

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

1475

CAF 09-02182

PRESENT: MARTOCHE, J.P., SMITH, FAHEY, PERADOTTO, AND GREEN, JJ.

IN THE MATTER OF WILLIAM F. FRAZIER,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

KIMBERLY A. FRAZIER, RESPONDENT-RESPONDENT.

DEBRA D. WILSON, LOCKPORT, FOR PETITIONER-APPELLANT.

LOTEMPPIO & BROWN, P.C., BUFFALO (TERRI L. LOTEMPPIO OF COUNSEL), FOR
RESPONDENT-RESPONDENT.

Appeal from an order of the Family Court, Niagara County (David E. Seaman, J.), entered August 27, 2009 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 granted respondent mother's motion to dismiss the petition seeking to modify the visitation provision of the parties' divorce judgment by awarding petitioner father visitation with the parties' daughter at the correctional facility where he is currently incarcerated. The court properly determined that the father's relocation from a federal prison to a state prison did not constitute a sufficient change in circumstances warranting modification of the judgment (*see generally Matter of Jason A.C. v Lisa A.C.*, 30 AD3d 1110). Contrary to the contention of the father, his allegations in support of the petition were insufficient to warrant an evidentiary hearing (*see Matter of Dann v Dann*, 51 AD3d 1345, 1347). We reject the further contentions of the father that the court erred in failing to appoint an attorney for the child and that he was denied effective assistance of counsel (*see Moor v Moor*, 75 AD3d 675, 678-679; *Matter of Perry v Perry*, 52 AD3d 906, 907, *lv denied* 11 NY3d 707).

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court