

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

1114

CAF 11-02095

PRESENT: FAHEY, J.P., PERADOTTO, CARNI, WHALEN, AND MARTOCHE, JJ.

IN THE MATTER OF FRANK ODDO,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

NATHANIA COLLINS, RESPONDENT-APPELLANT.

LEONARD G. TILNEY, JR., LOCKPORT, FOR RESPONDENT-APPELLANT.

THOMAS J. CASERTA, JR., NIAGARA FALLS, FOR PETITIONER-RESPONDENT.

ANGELA STAMM-PHILIPPS, ATTORNEY FOR THE CHILD, LOCKPORT, FOR AVIANNA O.

Appeal from an order of the Supreme Court, Niagara County (Frank Caruso, J.), entered June 15, 2011. The order, among other things, awarded petitioner residential custody of the subject child.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the matter is remitted to Supreme Court, Niagara County, for further proceedings in accordance with the following Memorandum: Respondent mother appeals from an order modifying the parties' existing custody arrangement by, inter alia, transferring residential custody of the child from the mother to petitioner father. In the absence of an in camera hearing with the child (*see Matter of Lincoln v Lincoln*, 24 NY2d 270, 271-272), we are unable to determine whether a change in custody is in the best interests of the child. We therefore remit the matter to Supreme Court to give the court the opportunity, at a minimum, to conduct a *Lincoln* hearing with the child, who is now old enough to provide insight as to her interaction with each of her parents in the home (*see Matter of Tamara FF. v John FF.*, 75 AD3d 688, 690; *Matter of Flood v Flood*, 63 AD3d 1197, 1199). We note that the order entered June 15, 2011 remains in effect pending the court's order upon further proceedings (*see Matter of Matthews v Matthews*, 56 AD3d 1268, 1269).

Entered: November 16, 2012

Frances E. Cafarell
Clerk of the Court