

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

D26027
G/kmg

_____AD3d_____

Argued - December 17, 2009

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

2009-04505

DECISION & ORDER

Katerina Stysis, respondent, v Julian Stysis, appellant.

(Index No. 24841/05)

Laurence P. Greenberg, New York, N.Y., for appellant.

Angela Scarlato, Brooklyn, N.Y., for respondent.

Randi L. Karmel, PLLC, New York, N.Y., attorney for the child.

In a matrimonial action in which the parties were divorced by judgment entered October 19, 2006, the defendant appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Prus, J.), dated April 22, 2009, as denied, without a hearing, his motion to modify the parties' stipulation dated June 8, 2006, to award him sole custody of the parties' child, and his separate motion to modify the stipulation to award him expanded visitation with the child.

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

Contrary to the defendant's contention, the Supreme Court properly denied, without a hearing, his separate motions to modify the terms of the parties' stipulation as to custody and visitation. "A parent who seeks a change of custody [or visitation] is not automatically entitled to a hearing, but must make an evidentiary showing sufficient to warrant a hearing . . . [Here,] [t]he Supreme Court providently exercised its discretion in finding that the father failed to meet his threshold burden of proffering sufficient evidence to warrant a hearing to determine whether, under

the totality of the circumstances, a change of custody [or visitation] would be in the best interests of the child[]” (*Salick v Salick*, 66 AD3d 757, 757, 758 [citations omitted]).

There is no merit to the parties’ remaining contentions.

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

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court