

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

Decided and Entered: November 8, 2012

513652

In the Matter of JASON EVERETT
PANZER,

Appellant,

v

MEMORANDUM AND ORDER

MELISSA JEAN WOOD,

Respondent.

Calendar Date: October 10, 2012

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

Paul J. Connolly, Delmar, for appellant.

Vida L. McCarthy Cerrito, Schenectady, attorney for the
child.

McCarthy, J.

Appeal from an order of the Family Court of Schenectady
County (Taub, J.H.O.), entered June 14, 2011, which dismissed
petitioner's application, in a proceeding pursuant to Family Ct
Act article 6, to hold respondent in violation of a prior order.

The parties are the parents of a son (born in 2001). By
order signed January 2011, a modification of an order of
visitation was entered, on consent, directing that (1) respondent
shall send letters and photographs to petitioner¹ updating him on

¹ Petitioner apparently has been imprisoned out of state
for most of the child's life.

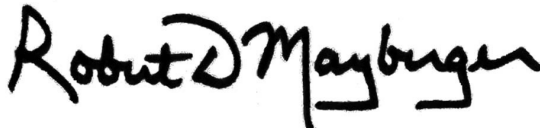
the child's growth and development three times a year, (2) both parties must inform the other of any change of address, and (3) petitioner may send letters and cards to the child so long as the correspondence is not signed as "Dad." In April 2011, petitioner commenced this violation proceeding claiming that respondent violated the terms and conditions of the visitation order by interfering with his 14th Amendment rights. Family Court, sua sponte, dismissed the petition for failure to state a cause of action and this appeal ensued.²

We affirm. Even accepting petitioner's allegations as true and according petitioner the benefit of every possible favorable inference, as we must (see Matter of Mitchell v Childs, 26 AD3d 685, 687 [2006]; see also Family Ct Act § 165; CPLR 3026), petitioner has failed to set forth factual allegations tending to support his contention that respondent violated the visitation order in any way. Accordingly, Family Court properly dismissed the petition for failure to state a cause of action.

Mercure, J.P., Lahtinen, Kavanagh and Garry, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court

² Although petitioner's appeal is technically premature because he filed his notice of appeal prior to the entry of the order of dismissal (see CPLR 5512 [a]; Family Ct Act § 165), in the exercise of our discretion, we will treat the notice of appeal as valid (see CPLR 5520 [c]; Matter of Loomis v Yu-Jen G., 81 AD3d 1083, 1084 [2011]).