

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

D23951
G/prt

_____AD3d_____

Submitted - June 22, 2009

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
MARK C. DILLON
JOSEPH COVELLO, JJ.

2007-10664

DECISION & ORDER

In the Matter of Brian G. Reilly, appellant-respondent,
v Carole A. Reilly, respondent-appellant.

(Docket No. V-01823-01)

Brian G. Reilly, Fishkill, N.Y., appellant-respondent pro se.

Yasmin Daley-Duncan, Brooklyn, N.Y., for respondent-appellant.

Diane P. Foley, Wappingers Falls, N.Y., attorney for the child.

In a proceeding pursuant to Family Court Act article 6, the father appeals, as limited by his brief, from so much of an order of the Family Court, Dutchess County (Amodeo, J.), dated October 19, 2007, as granted that branch of the mother's motion which was to dismiss, without a hearing, his petition to modify a visitation order dated January 29, 2007, and the mother cross-appeals, as limited by her brief, from so much of the same order as denied that branch of her motion which was for an award of an attorney's fee.

ORDERED that the order is affirmed insofar as appealed and cross-appealed from, without costs or disbursements.

One who seeks a change in visitation is not automatically entitled to a hearing but must make a sufficient evidentiary showing of a material change of circumstances to warrant a hearing (*see Matter of Rodriguez v Hangartner*, 59 AD3d 630; *Matter of Gold v Gold*, 53 AD3d 485, 488; *Matter of Walberg v Rudden*, 14 AD3d 572; *Matter of Steinharter v Steinharter*, 11 AD3d 471; *Matter of Brocher v Brocher*, 213 AD2d 544). Contrary to the father's contention, the Family Court properly dismissed, without a hearing, his petition to modify the order of visitation (*see Matter of Walberg v*

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Rudden, 14 AD3d at 572; *Smockiewicz v Smockiewicz*, 2 AD3d 705, 706; *Matter of Ritchie v Waters*, 1 AD3d 839, 840; *Matter of Gerow v Gerow*, 257 AD2d 718, 718-719; *cf. Matter of Hermanowski v Hermanowski*, 57 AD3d 777, 778; *Matter of Vasquez-Williams v Williams*, 32 AD3d 859, 859-860).

The Family Court properly denied that branch of the mother's motion which was for an award of an attorney's fee.

SPOLZINO, J.P., SKELOS, DILLON and COVELLO, 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