

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

Decided and Entered: June 8, 2006

98365

In the Matter of ANDREW
M. PRATT SR.,
Appellant,

v

MEMORANDUM AND ORDER

KELLY S. ANTHONY,
Respondent.

Calendar Date: May 1, 2006

Before: Mercure, J.P., Crew III, Peters, Rose and Lahtinen, JJ.

Justin C. Brusgal, Voorheesville, for appellant.

Mary Cosgrove Militano, Law Guardian, Scotia.

Lahtinen, J.

Appeal from an order of the Family Court of Saratoga County (Hall, J.), entered March 3, 2005, which dismissed petitioner's application, in a proceeding pursuant to Family Ct Act article 6, to, inter alia, modify an order of visitation.

The parties are the parents of a daughter (born in 1995) and a son (born in 1998). Petitioner, who is currently incarcerated for a sex crime perpetrated upon a seven-year-old girl, filed a petition seeking, among other things, modification of a visitation order. Family Court held that the petition failed to state a cause of action and, thus, dismissed it without prejudice. Petitioner appeals.

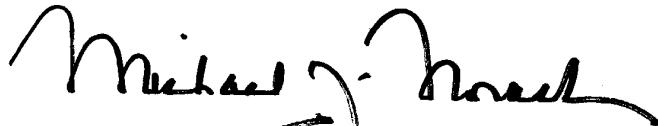
It is incumbent upon an appellant to assemble a proper record, including the relevant documents that were before the

lower court, and appeals will be dismissed when the record is incomplete (see Mergl v Mergl, 19 AD3d 1146, 1147 [2005]; Fernald v Vinci, 13 AD3d 333, 334 [2004]). Here, the order that petitioner asserts should be modified is not included in the record. The omission of that order requires dismissal of this appeal. Even if such omission were not present, we note that, on the face of the petition, it fails to allege a substantial change of circumstances sufficient to justify an inquiry into whether modification would serve the best interests of the children (see Matter of Cooke v Miller, 300 AD2d 959, 960 [2002]).

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

ORDERED that the appeal is dismissed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is fluid and cursive, with a large loop at the end.

Michael J. Novack
Clerk of the Court