

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

86

CAF 08-00612

PRESENT: MARTOCHE, J.P., FAHEY, GREEN, AND PINE, JJ.

IN THE MATTER OF WALTER K. TELFER,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

NICOLE L. PICKARD, RESPONDENT-RESPONDENT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (GERALD T. BARTH OF
COUNSEL), FOR PETITIONER-APPELLANT.

Appeal from an order of the Family Court, Onondaga County (George M. Raus, Jr., R.), entered October 12, 2007 in proceedings pursuant to, inter alia, Family Court Act article 6. The order dismissed the petitions.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner father filed two petitions, one seeking to modify a prior order and the other alleging that respondent mother had violated that prior order. We conclude that Family Court properly dismissed the petitions. The prior order required the mother to mail to the father, who is incarcerated, a photograph of the parties' child every other month, along with a letter describing the photograph and any important events in the child's life that had occurred since the prior letter was sent. The petitions were filed 1½ months following entry of the prior order. The father alleged in one petition that the mother had failed to mail the father a photograph of the child, and he sought modification of the prior order by instead requiring a third party to bring the child to visit him. The father alleged in the other petition that the mother had violated the prior order by failing to send him any pictures of the child or any correspondence concerning the child. We conclude with respect to the modification petition that the father " 'fail[ed] to allege a sufficient change in circumstances requiring modification in the best interest[s] of the child[]' " (*Matter of Reczko v Reczko*, 278 AD2d 876, 876), and we conclude with respect to the violation petition that, at the time the petitions were filed, there was no evidence of the mother's willful violation of the prior order.

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court