

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

D29610
O/kmb

_____AD3d_____

Submitted - December 14, 2010

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2010-03054

DECISION & ORDER

In the Matter of Michael M. Francis, appellant,
v Lara H. Francis, respondent.

(Docket No. V-10555-05)

Michael M. Francis, Lindenhurst, N.Y., appellant pro se.

Kevin G. McClancy, Central Islip, N.Y., for respondent.

In a visitation proceeding pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Suffolk County (Lynaugh, J.), dated March 4, 2010, which denied his motion to vacate an order of the same court dated September 19, 2005, and denied his separate motion for leave to file a petition for modification of visitation without prejudice to filing a new motion before the Family Court, Nassau County, where the visitation proceeding is currently pending.

ORDERED that the order dated March 4, 2010, is affirmed, with costs.

The Family Court, Suffolk County, properly denied the petitioner's motion to vacate an order dated September 19, 2005, as the petitioner failed to demonstrate the existence of any valid grounds for vacatur (*see* CPLR 5015[a]; *Alderman v Alderman*, 78 AD3d 621, 621; *Matter of Molinari v Tuthill*, 59 AD3d 722; *Matter of Simpson v Ptaszynska*, 41 AD3d 607, 608; *Matter of Shreve v Shreve*, 229 AD2d 1005, 1006).

Under the circumstances of this case, the Family Court, Suffolk County, did not err in denying the father's motion for leave to file a petition for modification of visitation without

January 11, 2011

Page 1.

MATTER OF FRANCIS v FRANCIS

prejudice to filing a new motion before the Family Court, Nassau County, where the visitation proceeding is currently pending (*see Matter of DelVecchio v DelVecchio*, 64 AD3d 594; *cf. Matter of Plummer v Plummer*, 25 AD3d 558, 558).

The father's remaining contentions are without merit.

MASTRO, J.P., RIVERA, AUSTIN and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court