

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: November 24, 2004

93659

---

In the Matter of JOHN W.  
FOLSOM,  
Appellant,

v

MEMORANDUM AND ORDER

KHALIDA FOLSOM, Now Known as  
KHALIDA SWAN,  
Respondent.

---

Calendar Date: October 19, 2004

Before: Mercure, J.P., Spain, Carpinello, Lahtinen and Kane, JJ.

---

Justin C. Brusgul, Voorheesville, for appellant.

Kelly M. Corbett, Law Guardian, Ithaca.

---

Mercure, J.P.

Appeal from an order of the Family Court of Chemung County (Brockway, J.), entered January 8, 2003, which, in a proceeding pursuant to Family Ct Act article 6, denied petitioner's objections to a prior order of the court.

Petitioner is an inmate in a state correctional facility. In September 2001, Family Court directed that all of petitioner's written correspondence with his children be forwarded to a Law Guardian for screening.<sup>1</sup> After a subsequent request for guidance

---

<sup>1</sup> A more thorough recitation of the underlying facts in this matter may be found in two prior decisions of this Court (286 AD2d 830 [2001], lv denied 97 NY2d 606 [2001]; 262 AD2d 875 [1999]).

from the Law Guardian, Family Court modified its previous order without a hearing, instructing the Law Guardian to return certain letters containing inappropriate language and to forward only "child appropriate" correspondence. The court denied petitioner's objections to the modified order and petitioner now appeals, arguing that the court should have conducted a hearing.

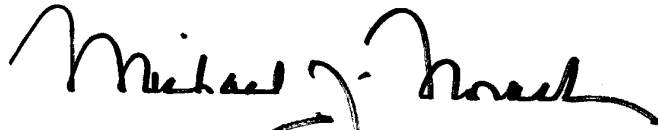
We affirm. Generally, an evidentiary hearing is necessary in determining whether modification of a prior custody order is warranted (see Matter of Smith v Bombard, 294 AD2d 673, 675 [2002], lv denied 98 NY2d 609 [2002]; Matter of Davies v Davies, 223 AD2d 884, 886-887 [1998]). A hearing is not required, however, "when 'the information before the court enables it to undertake a comprehensive independent review of the [children's] best interest[s]'" (Matter of Davies v Davies, supra at 886, quoting Matter of Oliver S. v Chemung County Dept. of Social Servs., 162 AD2d 820, 821-822 [1990]), as is the case here. Moreover, contrary to petitioner's further assertion, we conclude that there was sufficient evidence to support Family Court's modification of the order. Petitioner's disregard of the court's instructions to avoid negative terms in his letters warranted the clarification of the Law Guardian's obligation in supervising petitioner's correspondence to ensure that the best interests of the children would be advanced (see Matter of Simpson v Simrell, 296 AD2d 621, 621-622 [2002]; see also Matter of Rosario WW. v Ellen WW., 309 AD2d 984, 986 [2003]).

We have considered petitioner's remaining arguments and conclude that they are lacking in merit.

Spain, Carpinello, Lahtinen and Kane, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Michael J. Novack  
Clerk of the Court

