

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

788

**CAF 24-00475**

PRESENT: CURRAN, J.P., BANNISTER, OGDEN, DELCONTE, AND HANNAH, JJ.

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IN THE MATTER OF AMBUR FORTNEY, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

LAVAUN RIVERS, RESPONDENT-RESPONDENT.

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IN THE MATTER OF AMBUR FORTNEY, PETITIONER-APPELLANT,

V

DUSTIN MILLER, RESPONDENT-RESPONDENT.

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IN THE MATTER OF AMBUR FORTNEY, PETITIONER-APPELLANT,

V

LAVAUN RIVERS AND DUSTIN MILLER,  
RESPONDENTS-RESPONDENTS.

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STEPHANIE R. DIGIORGIO, UTICA, FOR PETITIONER-APPELLANT.

BRIAN J. EHRHARD, UTICA, ATTORNEY FOR THE CHILD.

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Appeal from an order of the Family Court, Herkimer County (Robert E. Pronteau, R.), entered February 20, 2024, in a proceeding pursuant to Family Court Act article 6. The order, inter alia, denied in part the petition to modify an existing custody order.

It is hereby ORDERED that the appeal from the order insofar as it concerns custody of the subject child is unanimously dismissed and the order is affirmed without costs.

Memorandum: Petitioner mother filed a petition seeking modification of an existing custody order and two separate petitions alleging that respondent father and respondent maternal grandmother, respectively, violated that custody order. The mother appeals from an order that, among other things, denied her modification petition in part and dismissed the violation petitions.

Initially, we dismiss as moot the appeal from the order insofar as it concerns custody of the subject child because a subsequent order has been entered rendering the mother's challenge with respect to the child moot (*see Matter of Beavers v Beavers*, 239 AD3d 1424, 1425 [4th Dept 2025]; *Matter of Kirkpatrick v Kirkpatrick*, 117 AD3d 1575, 1576

[4th Dept 2014])).

We reject the mother's contention that Family Court erred in dismissing the violation petitions and in refusing to find the father and the maternal grandmother in civil contempt of court for violating the existing custody order. We conclude that the mother failed to establish by clear and convincing evidence the elements necessary to support a finding of civil contempt (see generally *El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]).