

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

D17478
Y/kmg

_____AD3d_____

Argued - November 30, 2007

WILLIAM F. MASTRO, J.P.
ROBERT A. LIFSON
JOSEPH COVELLO
DANIEL D. ANGIOLILLO, JJ.

2007-04505

DECISION & ORDER

In the Matter of Florence Gold, appellant,
v Gene Gold, et al., respondents.

(Docket No. V-1339-07)

Lynn M. Smookler, Poughkeepsie, N.Y. for appellant.

Marcus, Ollman & Kommer, LLP, New Rochelle, N.Y. (Rachel F. Ciccone and John F. Kommer of counsel), for respondents.

In a proceeding pursuant to Family Court Act article 6 for grandparent visitation, the paternal grandmother appeals from an order of the Supreme Court, Dutchess County (Sammarco, J.), dated April 12, 2007, which, without a hearing, denied her petition and dismissed the proceeding.

ORDERED that the order is affirmed, without costs or disbursements.

On December 6, 2006, in settlement of pending litigation between them, the parties entered into a stipulation in open court, which provided that the appellant Florence Gold (hereinafter the grandmother) was allowed five supervised visits per year with the grandchildren in Dutchess County. After having the first of these visits in February 2007, the grandmother filed the instant petition in March 2007, requesting unsupervised visitation in her home in Bronx County on the ground that a deterioration in her health had made it difficult for her to travel to Dutchess County.

The Family Court properly denied the petition without a hearing. The grandmother voluntarily entered into the settlement agreement defining the terms of her visitation with the grandchildren, and she failed to make a sufficient evidentiary showing that there had been a material

change of circumstances in the four months since that agreement which would entitle her to a hearing on the issue of modification (*see Nash v Yablon-Nash*, 16 AD3d 471; *Matter of Steinharter v Steinharter*, 11 AD3d 471; *Matter of Timson v Timson*, 5 AD3d 691, 692).

The grandmother's remaining contentions are without merit.

MASTRO, J.P., LIFSON, COVELLO and ANGIOLILLO, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court