

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

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Submitted - March 4, 2009

STEVEN W. FISHER, J.P.
HOWARD MILLER
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2007-10768

DECISION & ORDER

In the Matter of Daria M. Sullivan, appellant, v
Steven S. Plotnick, respondent.

(Docket Nos. V-6682-04, V-6683-04)

Law Office of Russell I. Marnell, P.C., East Meadow, N.Y. (Scott R. Schwartz of counsel), for appellant.

Mangi & Graham, LLP, Westbury, N.Y. (James J. Graham of counsel), for respondent.

Cynthia Holfester-Neugebauer, Glen Head, N.Y., attorney for the children.

In a proceeding pursuant to Family Court Act article 6, the mother appeals, as limited by her brief, from so much of an order of the Family Court, Nassau County (Singer, J.), dated October 4, 2007, as, without a hearing, granted the father's cross motion to dismiss her petition to modify a consent order of custody and visitation of the same court (Brennan, J.) dated October 25, 2004, as amended by a consent order of the same court (Jaeger, J.) dated December 19, 2005.

ORDERED that the order dated October 4, 2007, is reversed insofar as appealed from, on the law, without costs or disbursements, and the matter is remitted to the Family Court, Nassau County, for a hearing on the mother's petition to modify the consent order of custody and visitation.

April 21, 2009

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MATTER OF SULLIVAN v PLOTNICK

Under the circumstances of this case, a final determination should not have been made without a hearing (*see Matter of Gurewich v Gurewich*, 58 AD3d 628; *Matter of Garcia v Scruggs*, 44 AD3d 660; *Matter of Ramos v Andino*, 19 AD3d 424; *Wiener v Wiener*, 303 AD2d 582).

FISHER, J.P., MILLER, ANGIOLILLO and BALKIN, 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