

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

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CAF 09-00005

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, PINE, AND GORSKI, JJ.

IN THE MATTER OF NORMA WARRIOR,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ROBERT BEATMAN, SR., RESPONDENT-RESPONDENT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (ELIZABETH deV. MOELLER OF
COUNSEL), FOR PETITIONER-APPELLANT.

TIMOTHY PATRICK MURPHY, WILLIAMSVILLE, FOR RESPONDENT-RESPONDENT.

STEVEN J. LORD, LAW GUARDIAN, ARCADE, FOR ROBERT B., JR.

Appeal from an order of the Family Court, Cattaraugus County
(Paul B. Kelly, J.H.O.), entered November 19, 2008 in a proceeding
pursuant to Family Court Act article 6. The order granted the motion
of the Law Guardian and dismissed the petition.

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

Memorandum: We reject the contention of petitioner mother that
Family Court erred in granting the Law Guardian's motion to dismiss
the petition seeking modification of an existing custody order without
conducting a hearing. "A hearing is not automatically required
whenever a parent seeks modification of a custody order" (*Matter of
Wurmlinger v Freer*, 256 AD2d 1069) and, here, the mother failed to
"make a sufficient evidentiary showing of a change in circumstances to
require a hearing" (*Matter of Di Fiore v Scott*, 2 AD3d 1417, 1417-1418
[internal quotation marks omitted]; see *Matter of Krest v Kawczynski*,
9 AD3d 907).

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court