

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

798

CAF 23-00123

PRESENT: WHALEN, P.J., CURRAN, MONTOUR, OGDEN, AND NOWAK, JJ.

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IN THE MATTER OF NANCY L. NICHOLS,  
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

WENDY L. NICHOLS, RESPONDENT-APPELLANT,  
ET AL., RESPONDENT.

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MICHAEL D. SCHMITT, ROCHESTER, FOR RESPONDENT-APPELLANT.

KAMAN BERLOVE LLP, ROCHESTER (GARY MULDOON OF COUNSEL), FOR  
PETITIONER-RESPONDENT.

MAUREEN N. POLEN, ROCHESTER, ATTORNEY FOR THE CHILDREN.

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Appeal from an order of the Family Court, Monroe County (Dandrea L. Ruhlmann, J.), entered July 27, 2022, in a proceeding pursuant to Family Court Act article 6. The order, inter alia, granted the second amended petition for visitation with respect to the subject children.

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

Memorandum: In this proceeding pursuant to Family Court Act article 6, respondent mother appeals from an order that, inter alia, awarded petitioner, the maternal grandmother of the subject children, visitation with the children. The mother contends that the grandmother failed to demonstrate that she had standing to seek visitation pursuant to Domestic Relations Law § 72 (1). We reject that contention inasmuch as the grandmother established that "conditions exist [in] which equity would see fit to intervene" (*id.*; see *Matter of Panebianco v Panebianco*, 183 AD3d 1239, 1239 [4th Dept 2020], *lv denied* 35 NY3d 911 [2020]; see generally *Matter of Emanuel S. v Joseph E.*, 78 NY2d 178, 182 [1991]). It is undisputed that the grandmother has a long-standing, extensive, and loving relationship with the children (see *Matter of Hilgenberg v Hertel*, 100 AD3d 1432, 1433 [4th Dept 2012]; see also *Emanuel S.*, 78 NY2d at 182). Indeed, prior to the deterioration of her relationship with the mother, the children visited the grandmother overnight on a monthly basis and saw her several times a month. Moreover, the record supports Family Court's determination that the mother failed to set forth any basis for the court to determine that equity should not intervene here (see generally Domestic Relations Law § 72 [1]; *Panebianco*, 183 AD3d at 1240). Further, we note that the mother did not testify or adduce any

evidence at the factfinding hearing and therefore failed to articulate—let alone substantiate—any legitimate objection to visitation between the children and the grandmother.

Contrary to the mother's further contention, we conclude that the record supports the court's determination that visitation is in the best interests of the children (see *Panebianco*, 183 AD3d at 1240; *Matter of Richardson v Ludwig*, 126 AD3d 1546, 1547 [4th Dept 2015]). Finally, we reject the mother's contention that the court abused its wide discretion in formulating the grandmother's visitation schedule (see generally *Matter of Tartaglia v Tartaglia*, 188 AD3d 1754, 1755 [4th Dept 2020]; *Matter of Eliza JJ. v Felipe KK.*, 173 AD3d 1285, 1286 [3d Dept 2019]; *Matter of Terramiggi v Tarolli*, 151 AD3d 1670, 1672 [4th Dept 2017]).