

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

1032

CAF 13-00616

PRESENT: SMITH, J.P., PERADOTTO, VALENTINO, WHALEN, AND DEJOSEPH, JJ.

IN THE MATTER OF MARK B. MILLER,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

CHIVON PEDERSON, RESPONDENT-RESPONDENT.

IN THE MATTER OF MARK B. MILLER,
PETITIONER-APPELLANT,
AND SUSAN MILLER, PETITIONER,

V

CHIVON PEDERSON, RESPONDENT-RESPONDENT.

ABBIE GOLDBAS, UTICA, FOR PETITIONER-APPELLANT.

JOHN G. KOSLOSKY, ATTORNEY FOR THE CHILD, UTICA.

Appeal from an order of the Family Court, Herkimer County (John H. Crandall, A.J.), entered January 8, 2013 in a proceeding pursuant to Family Court Act article 6. The order dismissed the petitions.

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

Memorandum: Contrary to petitioner father's contention, Family Court properly denied his petitions seeking to modify a prior order of custody and visitation by providing, inter alia, increased visitation with his son. The son is in the custody of respondent mother. " 'An order of visitation cannot be modified unless there has been a sufficient change in circumstances since the entry of the prior order [that], if not addressed, would have an adverse effect on the [child's] best interests' " (*Matter of Neeley v Ferris*, 63 AD3d 1258, 1259), and here the father failed to demonstrate such a change in circumstances.

The record does not support the father's further contention that the court drew a negative inference against him based on his failure to testify, and acted improperly in doing so. Indeed, the court merely noted in its decision that the father "did not testify in support of the subject petitions," and there is no indication in the

record that the court drew a negative inference against the father.

Entered: October 3, 2014

Frances E. Cafarell
Clerk of the Court