

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

Decided and Entered: December 6, 2012

512104

In the Matter of LOUIS R.
MARIANI,

Appellant,

v

MEMORANDUM AND ORDER

JULIE MORGAN,

Respondent.

Calendar Date: November 19, 2012

Before: Peters, P.J., Spain, Kavanagh, McCarthy and
Egan Jr., JJ.

Marshall Nadan, Kingston, for appellant, and appellant
pro se.

Dale Dorner, Greenville, for respondent.

Alexander W. Bloomstein, Hillsdale, attorney for the
children.

Kavanagh, J.

Appeal from an order of the Family Court of Greene County
(Czajka, J.), entered November 9, 2010, which dismissed
petitioner's application, in a proceeding pursuant to Family Ct
Act article 6, to, among other things, enforce an order of
visitation.

Petitioner (hereinafter the father) and respondent
(hereinafter the mother) are the unmarried parents of two
children, a daughter (born in 1997) and a son (born in 1999).
Pursuant to an August 2007 Family Court (Pulver Jr., J.) order,

entered upon stipulation of the parties, they shared joint legal custody, with the mother having primary physical custody and the father having scheduled visitation. After the children began experiencing problems at school due to, among other things, visitation, the court issued a temporary order in January 2008 suspending the father's visitation "pending further order of this court." Following a psychological evaluation of the children, therapy was directed for the parents and children, with the father indicating that he would participate.¹

The father's cooperation over the ensuing months was minimal. In a March 2010 appearance before Family Court (Czajka, J.), the father agreed to follow a recommendation from a psychological evaluation of the children indicating that, before his visitation would resume, "he obtain a full and complete mental health evaluation, and engage in therapeutic counseling thereafter." A consent order to that effect was entered on March 25, 2010, which provided that, in the event the parties could not agree as to how visitation was to resume following the father's completion of the mental health evaluation, the father was to "re-petition the court to establish visitation." Nonetheless, the father did not follow through with obtaining the evaluation and, instead, brought a petition in October 2010, seeking, among other things, enforcement of the visitation provisions of the stipulation embodied in the superceded August 2007 order. Following a hearing, the court dismissed the petition with prejudice and the father did not appeal that order. The father then filed an almost identical petition again seeking enforcement of the visitation provisions of the August 2007 order. In an order entered December 20, 2010, the court dismissed this petition with prejudice.² This appeal ensued.

¹ At a March 2008 appearance, Family Court specifically advised the father that he had the right to an attorney and the father stated that he did not want an attorney. In all proceedings included in the record before this Court, the father thereafter appeared pro se.

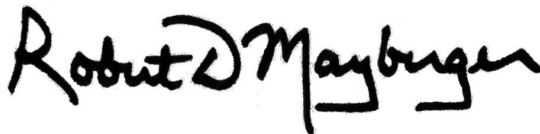
² Citing Matter of Horike v Freedman (37 AD3d 978, 980 [2008]), Family Court also directed that the Greene County Family

Appellate counsel for respondent seeks to be relieved of his assignment upon the ground that there are no nonfrivolous issues to pursue on appeal (see People v Cruwys, 113 AD2d 979 [1985], lv denied 67 NY2d 650 [1986]). Upon our review of the record and the parties' submissions, we agree. The only matter before this Court is an appeal from Family Court's dismissal of the most recent of the father's petitions seeking to enforce a superceded order. Under these circumstances, the court's order must be affirmed and the father's counsel is relieved of his assignment (see Matter of Danielle L., 269 AD2d 704 [2000]).

Peters, P.J., Spain, McCarthy and Egan Jr., JJ., concur.

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

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court

Court Clerk not accept any further papers from the father for filing unless done so by order to show cause.