

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

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CAF 13-00652

PRESENT: SMITH, J.P., FAHEY, PERADOTTO, SCONIERS, AND VALENTINO, JJ.

IN THE MATTER OF TIMOTHY SEIFERT,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

NATALIE PASTWICK, RESPONDENT-APPELLANT.

THE ABBATOY LAW FIRM, PLLC, ROCHESTER (DAVID M. ABBATOY, JR., OF
COUNSEL), FOR RESPONDENT-APPELLANT.

JON STERN, ROCHESTER, FOR PETITIONER-RESPONDENT.

MARY ANNE CONNELL, ATTORNEY FOR THE CHILD, BUFFALO.

Appeal from an order of the Family Court, Erie County (Kevin M. Carter, J.), entered April 1, 2013 in a proceeding pursuant to Family Court Act article 6. The order, among other things, awarded petitioner sole custody of the subject child.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the matter is remitted to Family Court, Erie County, for a new hearing in accordance with the following Memorandum: In this proceeding pursuant to Family Court Act article 6, respondent mother appeals from an order that, among other things, awarded petitioner father sole custody of the parties' child. We agree with the mother that she was denied her right to counsel. The mother was entitled to representation based upon her status as a respondent in a Family Court Act article 6 proceeding and a person alleged to be in willful violation of a court order, and Family Court's inquiry concerning her decision to proceed pro se was insufficient to enable the court to determine whether she knowingly, intelligently and voluntarily waived her right to counsel (see § 262 [a]; *Matter of Hassig v Hassig*, 34 AD3d 1089, 1091; see also *Matter of Storelli v Storelli*, 101 AD3d 1787, 1788). We therefore reverse the order and remit the matter to Family Court for a new hearing (see *Storelli*, 101 AD3d at 1788). In light of our determination, we do not reach the mother's remaining contentions.

Entered: June 20, 2014

Frances E. Cafarell
Clerk of the Court