

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

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Submitted - March 6, 2008

ROBERT A. SPOLZINO, J.P.
HOWARD MILLER
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2007-00402

DECISION & ORDER

In the Matter of Joseph Gatke, respondent,
v Tanya Johnson, appellant.

(Docket No. V-14457-03/06D)

Joseph R. Faraguna, Sag Harbor, N.Y., for appellant.

John M. Zenir, Mineola, N.Y., attorney for the child.

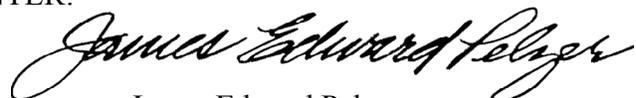
In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Nassau County (Phillips, Ct. Atty. Ref.), dated November 29, 2006, which, after a hearing, granted the father's petition to transfer sole custody of the subject child from her to him and established a visitation schedule for her.

ORDERED that the order is reversed, on the facts and in the exercise of discretion, without costs or disbursements, the matter is remitted to the Family Court, Nassau County, for a new hearing, and thereafter a new determination consistent herewith, and the subject child shall remain in the custody of the mother pending final determination of the petition.

The attorney for the child on this appeal has raised significant issues regarding developments that have arisen since the date of the order on appeal that preclude us from determining which custodial arrangement is in the child's best interests (*see Matter of Michael B.*, 80 NY2d 299, 318; *Matter of Londel Chavis C.*, 41 AD3d 843; *Matter of Antonette Alasha E.*, 8 AD3d 375, 376). Accordingly, the proceeding must be remitted to the Family Court, Nassau County, for a new hearing and a new custody determination thereafter. We express no opinion as to the appropriate determination.

SPOLZINO, J.P., MILLER, COVELLO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

April 8, 2008

MATTER OF GATKE v JOHNSON