

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - February 13, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
GLORIA GOLDSTEIN
WILLIAM E. McCARTHY, JJ.

2006-00306

DECISION & ORDER

In the Matter of Trevor Smith, appellant,
v Joanne Wood, respondent.

(Index No. 7779/05)

Gassman & Keidel, P.C., Garden City, N.Y. (Neil S. Cohen of counsel), for appellant.

William A. Cadel, Westbury, N.Y., Law Guardian for the children.

In a custody proceeding pursuant to Family Court Act article 6, the father appeals, as limited by his notice of appeal and brief, from so much of an order of the Supreme Court, Nassau County (Joseph, J.), dated December 9, 2005, as, upon granting his petition for a change of custody of the parties' children, directed him to provide a residence for the mother and pay expenses related thereto, and awarded visitation to the maternal grandmother and the maternal aunt.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs.

Upon granting the father's petition for a change of custody, the Supreme Court erred in directing the father to provide a residence for the mother and pay expenses related thereto. The parties were never married, the children will no longer be residing with the mother, and this relief was never requested by the mother. Moreover, the Supreme Court erred in awarding visitation to the maternal grandmother and the maternal aunt, since neither relative was a party to this proceeding, and neither applied for such relief (*see Nir v Nir*, 172 AD2d 651; *see also Martinez v Dushko*, 7 AD3d

March 6, 2007

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584, 585; *Matter of McAteer v Condon*, 296 AD2d 412).

MILLER, J.P., SPOLZINO, GOLDSTEIN and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court