

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

Decided and Entered: June 5, 2008

503097

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In the Matter of MARK C.  
STERLING,  
Appellant,

v

MEMORANDUM AND ORDER

ALLEGRA V. DYAL,  
Respondent.

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Calendar Date: April 22, 2008

Before: Cardona, P.J., Mercure, Rose, Malone Jr. and  
Kavanagh, JJ.

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Teresa C. Mulliken, Harpersfield, for appellant.

Abigail De Loache, Law Guardian, Ithaca.

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Cardona, P.J.

Appeal from an order of the Family Court of Tioga County (Squeglia, J.), entered July 3, 2007, which dismissed petitioner's application, in a proceeding pursuant to Family Ct Act article 6, to modify a prior order of custody and visitation.

Petitioner (hereinafter the father) and respondent (hereinafter the mother) are the parents of a child born in September 2003. In August 2006, based upon the parties' stipulation, Family Court entered an order granting the mother sole custody of the child and the father the right to refile a petition without alleging a change in circumstances. Thereafter, in February 2007, the father commenced the instant modification proceeding seeking visitation with the child. At that time, the father had been incarcerated based upon an assault against the

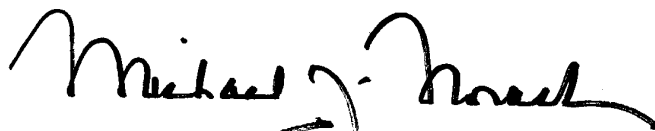
mother and was awaiting sentencing on an unrelated conviction. During the course of the proceedings, the parties, represented by counsel, stipulated to a disposition of the matter, which was placed on the record in open court. The stipulation provided that sole custody of the child would continue with the mother and she agreed to allow visitation, at her discretion, with the paternal grandmother - who the parties acknowledged was not a party to the proceeding. Family Court entered an order to that effect. The father then requested by letter that the order be amended, claiming, among other things, that he did not agree that visitation with the paternal grandmother be within the sole discretion of the mother. By letter, Family Court denied the father's request to amend the order. The father then appealed from the consent order.

The order from which the father appeals was entered upon the consent of the parties, the terms of which were clearly set forth on the record. Inasmuch as no appeal lies from an order on consent (see CPLR 5511), the appeal must be dismissed (see Matter of Collins v Brush, 17 AD3d 726, 727 [2005]; Matter of Geddes v Montpetit, 15 AD3d 797 [2005], lv dismissed 4 NY3d 869 [2005]; Matter of Forbus v Stolfi, 300 AD2d 852 [2002], appeal dismissed 99 NY2d 642 [2003]).

Mercure, Rose, Malone Jr. and Kavanagh, 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 written in a cursive style with a large, looping initial "M".

Michael J. Novack  
Clerk of the Court