

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

670

CAF 09-01163

PRESENT: SMITH, J.P., CARNI, LINDLEY, SCONIERS, AND PINE, JJ.

IN THE MATTER OF CANDICE ROUSSEAU,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

LISA A. KRAFT, RESPONDENT-APPELLANT.
(APPEAL NO. 1.)

CHERYL L. HITZEL, SPRING BROOK, FOR RESPONDENT-APPELLANT.

THOMAS A. DEUSCHLE, LAW GUARDIAN, WEST SENECA, FOR BRANDON W.

DOMINIC PAUL CANDINO, LAW GUARDIAN, BUFFALO, FOR JAISON W.

Appeal from an order of the Family Court, Erie County (Marjorie C. Mix, J.H.O.), entered April 23, 2009 in a proceeding pursuant to Family Court Act article 6. The order granted the petition to modify an order of visitation.

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 hearing on the petition.

Memorandum: With respect to the order in appeal No. 1, we agree with respondent mother that Family Court erred in failing to conduct a hearing before granting the petition in which petitioner grandmother sought to modify an order setting forth a visitation schedule with the mother's children. " 'Determinations affecting custody and visitation should be made following a full evidentiary hearing, not on the basis of conflicting allegations' " (*Matter of Kenneth M. v Monique M.*, 48 AD3d 1174, 1174-1175). "Based upon the record before us, we are unable to determine whether the court 'possessed sufficient information to render an informed determination that was consistent with the child[ren]'s best interests' " (*Matter of Hopkins v Gelia*, 56 AD3d 1286). We therefore reverse the order in appeal No. 1 and remit the matter to Family Court for a hearing on the petition.

With respect to the order in appeal No. 2, the mother has not raised any issues concerning that order in her brief on appeal, and we thus deem any such issues abandoned (*see Matter of Sportello v Sportello* [appeal No. 1], 70 AD3d 1446; *Ciesinski v Town of Aurora*,

202 AD2d 984).

Entered: April 30, 2010

Patricia L. Morgan
Clerk of the Court