

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

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Submitted - January 25, 2011

MARK C. DILLON, J.P.
JOSEPH COVELLO
ANITA R. FLORIO
L. PRISCILLA HALL, JJ.

2010-04679

DECISION & ORDER

In the Matter of Jose Figueroa, appellant,
v Jacqueline Lewis, respondent.

(Docket Nos. V-06363-09, V-06364-09)

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

Michael G. Paul, New City, N.Y., attorney for the children.

In a visitation proceeding pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Dutchess County (Sammarco, J.), dated April 8, 2010, which, without a hearing, dismissed his petition to modify a prior order of visitation.

ORDERED that the order is affirmed, without costs or disbursements.

“Modification of an existing custody or visitation arrangement is permissible only upon a showing that there has been a change in circumstances such that a modification is necessary to ensure the continued best interests and welfare of the child[ren]” (*Matter of Leichter-Kessler v Kessler*, 71 AD3d 1148, 1148-1149; *see Matter of Mazzola v Lee*, 76 AD3d 531; *Matter of Balgley v Cohen*, 73 AD3d 1038; *Matter of Riedel v Riedel*, 61 AD3d 979; *Matter of Molinari v Tuthill*, 59 AD3d 722, 723). While “[i]n general, an evidentiary hearing is necessary regarding a modification of visitation” (*Matter of Perez v Sepulveda*, 51 AD3d 673, 673), one who seeks a change in visitation is not automatically entitled to a hearing, but must make an evidentiary showing sufficient to warrant a hearing (*see Matter of Reilly v Reilly*, 64 AD3d 660; *Matter of Rodriguez v Hangartner*, 59 AD3d 630, 630-631; *Matter of Walberg v Rudden*, 14 AD3d 572) and “a hearing will not be necessary where the court possesses adequate relevant information to enable it to make an informed and

provident determination as to the child[ren's] best interest" (*Matter of Hom v Zullo*, 6 AD3d 536, 536; see *Matter of Perez v Sepulveda*, 51 AD3d at 673; *Matter of Smith v Molody-Smith*, 307 AD2d 364).

Here, the father failed to allege a sufficient change in circumstances between the time the order of visitation was issued and the filing of his petition which would warrant a hearing on the issue of whether he was entitled to supervised therapeutic visitation. Accordingly, the Family Court properly dismissed the petition (see *Matter of Collazo v Collazo*, 78 AD3d 1177; *Matter of Varricchio v Varricchio*, 68 AD3d 774, 775; *Matter of Reilly v Reilly*, 64 AD3d 660; *Matter of Rodriguez v Hangartner*, 59 AD3d at 631).

DILLON, J.P., COVELLO, FLORIO and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court