

161 A.D.2d 1165, 558 N.Y.S.2d 866
(Cite as: 161 A.D.2d 1165)

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Supreme Court, Appellate Division,
Fourth Department, New York.

Matter of Jeanette MaCORMACK, Appellant,
v.
James MaCORMACK, Respondent.

May 11, 1990

Butler, Fitzgerald & Potter, by **David Fiveson**,
New York City, for appellant. James MaCormack,
Hudson, pro se.

Order unanimously reversed on the law with costs, petition granted and judgment entered, in accordance with the following Memorandum: Family Court erred in failing to enter judgment for the petitioner in the sum of \$13,760.00 for child support arrears, and in denying petitioner counsel fees in the sum of \$1,032.00. Entry of judgment is mandatory unless the party in arrears shows good cause for failure to apply for relief from the judgment or order directing payments prior to accrual of the arrears ([Family Ct Act § 460 \[1\]](#)). Respondent did not seek to be relieved of the *1166 child support order until the petition to enforce the order had been filed, nor did he proffer any excuse for delay in applying for such relief. Moreover, there is no proof that petitioner wrongfully interfered with respondent's visitation rights. Finally, under the circumstances presented here, it was an abuse of discretion for the court not to award counsel fees in the amount requested. (Appeal from Order of Herkimer County Family Court, La Raia, J.—Child Support.)

DILLON, P.J., and **CALLAHAN**, **DENMAN**,
BALIO and LOWERY, JJ., concur.

N.Y.A.D. 4 Dept. 1990.
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