

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

D23819  
C/prt

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

Submitted - June 8, 2009

REINALDO E. RIVERA, J.P.  
PETER B. SKELOS  
RUTH C. BALKIN  
JOHN M. LEVENTHAL, JJ.

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2008-06077

DECISION & ORDER

In the Matter of Christine Grant, appellant,  
v Larney Hunter, respondent.

(Docket No. V-31425-06)

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Jeffrey C. Bluth, Brooklyn, N.Y., for appellant.

Steven Banks, New York, N.Y. (Tamara A. Steckler and Louise Feld of counsel),  
attorney for the child.

In a custody and visitation 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, Kings County (Krauss, J.), dated April 9, 2008, as, without a hearing, granted the father's motion to dismiss her petition for custody of the subject child or for expanded visitation rights, on the ground that the petition failed to state a change of circumstances sufficient to warrant modification of a prior order of the same court dated November 8, 2004, awarding custody to the father and certain visitation rights to the mother.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Family Court properly dismissed, without a hearing, the mother's petition for custody of the subject child or expanded visitation rights with respect to the subject child (*see Matter of Mattie M. v Administration for Children's Servs.*, 48 AD3d 392; *Matter of Steinharter v Steinharter*, 11 AD3d 471). "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 Riedel v Riedel*, 61 AD3d 978, 979, quoting *Matter of Molinari v Tuthill*, 59 AD3d 722, 723; *see*

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*Matter of Gurewich v Gurewich*, 58 AD3d 628). A person seeking a change in visitation or custody is not automatically entitled to a hearing, but must make an evidentiary showing sufficient to warrant a hearing (see *Matter of Riedel v Riedel*, 61AD3d at 979; *Matter of Gurewich v Gurewich*, 58 AD3d at 629).

Here, the mother failed to make such a showing (see *Matter of Bauman v Abbate*, 48 AD3d 679, 680; *Matter of Mattie M.*, 48 AD3d 392; *Matter of Steinharter v Steinharter*, 11 AD3d 471). The mother's assertions were largely unsubstantiated or conclusory (see *Matter of Blackstock v Price*, 51 AD3d 914, 915; *Matter of El-Sheemy v El-Sheemy*, 35 AD3d 738, 739; *Nash v Yablon-Nash*, 16 AD3d 471).

RIVERA, J.P., SKELOS, BALKIN 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, looping initial "J".

James Edward Pelzer  
Clerk of the Court