

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Submitted - November 21, 2019

REINALDO E. RIVERA, J.P.  
JOSEPH J. MALTESE  
FRANCESCA E. CONNOLLY  
VALERIE BRATHWAITE NELSON, JJ.

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2018-04281

DECISION & ORDER

In the Matter of Heldert Thelot, appellant,  
v Kathryn E. Patterson, respondent.

(Docket Nos. V-22215-12/18K, V-22216-12/18K,  
V-22217-12/18K, V-26669-12/18K, V-26670-12/18K,  
V-26671-12/18K)

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Deana Balahtsis, New York, NY, for appellant.

Paul Aronson, Brooklyn, NY, for respondent.

In a proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Kings County (Dean T. Kusakabe, J.), dated March 16, 2018. The order dismissed the proceeding.

ORDERED that the order is affirmed, without costs or disbursements.

While a petition filed by the mother to modify a custody order was pending, the mother filed the instant petition seeking the same relief, based upon allegations similar to those contained in the first petition, as well as new allegations purportedly demonstrating a change in circumstances. At the next court appearance, the Family Court advised the mother that it was dismissing her second petition because she already had a petition pending for the same relief. The court further advised the mother that it would allow her to present evidence of any new allegations asserted in her second petition in the proceeding pending on her first petition. The mother appeals, and we affirm.

January 29, 2020

MATTER OF THELOT v PATTERSON

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CPLR 3211(a)(4) “vests a court with broad discretion in considering whether to dismiss an action on the ground that another action is pending between the same parties on the same cause of action” (*Whitney v Whitney*, 57 NY2d 731, 732). Under the circumstances of this case, we agree with the Family Court’s determination to dismiss the proceeding pursuant to CPLR 3211(a)(4).

RIVERA, J.P., MALTESE, CONNOLLY and BRATHWAITE NELSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court