

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

Decided and Entered: November 17, 2011

509749

In the Matter of MICHAEL GG.,
Respondent,

v

MELISSA HH.,

Appellant.

MEMORANDUM AND ORDER

(And Another Related Proceeding.)

Calendar Date: October 18, 2011

Before: Rose, J.P., Lahtinen, Kavanagh, McCarthy and Garry, JJ.

Tracy Donovan-Laughlin, Cherry Valley, for appellant.

Mycek Law Firm, Amsterdam (William H. Mycek of counsel),
for respondent.

Karen Kimball, Wynantskill, attorney for the child.

Kavanagh, J.

Appeal from an order of the Family Court of Montgomery County (Cortese, J.), entered April 26, 2010, which, among other things, granted petitioner's application, in a proceeding pursuant to Family Ct Act article 6, to modify a prior order of custody.

The parties are the parents of a son (born in 2006) and, pursuant to a June 2007 Family Court order, they shared joint legal custody, with primary physical custody residing with respondent (hereinafter the mother). After petitioner (hereinafter the father) discovered that the mother and the

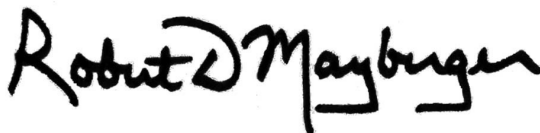
subject child were living in squalid conditions, he commenced a proceeding in July 2009 seeking to modify custody.¹ Following hearings, Family Court awarded sole physical and legal custody to the father with limited visitation to the mother. The mother appeals.

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 Jennifer HH. v Veronica II., 70 AD3d 1072, 1073 [2010]). However, we concur with the attorney for the child that the record reveals at least one potentially nonfrivolous issue, namely whether it was proper for Family Court to award sole legal custody of the child to the father. Accordingly, without expressing any opinion as to the ultimate merits, we grant counsel's request to be relieved of the assignment and will assign new appellate counsel to address this issue and any other nonfrivolous issues that the record may disclose (see Matter of Marchand v Nazzaro, 48 AD3d 1007 [2008]; Matter of Taylor v Fry, 42 AD3d 680, 681 [2007]).

Rose, J.P., Lahtinen, McCarthy and Garry, JJ., concur.

ORDERED that the decision is withheld, application to be relieved of assignment granted and new counsel to be assigned.

ENTER:



Robert D. Mayberger
Clerk of the Court

¹ The father also filed a family offense petition, which Family Court dismissed.