

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

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**CAF 09-00486**

PRESENT: SCUDDER, P.J., SMITH, FAHEY, AND LINDLEY, JJ.

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IN THE MATTER OF SHANE PATRICK GOLLOGLY,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

HILARY L. THOMPSON, RESPONDENT-RESPONDENT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (GRAZINA MYERS OF  
COUNSEL), FOR PETITIONER-APPELLANT.

HANDELMAN, WITKOWICZ & LEVITSKY, ROCHESTER (STEVEN M. WITKOWICZ OF  
COUNSEL), FOR RESPONDENT-RESPONDENT.

MARY P. DAVISON, LAW GUARDIAN, CANANDAIGUA, FOR NATALIE G.

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Appeal from an order of the Family Court, Monroe County (Patricia E. Gallaher, J.), entered December 15, 2008 in a proceeding pursuant to Family Court Act article 6. The order dismissed the petition.

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

Memorandum: Family Court properly dismissed the petition seeking to modify a prior order of custody without conducting a hearing. Petitioner father failed to establish that the child was affected by respondent mother's mental health issues (*cf. Matter of Leo v Leo*, 39 AD3d 899, 901-902; *Matter of Baker v Baker*, 283 AD2d 730, 730-731, *lv denied* 96 NY2d 720), and he otherwise failed to make a sufficient evidentiary showing to warrant a hearing (*see Matter of Wurmlinger v Freer*, 256 AD2d 1069; *Matter of Lynette L. v Richard K.A.*, 210 AD2d 1005).

Entered: February 11, 2010

Patricia L. Morgan  
Clerk of the Court