

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

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CAF 10-02220

PRESENT: SCUDDER, P.J., PERADOTTO, LINDLEY, GREEN, AND GORSKI, JJ.

IN THE MATTER OF RHEA L.W.,
RESPONDENT-APPELLANT.

NIAGARA COUNTY ATTORNEY,
PETITIONER-RESPONDENT.

MEMORANDUM AND ORDER

ARDETH L. HOUDE, ATTORNEY FOR THE CHILD, ROCHESTER, FOR
RESPONDENT-APPELLANT.

Appeal from an order of the Family Court, Niagara County (John F. Batt, J.), entered October 19, 2010 in a proceeding pursuant to Family Court Act article 3. The order, among other things, found that respondent had willfully violated an order of conditional discharge and placed her in the custody of the New York State Office of Children and Family Services.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the petition is dismissed.

Memorandum: Respondent contends that Family Court erred in revoking an order of conditional discharge based on its finding that she violated a condition directing her to enroll in a specified private facility for troubled youth. We agree with respondent that petitioner failed to meet its burden of establishing that she willfully violated that condition (*see generally* Family Ct Act § 360.3 [1]; *Matter of Anthony M.*, 81 AD3d 1205, 1206). Indeed, petitioner's own evidence at the hearing on the petition established that respondent took the steps required of her but was unable to enroll in the facility because her mother could not afford the fees. The court, therefore, should have dismissed the petition.

In view of our decision, we do not address respondent's challenge to the dispositional portion of the order.

Entered: June 10, 2011

Patricia L. Morgan
Clerk of the Court