

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

490

CAF 09-02454

PRESENT: MARTOCHE, J.P., CENTRA, FAHEY, PERADOTTO, AND PINE, JJ.

IN THE MATTER OF EDUARDO R.,
RESPONDENT-RESPONDENT.

ERIE COUNTY ATTORNEY,
PETITIONER-APPELLANT.
(APPEAL NO. 2.)

MEMORANDUM AND ORDER

CHERYL A. GREEN, COUNTY ATTORNEY, BUFFALO (MICHAEL J. LISZEWSKI OF
COUNSEL), FOR PETITIONER-APPELLANT.

DAVID C. SCHOPP, LAW GUARDIAN, THE LEGAL AID BUREAU OF BUFFALO, INC.,
BUFFALO (CHARLES D. HALVORSEN OF COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from an order of the Family Court, Erie County (Paul G. Buchanan, J.), entered September 9, 2009 in a proceeding pursuant to Family Court Act article 3. The order adjourned the proceeding in contemplation of dismissal.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the matter is remitted to Family Court, Erie County, for further proceedings in accordance with the following Memorandum: Family Court erred in entering an order adjourning the juvenile delinquency proceeding in contemplation of dismissal. Family Court Act § 315.3 provides that the court may, at any time prior to entering a finding pursuant to section 352.1, order that the proceeding be adjourned in contemplation of dismissal. Here, the court had previously made a finding that respondent was a juvenile delinquent pursuant to section 352.1, and thus the court lacked the authority to adjourn the proceeding in contemplation of dismissal. Rather, once the court "vacated" the prior order of conditional discharge, it was mandated by Family Court Act § 360.3 (6) to order a different disposition pursuant to section 352.2, and an adjournment in contemplation of dismissal is not listed as a possible disposition therein. We therefore reverse the order and remit the matter to Family Court for further proceedings in compliance with Family Court Act § 360.3 (6).

Entered: April 30, 2010

Patricia L. Morgan
Clerk of the Court