

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

Decided and Entered: October 18, 2007

501355

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In the Matter of JOHNNIE  
MOORE,

Appellant,

v

MEMORANDUM AND ORDER

TAWNY M. SCHILL et al.,  
Respondents.

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Calendar Date: September 14, 2007

Before: Cardona, P.J., Crew III, Mugglin, Rose and  
Lahtinen, JJ.

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Francisco Berry, Ithaca, for appellant.

Tawny M. Schill, Elmira, respondent pro se.

Rhonda Klee, Elmira, respondent pro se.

Norbert A. Higgins, Law Guardian, Binghamton.

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Cardona, P.J.

Appeal from an order of the Family Court of Chemung County (Brockway, J.), entered April 20, 2006, which granted petitioner's application, in a proceeding pursuant to Family Ct Act article 6, for visitation with his child.

Petitioner and respondent Rhonda Klee are the biological parents of a child born in 2004. Shortly after birth, the child

was placed in the custody of his maternal aunt, respondent Tawny M. Schill, due to the incarceration of both parents. In October 2005, petitioner, incarcerated in a federal prison in Pennsylvania, commenced this proceeding seeking visitation. Following a hearing, Family Court, among other things, awarded petitioner visitation every six months provided that petitioner pay transportation expenses associated therewith as calculated according to the state mileage reimbursement rate.

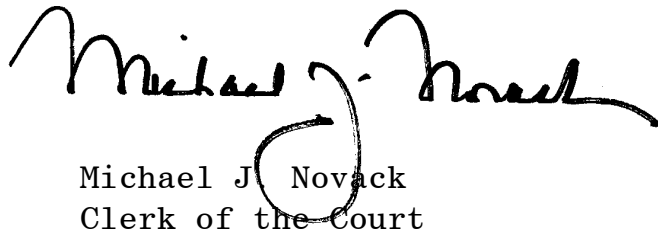
Initially, we are unpersuaded by petitioner's contention that Family Court should have awarded more frequent visitation. The propriety of visitation is left to the sound discretion of Family Court and its findings, guided by the best interests of the child, will not be disturbed unless they lack a sound basis in the record (see Matter of Conklin v Hernandez, 41 AD3d 908, 910 [2007]; Matter of Simpson v Simrell, 296 AD2d 621 [2002]). Here, Family Court weighed, among other things, the child's young age, as well as the distance and travel time to the penitentiary. Based upon this record, we find no reason to disturb the court's award of semi-annual visitation. The record also supports the court's decision requiring petitioner to bear the transportation costs of facilitating the visitation, as well as its application of the state mileage rate.

Finally, although petitioner has since been transferred to another prison facility, he did not raise any issue regarding a potential transfer in the current petition and, in any event, any change in circumstance is more appropriately the subject of a modification petition.

Crew III, Mugglin, Rose and Lahtinen, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, prominent initial "M".

Michael J. Novack  
Clerk of the Court