

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

1231

CAF 17-00320

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, NEMOYER, AND TROUTMAN, JJ.

IN THE MATTER OF KATHLEEN PHALEN,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

JOSEPH ROBINSON, III, RESPONDENT-APPELLANT.

JUSTIN S. WHITE, WILLIAMSVILLE, FOR RESPONDENT-APPELLANT.

KATHLEEN PHALEN, PETITIONER-RESPONDENT PRO SE.

Appeal from an order of the Family Court, Erie County (Kevin M. Carter, J.), entered May 12, 2016 in a proceeding pursuant to Family Court Act article 4. The order denied respondent's objection to the order of the Support Magistrate.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner mother commenced this proceeding pursuant to Family Court Act article 4 alleging that respondent father violated his child support obligations by refusing to pay certain dental expenses for the parties' child. At the ensuing hearing, the Support Magistrate, over the father's objections, permitted a dentist to testify telephonically regarding the child's need for dental treatment. Contrary to the father's contention, we cannot say that the Support Magistrate abused her broad discretion in permitting the dentist's telephonic testimony under these circumstances (see generally Family Ct Act § 433 [c] [iii]; *Matter of Rodriguez v Feldman*, 126 AD3d 1557, 1558 [4th Dept 2015]; *Matter of Eileen R. [Carmine S.]*, 79 AD3d 1482, 1485 [3d Dept 2010]). Moreover, the father was not prejudiced by a ministerial error on the dentist's application for leave to testify by telephone.

Entered: November 9, 2017

Mark W. Bennett
Clerk of the Court