

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

Decided and Entered: December 10, 2015

520294

In the Matter of CHRISTOPHER
DRISCOLL,
Respondent,

v

AMBER OURSLER,
Appellant.

MEMORANDUM AND ORDER

(And Nine Other Related Proceedings.)

Calendar Date: November 20, 2015

Before: Lahtinen, J.P., McCarthy, Egan Jr., Lynch and Clark, JJ.

Frank A. Sarat, Homer, for appellant.

Karen L. Howe, Cortland, for respondent.

Elizabeth Aherne, Ithaca, attorney for the child.

Clark, J.

Appeal from an order of the Family Court of Cortland County (Campbell, J.), entered October 6, 2014, which, among other things, granted petitioner's application, in a proceeding pursuant to Family Ct Act article 6, for custody of the parties' child.

Petitioner (hereinafter the father) and respondent (hereinafter the mother) are the parents of a child (born in 2007). After the parties went their separate ways in 2010, they had an informal and unstructured arrangement where they shared parenting time. In 2013, the father commenced the first of these

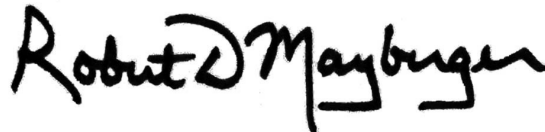
proceedings seeking sole custody of the child. Following the filing of nine additional proceedings, hearings were held over several days during which numerous witnesses testified. At the conclusion of the hearings, Family Court, among other things, awarded sole legal and physical custody to the father and parenting time with the mother. The mother now appeals.

The mother's appellate counsel seeks to be relieved of his assignment on the basis that there are no nonfrivolous issues to be raised, citing Anders v California (386 US 738 [1967]). As we have previously stated, however, "[i]t is indeed rare that an Anders brief will reflect effective advocacy in a contested case such as this where a trial or full evidentiary hearing has occurred" (Matter of Taylor v Fry, 42 AD3d 680, 681 [2007]; accord Matter of Reynolds v VanDusen, 128 AD3d 1294, 1295 [2015]). Our review of the record and the mother's pro se brief reveals at least one potentially nonfrivolous issue to be raised, whether it was proper for Family Court to award sole custody of the child to the father. Accordingly, without expressing any opinion as to the ultimate merits, counsel's request is granted and new appellate counsel will be assigned to address this issue and any other nonfrivolous issues that the record may disclose (see Matter of Reynolds v VanDusen, 128 AD3d at 1295; Matter of Marchand v Nazzaro, 48 AD3d 1007, 1007 [2008]).

Lahtinen, J.P., McCarthy, Egan Jr. and Lynch, JJ., concur.

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

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