

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

Decided and Entered: February 23, 2006

97890

In the Matter of VIRGINIA
LE CLAIR,

Appellant,

v

MEMORANDUM AND ORDER

DALE McDONALD SR.,

Respondent.

(And Another Related Proceeding.)

Calendar Date: January 18, 2006

Before: Mercure, J.P., Crew III, Peters, Mugglin and Kane, JJ.

Diane Webster-Brady, Plattsburgh, for appellant.

O'Connell & Aronowitz, Plattsburgh (Heidi Dennis of
counsel), for respondent.

Barry J. Jones, Law Guardian, Glens Falls.

Kane, J.

Appeal from an order of the Family Court of Clinton County
(Lawliss, J.), entered March 9, 2005, which, inter alia,
partially granted petitioner's application, in two proceedings
pursuant to Family Ct Act article 6, to modify a prior order of
custody and visitation.

Both parties filed petitions in Family Court seeking
modification of a prior order granting respondent visitation with
the parties' son. The court partially granted the petitions by
crafting a detailed plan for visitation during the child's school

vacations and holidays. Petitioner appeals, contending that the court erred by not terminating respondent's Thursday overnight visitation every other week, not changing the location where the parties exchange the child and not ordering that respondent return the child to her if he is working during his visitation times. As these contentions have no merit, we affirm.

Despite petitioner's pretrial allegations regarding the child being cranky after Thursday night visits with respondent, no change was warranted because petitioner did not present any proof on that matter at the hearing (see Matter of Finch v Dunn, 11 AD3d 755, 756 [2004]). Petitioner's proof failed to establish that changing the exchange location would benefit the child, rather than just being more convenient for petitioner. As the parties cannot communicate, Family Court reasonably determined that it would be easier for the working parent to arrange for a daycare provider than to require each party to inform the other when he or she was working during visitation periods so that the nonworking parent could watch the child at those times (compare Matter of Leach v Santiago, 20 AD3d 715, 717-718 [2005], lv denied ___ NY3d ___ [Dec. 20, 2005]). Because the record supports Family Court's findings that these requested changes were not in the child's best interest, we will not disturb those findings (see Matter of Dickinson v Dickinson, 309 AD2d 994, 995 [2003]).

Mercure, J.P., Crew III, Peters and Mugglin, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Michael J. Novack
Clerk of the Court