

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

Decided and Entered: December 3, 2009

505850

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In the Matter of JAMES W.  
McDONALD III,  
Respondent,

v

JHENNA A. REED, Now Known as  
JHENNA A. LAFLAIR,  
Appellant.

MEMORANDUM AND ORDER

(And Another Related Proceeding.)

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Calendar Date: October 15, 2009

Before: Peters, J.P., Rose, Kane, Kavanagh and McCarthy, JJ.

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John A. Cirando, Syracuse, for appellant.

Nicholas Pignone, Potsdam, for respondent.

Maureen C. McGaw, Law Guardian, Canton.

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Rose, J.

Appeal from an order of the Family Court of St. Lawrence County (Berke, J.H.O.), entered October 30, 2008, which, among other things, granted petitioner's application, in two proceedings pursuant to Family Ct Act article 6, for custody of the parties' child.

Petitioner (hereinafter the father) and respondent (hereinafter the mother) each sought custody of their child. During a hearing conducted by a Judicial Hearing Officer (hereinafter JHO), the parties and the Law Guardian ultimately

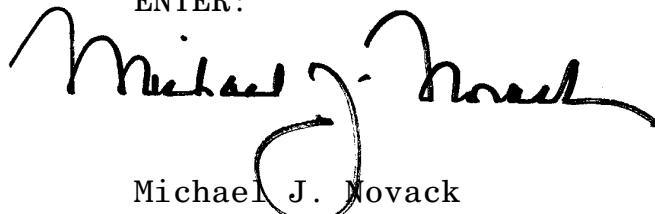
agreed to a settlement which provided for joint custody, physical placement with the mother and extensive visitation for the father. The terms of the agreement were placed on the record and incorporated in a written order issued by the JHO.

The mother now questions the authority of the JHO to issue the consent order because there is no order of reference in the record pursuant to CPLR 4317. The JHO's authority, however, arose from Judiciary Law article 22 upon assignment by the local administrative judge (see Judiciary Law §§ 851, 853; 22 NYCRR 122.6). The parties consented to have their petitions heard by the JHO (cf. Matter of Heather J., 244 AD2d 762, 763 [1997]), and there is nothing in the record indicating that the JHO was not lawfully assigned to their proceedings. Inasmuch as the consent order was entered pursuant to a stipulated settlement among the parties and the Law Guardian, with the mother and the father both represented by counsel, it is not appealable (see Matter of Sterling v Dyal, 52 AD3d 894, 895 [2008]; Matter of Forbus v Stolfi, 300 AD2d 852, 852 [2002], appeal dismissed and lv dismissed 99 NY2d 642 [2003]). Since the mother has not sought to vacate the order or set the stipulation aside (see Matter of Collins v Brush, 17 AD3d 726, 727 [2005]; Dudla v Dudla, 304 AD2d 1009, 1010 [2003]), her remaining contentions are unavailing.

Peters, J.P., Kane, Kavanagh and McCarthy, JJ., concur.

ORDERED that the appeal is dismissed, without costs.

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