

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

D25272  
G/kmg

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

Argued - November 12, 2009

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
RUTH C. BALKIN  
JOHN M. LEVENTHAL, JJ.

2008-10798

DECISION & ORDER

In the Matter of Stephanie Fasano, appellant,  
v Michaelangelo Battista, respondent.

(Docket No. V-00293/06)

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Law Office of Steven A. Morelli, P.C., Carle Place, N.Y., for appellant.

Posner & Gaier, Hempstead, N.Y. (Stephen Posner and Phyllis L. Gaier of counsel),  
for respondent.

Isa D. Kantor, Hicksville, N.Y., attorney for the child.

In a child custody 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 24, 2008, as, without a hearing, granted that branch of the father's motion which was to dismiss her petition to modify a prior order of the same court (Kase, J.), dated June 27, 2006, inter alia, awarding sole custody of the subject child to the father, so as to award her sole custody of the subject child.

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

Contrary to the mother's contention, the Family Court properly dismissed, without a hearing, her petition to modify a prior order so as to award her sole custody. 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 *Matter of Lopez v Infante*, 55 AD3d 837; *DiVittorio v DiVittorio*, 36 AD3d 848,

December 8, 2009

Page 1.

MATTER OF FASANO v BATTISTA

849; *Jackson v Jackson*, 31 AD3d 386). A noncustodial parent seeking a change of custody is not entitled to a hearing without making some evidentiary showing sufficient to warrant a hearing (*see Matter of Lopez v Infante*, 55 AD3d at 838; *Matter of Bauman v Abbate*, 48 AD3d 679, 680; *DiVittorio v DiVittorio*, 36 AD3d at 849). Here, the mother failed to make such a showing.

We decline the father's request to impose sanctions against the mother.

MASTRO, J.P., FLORIO, 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, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court