

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

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Submitted - June 7, 2007

REINALDO E. RIVERA, J.P.
GABRIEL M. KRAUSMAN
PETER B. SKELOS
RUTH C. BALKIN, JJ.

2006-09379

DECISION & ORDER

In the Matter of Leslie L. McIver-Heyward,
appellant, v Richard Heyward, respondent.

(Docket Nos. V-3639-03, V-3804-03)

Rawlins & Gibbs, LLP, New York, N.Y. (Earl A. Rawlins of counsel), for appellant.

Richard Heyward, Englewood, N.J., respondent pro se (no brief filed).

Shelley A. Forde, New City, N.Y., Law Guardian for the child.

In a proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Rockland County (Christopher, J.), entered September 1, 2006, which granted the father's petition to modify a prior order of the same court (Kaufman, J.), dated December 29, 2004, by vacating so much of the order as directed the father, as the noncustodial parent, to stay away from the marital residence.

ORDERED that the order is reversed, on the law and the facts, without costs or disbursements, the petition is denied, and the proceeding is dismissed.

The Family Court erred in granting the father's petition to modify the order dated December 29, 2004. The father failed to demonstrate that there had been a change in circumstances that necessitated modification of the order to ensure the best interests of the child (*see Matter of*

September 4, 2007

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MATTER OF McIVER-HEYWARD v HEYWARD

Joseph F. v Patricia F., 32 AD3d 938, 939; *Smockiewicz v Smockiewicz*, 2 AD3d 705, 706; *Matter of Winslow v Lott*, 295 AD2d 620).

RIVERA, J.P., KRAUSMAN, SKELOS and BALKIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court