

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

Decided and Entered: November 21, 2012

514874

In the Matter of MARY ANN YY.,
Respondent,

v

MEMORANDUM AND ORDER

EDWARD YY.,
Appellant.

Calendar Date: October 10, 2012

Before: Mercure, J.P, Lahtinen, Kavanagh, McCarthy and
Garry, JJ.

Tobin & Dempf, LLP, Albany (Michael L. Costello of
counsel), for appellant.

Sukloff & Schanz, Binghamton (Donald M. Sukloff of
counsel), for respondent.

Kavanagh, J.

Appeal from an order of the Family Court of Broome County
(Charnetsky, J.), entered October 24, 2011, which, among other
things, granted petitioner's application, in a proceeding
pursuant to Family Ct Act article 8, to find respondent in
willful violation of an order of protection.

In December 2010, upon petitioner's application, Family
Court issued a temporary order of protection requiring respondent
– her brother – to avoid having any contact with her. Shortly
after the parties entered into a written stipulation making that
order permanent, petitioner filed a petition alleging that
respondent had willfully violated the terms of the order by
attending a meeting regarding the parties' developmentally

disabled sister knowing that petitioner would be present.¹ After a hearing, Family Court found that respondent had willfully violated this order. This appeal ensued.

Petitioner is the co-standby guardian for the parties' developmentally disabled sister, who resides at a state-sponsored facility, and petitioner routinely attends meetings at the facility to discuss her sister's condition and treatment regimen. Respondent has not, for at least 10 years, attended one of these meetings. In March 2011, a meeting was scheduled at the facility and petitioner, in her capacity as co-standby guardian, was notified of it in writing. Respondent was not so notified, but decided to attend after learning of the meeting from another member of his immediate family. At the hearing before Family Court, respondent acknowledged that when he decided to attend, he assumed that petitioner, in all likelihood, would be present. When he arrived at the meeting, respondent saw petitioner, but continued into the meeting room and took a seat in a chair immediately opposite her. The program director, after being advised by petitioner of the order of protection, asked respondent to leave the meeting and he immediately complied. This evidence, all of which is uncontroverted and not in dispute, provides a clear and convincing basis for Family Court's determination that respondent deliberately and willfully violated the order of protection (see Matter of Hissam v Hissam, 84 AD3d 1513, 1515 [2011], lv dismissed and denied 17 NY3d 855 [2011]; Matter of Duane H. v Tina J., 66 AD3d 1148, 1149 [2009]; Matter of Cobane v Cobane, 57 AD3d 1320, 1322-1323 [2008], lv denied 12 NY3d 706 [2009]).

Mercure, J.P., Lahtinen, McCarthy and Garry, JJ., concur.

¹ The incident occurred the day after respondent signed the stipulation agreeing to having the order of protection become permanent.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive style with a large, prominent "R" at the beginning and a long, sweeping underline at the end.

Robert D. Mayberger
Clerk of the Court