal from an order of the Family Court of Broome County (Connerton, J.), entered June 2, 2008, which dismissed petitioner's application, in a proceeding pursuant to Family Ct Act article 6, for custody of the parties' child.

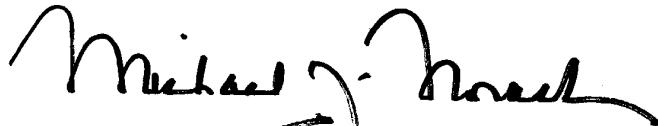
Petitioner and respondent are the unmarried parents of a child. On May 22, 2008, petitioner applied for custody of the child without signing or having his attorney sign the petition. Family Court thereafter dismissed his petition for failing to comply with the signature requirement of 22 NYCRR 130-1.1a. Petitioner now appeals.

Petitioner contends that Family Court erred in dismissing his petition for not containing a signature as required by 22 NYCRR 103-1.1a. We agree. "Absent good cause shown, the court shall strike any unsigned paper if the omission is not corrected promptly after being called to the attention of the attorney or party" (22 NYCRR 103-1.1a [a]). Here, although it is not clear from the record whether petitioner was represented by counsel at the time the petition was filed, there is no indication that petitioner or his attorney was given an opportunity to promptly correct the error. Nor is there any evidence that respondent has been confused or prejudiced by the error. Accordingly, we conclude that the dismissal of the unsigned petition without first bringing the error to petitioner's attention so it could be corrected was an improvident exercise of discretion (see Matter of Cardo v Board of Mgrs., Jefferson Vil. Condo 3, 29 AD3d 930, 931 [2006]; Pronti v Hogan, 278 AD2d 841, 841-842 [2000]).

Mercure, J.P., Rose, Malone Jr. and Kavanagh, JJ., concur.

ORDERED that the order is reversed, on the law, without costs, and matter remitted to the Family Court of Broome 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, flowing style with a large loop at the end.

Michael J. Novack
Clerk of the Court