

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

D22957  
O/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 23, 2009

REINALDO E. RIVERA, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

2008-03937

DECISION & ORDER

In the Matter of Lee Ann Riedel, appellant,  
v Paul Riedel, respondent.

(Index No. 13886/06)

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Davis Polk & Wardell, New York, N.Y. (Sharon Katz and Jennifer A. Ain of counsel), for appellant.

Constantino & Constantino, Copiague, N.Y. (Steven A. Constantino of counsel), for respondent.

In a proceeding, in effect, pursuant to Domestic Relations Law articles 5 and 5-A to modify the visitation provisions of a judgment of divorce entered in the State of Florida, the mother appeals from an order of the Supreme Court, Suffolk County (McNulty, J.), dated March 17, 2008, which, without a hearing, denied her petition.

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

Contrary to the mother's contention, the Supreme Court properly denied, without a hearing, her petition to modify the visitation provisions of the Florida judgment of divorce. "Modification of an existing custody or visitation arrangement is permissible only upon a showing that there has been a change in circumstances such that a modification is necessary to ensure the continued best interests and welfare of the child" (*Matter of Molinari v Tuthill*, 59 AD3d 722; *see Matter of Shockome v Shockome*, 53 AD3d 618, 619). A person seeking a change in visitation is not automatically entitled to a hearing, but must make an evidentiary showing sufficient to warrant a hearing (*see Matter of Rodriguez v Hangartner*, 59 AD3d 630; *Matter of Mennuti v Berry*, 59 AD3d

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625; *Matter of Hermanowski v Hermanowski*, 57 AD3d 777, 778). Here, the mother failed to make an evidentiary showing of a subsequent change in circumstances sufficient to warrant a hearing.

The mother's remaining contentions are without merit.

RIVERA, J.P., BALKIN, LEVENTHAL and LOTT, 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