

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

Decided and Entered: February 4, 2010

506572

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JENNIFER HH.,

Appellant,

v

MEMORANDUM AND ORDER

VERONICA II. et al.,

Respondents.

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Calendar Date: January 11, 2010

Before: Cardona P.J., Peters, Spain, Stein and Garry, JJ.

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Cynthia Feathers, Saratoga Springs, for appellant.

Carol R. Stiglmeier, Law Guardian, Albany.

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Spain, J.

Appeal from an order of the Family Court of Albany County (Walsh, J.), entered March 13, 2009, which dismissed petitioner's application, in a proceeding pursuant to Family Ct Act article 6, to modify a prior order of custody.


Petitioner (hereinafter the mother), who is the mother of a daughter born in 2000, commenced this proceeding in March 2009 seeking modification of a 2004 Supreme Court order which, among other things, granted primary physical custody of the subject child to respondents Veronica II. and Daniel II., the child's paternal grandparents. Inasmuch as the same allegations forming the basis of the petition herein were deemed unfounded in an earlier 2006 Family Court proceeding that was also commenced in a petition filed by the mother, Family Court dismissed the instant petition for failure to state a cause of action. The mother now appeals.

The mother's counsel seeks to be relieved of her assignment on the ground that there are no nonfrivolous issues to be pursued on appeal (see Anders v California, 386 US 738 [1967]; Matter of William XX. v Broome County Dept. of Social Servs., 11 AD3d 735 [2004]). Upon our review of the record, which includes the mother's acknowledgment that the allegations in the petition were previously considered by Family Court, we agree. Accordingly, counsel's application to be relieved of her assignment is granted (see Matter of Cheyenne T., 58 AD3d 1040, 1041 [2009]).

Cardona, P.J., Peters, Stein and Garry, JJ., concur.

ORDERED that the order is affirmed, without costs, and application to be relieved of assignment granted.

ENTER:



Michael J. Novack  
Clerk of the Court