

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

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Submitted - October 2, 2008

STEVEN W. FISHER, J.P.  
JOSEPH COVELLO  
WILLIAM E. McCARTHY  
JOHN M. LEVENTHAL, JJ.

2007-08702

DECISION & ORDER

In the Matter of Genara Lopez, appellant,  
v Juan R. Infante, respondent.

(Docket Nos. V-13002-04; 13004-04)

Matthew M. Lupoli, Flushing, N.Y., for appellant.

Paul B. Guttenberg, Syosset, N.Y., for respondent.

Elaine Miller, Great Neck, N.Y., attorney for the children.

In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Nassau County (Eisman, J.), dated August 10, 2007, which, without a hearing, dismissed, with prejudice, her petition to modify a prior order, inter alia, awarding custody of two of the parties' children to the father.

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

Where possible, custody should be established on a long term basis, "at least so long as the custodial parent has not been shown to be unfit, or perhaps less fit, to continue as the proper custodian" (*Obey v Degling*, 37 NY2d 768, 770; *see Jackson v Jackson*, 31 AD3d 386). Moreover, where parents enter into an agreement concerning custody, it will not be set aside unless there is a sufficient change in circumstances since the time of the stipulation and unless the modification of the custody agreement is in the best interests of the child (*see Smoczkiwicz v Smoczkiwicz*, 2 AD3d 705, 706). A noncustodial parent seeking a change of custody is not entitled to a hearing without

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making some evidentiary showing sufficient to warrant a hearing (*see Matter of Bauman v Abbate*, 48 AD3d 679, 680; *DiVittorio v DiVittorio*, 36 AD3d 848, 849; *McNally v McNally*, 28 AD3d 526, 527). Here, the mother failed to make such a showing.

The mother's remaining contentions are without merit.

FISHER, J.P., COVELLO, McCARTHY and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court