

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

1071

CAF 11-01094

PRESENT: SCUDDER, P.J., SMITH, CENTRA, GREEN, AND GORSKI, JJ.

IN THE MATTER OF MARK D. COLEMAN,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MAUREEN M. MURPHY, RESPONDENT-RESPONDENT.

BUCCI LAW FIRM, PLLC, BALDWINVILLE (ROSEMARY E. BUCCI OF COUNSEL),
FOR PETITIONER-APPELLANT.

JOHN M. MURPHY, JR., PHOENIX, FOR RESPONDENT-RESPONDENT.

LISA M. FAHEY, ATTORNEY FOR THE CHILD, EAST SYRACUSE, FOR CASEY M.C.

Appeal from an order of the Family Court, Onondaga County (William Dowling, R.), entered November 16, 2010 in a proceeding pursuant to Family Court Act article 4. The order dismissed the petition.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the petition is reinstated, and the matter is remitted to Family Court, Onondaga County, for further proceedings in accordance with the following Memorandum: Petitioner father commenced this proceeding pursuant to Family Court Act article 4 seeking to terminate his support obligation for the parties' son on the grounds that respondent mother had frustrated the father's visitation rights and that his son had abandoned him. The father appeals from an order dismissing his petition without prejudice "for lack of proper cause of action for filing." We agree with the father that the Referee erred in dismissing the petition without conducting a hearing. Indeed, the Referee was required to "conduct a hearing on [the] petition to modify a support order where the petition [was] 'supported by affidavit and other evidentiary material sufficient to establish a prima facie case for the relief requested.' Here, [the father] established a prima facie case for the relief requested with respect to child support by submitting evidentiary material establishing that his [son] had abandoned him. His submissions in support of the petition established that his repeated attempts at communication with his [son] had been refused and that [he] had expressed a clear wish to 'have nothing to do with' " the father (*Matter of Garcia v Barie*, 59 AD3d 1090; see *Matter of Saunders v Aiello*, 59 AD3d 1090, 1091; cf. *Matter of Hootnick v Cohen*, 193 AD2d 1092). In addition, the petition alleged that the mother had refused to permit the father to exercise his

visitation rights, and "a custodial parent's 'deliberate frustration' of visitation rights can, under appropriate circumstances, warrant the suspension of future child support payments" (*Hiross v Hiross*, 224 AD2d 662, 663). Consequently, we reverse the order, reinstate the petition, and remit the matter to Family Court for further proceedings thereon.

Entered: November 18, 2011

Patricia L. Morgan
Clerk of the Court