

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

Decided and Entered: March 29, 2012

512475

In the Matter of PAULETTE Y.
UCCI,

Respondent,

v

MEMORANDUM AND ORDER

DAVID G. UCCI,

Appellant.

Calendar Date: February 8, 2012

Before: Peters, J.P., Rose, Lahtinen, Stein and Garry, JJ.

Mitch Kessler, Cohoes, for appellant.

Tully Rinckey, P.L.L.C., Albany (Lori N. Bovee of counsel),
for respondent.

Christopher Obstarczyk, Albany, attorney for the children.

Garry, J.

Appeal from an order of the Family Court of Albany County (M. Walsh, J.), entered October 20, 2010, which, in a proceeding pursuant to Family Ct Act article 6, denied respondent's motion to vacate a prior order of custody and visitation.

The parties are the parents of two children (born in 2001 and 2003). In September 2010, Family Court entered an order of custody based upon their in-court stipulation. Respondent (hereinafter the father) thereafter moved for an order vacating the prior order. The court denied this application by a decision and order dated October 19, 2010. The decision and order was entered and copies were mailed by the court to counsel for all

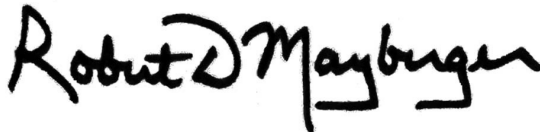
parties on the following day, October 20, 2010. The father thereafter filed a notice of appeal dated June 20, 2011.

Family Ct Act article 11 governs this proceeding. Family Court's decision and order bore the requisite statutory language advising as to the time limitations for appeal "in conspicuous print," as well as the notation regarding the mailing by the court (Family Ct Act § 1113). The appeal was untimely; in the circumstances presented, Family Ct Act § 1113 required that the appeal be taken within 35 days, and this did not occur. In contrast to criminal cases, where the governing statute affords a limited discretion for extensions of time (see CPL 460.30), the time bar in this matter is absolute. This Court lacks jurisdiction to proceed (see Matter of Kevin C. v Claudia C., 90 AD3d 1161 [2011]; Matter of Deandre GG. [Charlice HH.], 79 AD3d 1384, 1385 [2010], lv denied 16 NY3d 708 [2011]; Matter of Alexis BB., 285 AD2d 751, 752 [2001]).

Peters, J.P., Rose, Lahtinen and Stein, JJ., concur.

ORDERED that the appeal is dismissed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court