

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

D36697
N/kmb

_____AD3d_____

Submitted - November 15, 2012

MARK C. DILLON, J.P.
CHERYL E. CHAMBERS
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2012-01079

DECISION & ORDER

In the Matter of LisaAnn M. Mutone, appellant,
v MaryAnn A. Loos, respondent.

(Docket No. V-5401-07/11A)

Amy Colvin, Farmingdale, N.Y. (Neal D. Futerfas of counsel), for appellant.

Jan Murphy, Huntington, N.Y., attorney for the child.

In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Nassau County (Phillips, Ct. Atty. Ref.), dated December 13, 2011, which, in effect, denied her petition to modify a prior order of custody of the same court dated September 17, 2007, so as to award her sole custody of the subject child, and dismissed the proceeding.

ORDERED that the order dated December 13, 2011, is reversed, on the law, without costs or disbursements, the petition is reinstated, and the matter is remitted to the Family Court, Nassau County, for further proceedings consistent herewith, and a new determination thereafter.

The Family Court Act provides that when a person who has the right to the assistance of counsel “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 Court Act § 262[a]).

The Family Court Act enumerates “[e]ach of the persons [who] has the right to the assistance of counsel” (Family Court Act § 262[a]). One such person is “the parent of any child

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seeking custody . . . in any proceeding before the court in which the court has jurisdiction to determine such custody” (Family Court Act § 262[a][v]).

Here, the record does not demonstrate that the mother waived her right to counsel (*see* Family Court Act § 262[a]). Accordingly, since the Family Court did not ensure that the mother knowingly, intelligently, and voluntarily waived her right to counsel, we reverse the order dated December 13, 2011, reinstate the petition, and remit the matter to the Family Court, Nassau County, for further proceedings consistent herewith, and a new determination thereafter (*see e.g. Matter of Stephen Daniel A. [Sandra M.]*, 87 AD3d at 736).

The mother’s remaining contentions are without merit.

DILLON, J.P., CHAMBERS, SGROI and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court