

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

D25843  
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Submitted - December 17, 2009

A. GAIL PRUDENTI, P.J.  
WILLIAM F. MASTRO  
ANITA R. FLORIO  
LEONARD B. AUSTIN, JJ.

2009-04582  
2009-04583  
2009-04584

DECISION & ORDER

In the Matter of Robin Collier, appellant, v Dolores Norman, respondent.

(Docket Nos. V-31455-05, V-6809-09, O-6812-09)

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Dawn M. Shammas, Jamaica, N.Y., for appellant.

In related custody and visitation proceedings pursuant to Family Court Act article 6, and a family offense proceeding pursuant to Family Court Act article 8, the mother appeals from (1) an order of the Family Court, Kings County (Krauss, J.), dated April 9, 2009, which, without a hearing, denied her petition to modify a prior order of custody, (2) an order of the same court also dated April 9, 2009, which, without a hearing, denied her petition for visitation, and (3) an order of the same court also dated April 9, 2009, which, without a hearing, denied her petition for an order of protection.

ORDERED that the orders are reversed, on the law, without costs or disbursements, and the matter is remitted to the Family Court, Kings County, for further proceedings in accordance herewith.

Family Court Act § 262(a)(v) confers the right to the assistance of counsel upon “the parent of any child seeking custody or contesting the substantial infringement of his or her right to custody of such child, in any proceeding before the court in which the court has jurisdiction to determine such custody.” Similarly, Family Court Act § 262(a)(ii) confers the right to the assistance of counsel upon parties in proceedings brought pursuant to Family Court Act article 8. The statute

further provides that “[w]hen such person first appears in court, the judge shall advise such person before proceeding that he or she has the right to be represented by counsel of his or her own choosing, of the right to have an adjournment to confer with counsel, and of the right to have counsel assigned by the court in any case where he or she is financially unable to obtain the same” (Family Ct Act § 262[a]). The deprivation of a party’s right to counsel guaranteed by this statute “requires reversal, without regard to the merits of the unrepresented party’s position” (*Matter of Brown v Wood*, 38 AD3d 769, 770; *see Matter of Shepherd v Moore-Shepherd*, 54 AD3d 347; *Matter of Hall v Ladson*, 28 AD3d 768; *see also Matter of Knight v Knight*, 59 AD3d 445; *Matter of McGregor v Bacchus*, 54 AD3d 678; *Matter of Guzzo v Guzzo*, 50 AD3d 687; *Matter of Jetter v Jetter*, 43 AD3d 821; *Matter of Ford v Tindal*, 24 AD3d 664).

Here, the petitioner was entitled to be represented by counsel, as she was a parent seeking custody of her child and, during the pendency of the custody proceeding, visitation with the child (*see* Family Ct Act § 262[a][v]), and a petitioner in a proceeding pursuant to Family Court Act article 8 (*see* Family Ct Act § 262[a][ii]). The Family Court thus erred in failing to properly advise her of her right to counsel. Accordingly, the matter must be remitted to the Family Court, Kings County, to advise the petitioner of her right to counsel pursuant to Family Court Act § 262 and, if appropriate, to assign counsel, and thereafter for further proceedings on her petitions.

PRUDENTI, P.J., MASTRO, FLORIO and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court