

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

Decided and Entered: February 11, 2010

505716

In the Matter of CHRISTINE V.
SANCHEZ,
Appellant,

v

MICHAEL J. BOLLENBACH,
Respondent.

MEMORANDUM AND ORDER

(And Another Related Proceeding.)

Calendar Date: December 15, 2009

Before: Mercure, J.P., Spain, Malone Jr., Stein and
McCarthy, JJ.

Marshall A. Courtney, Kingston, for appellant.

William L. Koslosky, Law Guardian, Utica.

Malone Jr., J.

Appeal from an order of the Family Court of Ulster County (McGinty, J.), entered August 27, 2008, which dismissed petitioner's applications, in two proceedings pursuant to Family Ct Act article 6, to, among other things, modify a prior order of custody.

In September 2004, respondent (hereinafter the father) was awarded sole legal and physical custody of the parties' minor children (born in 1993 and 1996) and petitioner (hereinafter the mother) was awarded weekly visitation with the children at the paternal grandparents' home in the Town of Woodstock, Ulster County, in addition to any other visitation as agreed upon by the

parties. In August 2008, the mother filed the instant petitions alleging a violation of the prior order and seeking modification thereof. The petitions alleged, among other things, that the father and the children had moved several times and that her last contact with the children occurred in December 2007. The mother further alleged that, in May 2008, she became aware that the father and the children were living in Connecticut, but she had been unsuccessful in her attempts to ascertain their specific location. The mother also alleged that, immediately before filing the petitions, she learned from the father's stepson that the children's health and safety were at risk. Family Court dismissed the petitions without prejudice and without a hearing, finding that it did not have jurisdiction, without explanation for such determination. The mother appeals.

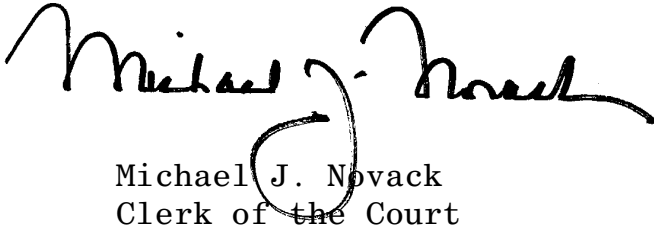
Because we are unable to ascertain on this record either the factual or the legal basis underlying Family Court's determination, we are constrained to remit the matter to Family Court to conduct a hearing and render a de novo determination on the issue of the court's jurisdiction to entertain the petitions (see Matter of Recard v Polite, 21 AD3d 379 [2005]; see also Domestic Relations Law art 5-A).¹

Mercure, J.P., Spain, Stein and McCarthy, JJ., concur.

¹ Notably, no objection or other response to the petitions by the father is contained in the record and he did not appear in this appeal.

ORDERED that the order is reversed, on the law, without costs, and matter remitted to the Family Court of Ulster County for further proceedings not inconsistent with this Court's decision.

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