

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

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_____AD3d_____

Argued - January 8, 2018

CHERYL E. CHAMBERS, J.P.
SYLVIA O. HINDS-RADIX
COLLEEN D. DUFFY
HECTOR D. LASALLE, JJ.

2017-04972

DECISION & ORDER

In the Matter of Nicole Latham, appellant, v Samuel
Savage, respondent.

(Docket No. V-28463-07)

Larry S. Bachner, New York, NY, for appellant.

Michael E. Lipson, Jericho, NY, for respondent.

Karen P. Simmons, Brooklyn, NY (Rachel J. Stanton and Janet Neustaetter of
counsel), attorney for the child.

Appeal from an order of the Family Court, Kings County (Maria Arias, J.), dated
April 25, 2017. The order, after a hearing, denied the mother's petition to modify a prior order of
custody so as to award her custody of the subject child.

ORDERED that the order is reversed insofar as appealed from, on the facts and as
a matter of discretion, without costs or disbursements, and the matter is remitted to the Family Court,
Kings County, for further proceedings consistent herewith. In the interim, custody of the subject
child shall remain with the mother.

The parties have one child together. On December 11, 2007, an order of custody was
entered awarding the father custody of the child and the mother supervised visitation. The mother
filed the instant petition on July 16, 2014, to modify the custody order so as to award her custody of
the child. After a hearing, the Family Court denied the petition, finding that the mother had failed
to establish a change in circumstances sufficient to modify custody. The mother appeals.

Here, new developments have arisen since the date the order appealed from was
issued, which have been brought to this Court's attention by the attorney for the child. "As the Court
of Appeals has recognized, changed circumstances may have particular significance in child custody

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matters and may render the record on appeal insufficient to review whether the Family Court's determinations are still in the best interests of the children" (*Matter of Leval B. v Kiona E.*, 115 AD3d 665, 667; see *Matter of Michael B.*, 80 NY2d 299, 317). In light of the serious allegations brought to this Court's attention by the attorney for the child, "the record before us is no longer sufficient for determining" the ultimate issues presented (*Matter of Michael B.*, 80 NY2d at 318).

Accordingly, the matter must be remitted to the Family Court, Kings County, for a new expedited hearing and new expedited determination of whether, considering the best interests of the child, current circumstances support the child's residence with the father. We express no opinion as to the appropriate determination. In the interim, custody of the subject child shall remain with the mother—we take judicial notice of the fact that the mother was granted temporary custody of the child by order of the Family Court, Kings County, dated September 22, 2017.

CHAMBERS, J.P., HINDS-RADIX, DUFFY and LASALLE, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court