

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

D32888  
N/kmb

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

Argued - October 27, 2011

ANITA R. FLORIO, J.P.  
L. PRISCILLA HALL  
LEONARD B. AUSTIN  
JEFFREY A. COHEN, JJ.

2010-09957

DECISION & ORDER

In the Matter of James M. DiCiaccio, respondent,  
v Pamela J. DiCiaccio, appellant.

(Docket No. V-02029-06/09G)

Maureen A. Porette, New City, N.Y., for appellant.

Wolfson & Egitto, P.C., Poughkeepsie, N.Y. (Joseph A. Egitto of counsel), for respondent.

John A. Pappalardo, White Plains, N.Y., attorney for the child.

In consolidated child custody and visitation proceedings 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, Dutchess County (Sammarco, J.), dated September 13, 2010, as granted the father's petition, in effect, to modify a prior order of custody and visitation of the same court entered November 18, 2008, upon a stipulation of settlement, so as to, inter alia, award the father sole legal and physical custody of the subject child and, thereupon, terminated the father's child support obligation effective September 1, 2010.

ORDERED that the order dated September 13, 2010, is reversed insofar as appealed from, on the law, with costs, the father's petition is denied, and the order of custody and visitation entered November 18, 2008, is reinstated.

“When parties enter into stipulations resolving custody issues, those stipulations ‘will not be modified unless there is a sufficient change in circumstances *since the time of the stipulation*, and unless modification of the custody arrangement is in the best interests of the children’” (*Mathie*

November 15, 2011

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*v Mathie*, 65 AD3d 527, 529, quoting *Matter of Said v Said*, 61 AD3d 879, 880 [emphasis added]). In this case, the Family Court improperly considered testimony regarding events alleged to have occurred prior to the parties' stipulation of settlement (*see Matter of Guerra v Balistreri*, 49 AD3d 646, 647; *Matter of Risman v Linke*, 235 AD2d 861, 861-862). Even if this testimony is considered, the father did not demonstrate that there was a sufficient change in circumstances such that modification of the custody and visitation arrangement was in the best interests of the subject child. Thus, the Family Court erred in granting his petition, in effect, to modify the order of custody and visitation entered November 18, 2008, which was based upon the parties' stipulation of settlement, and, thereupon, terminating his child support obligation, effective September 1, 2010, on that basis.

The mother's remaining contention need not be addressed in light of our determination.

FLORIO, J.P., HALL, AUSTIN and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court