

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

Decided and Entered: January 7, 2016

520483

In the Matter of LINDA SCHROLL,
Respondent,

v

ANGELIQUE WRIGHT,
Appellant,
et al.,
Respondent.

MEMORANDUM AND ORDER

Calendar Date: November 19, 2015

Before: Peters, P.J., Lahtinen, Garry, Rose and Clark, JJ.

Michelle I. Rosien, Philmont, for appellant.

Alexandra G. Verrigini, Rexford, for Linda Schroll,
respondent.

Heather Corey-Mongue, Ballston Spa, attorney for the child.

Peters, P.J.

Appeal from an order of the Family Court of Saratoga County (Hall, J.), entered September 19, 2014, which granted petitioner's application, in a proceeding pursuant to Family Ct Act article 6, to modify a prior order of visitation.

Respondent Angelique Wright (hereinafter the mother) is the mother of the subject child (born in 2005), and petitioner (hereinafter the grandmother) is the child's maternal grandmother. Pursuant to a stipulated order entered in May 2013, the mother and the grandmother share joint legal custody of the child, with the grandmother having primary physical custody and

the mother receiving parenting time. In April 2014, the grandmother commenced this proceeding seeking to have the mother's visitation supervised or suspended based on allegations of, among other things, her continued drug use. Thereafter, Family Court issued an order directing the mother to submit to a hair follicle test. When the parties next appeared, Family Court had yet to receive the test results despite the mother's claim that she had submitted to the test and had signed a release for the results to be provided to the court. The matter was thereafter twice adjourned while the court awaited the results of the test. When the parties appeared in September 2014 and the test results were still not forthcoming, Family Court immediately granted the grandmother's application and ordered that the mother's visitation be supervised. The mother appeals.

Family Court erred in modifying the mother's visitation without conducting a hearing. It is settled that "modification of a Family Ct Act article 6 custody order requires a full and comprehensive hearing at which a parent is to be afforded a full and fair opportunity to be heard" (Matter of Damian D. [Patricia WW.], 126 AD3d 12, 16 [2015] [internal quotation marks and citations omitted]; accord Matter of Richardson v Massey, 127 AD3d 1277, 1278 [2015]; see Matter of McCullough v Harris, 119 AD3d 992, 993 [2014]; Matter of Moore v Palmatier, 115 AD3d 1069, 1070 [2014]), except where "no hearing is requested and the court has sufficient information to undertake a comprehensive independent review of the child's best interests" (Matter of Twiss v Brennan, 82 AD3d 1533, 1534 [2011] [internal quotation marks, brackets and citations omitted]; see Matter of Moore v Palmatier, 115 AD3d at 1070-1071; Matter of Freedman v Horike, 107 AD3d 1332, 1333 [2013]; Matter of Spencer v Spencer, 85 AD3d 1244, 1245 [2011]).

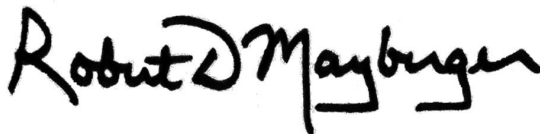
Here, the mother objected to the hair follicle test and specifically requested a hearing on the allegations concerning her continued drug use. Further, while Family Court made a fleeting reference during one of the court appearances to the mother's history of drug use, in the absence of the test results or any record evidence of recent drug use by the mother, there was not enough information before the court to permit it to determine whether unsupervised visitation would be inimical to

the child's welfare or whether supervised visitation was otherwise necessary to ensure the child's best interests (see Matter of Fish v Fish, 112 AD3d 1161, 1162 [2013]). As the restriction of the mother's visitation was based upon mere allegations, the order must be reversed and the matter remitted for a hearing on the petition (see Matter of Moore v Palmatier, 115 AD3d at 1071; Matter of Spencer v Spencer, 85 AD3d at 1245; Matter of Twiss v Brennan, 82 AD3d at 1535; compare Matter of Mary GG. v Alicia GG., 106 AD3d 1410, 1411-1412 [2013], lv denied 21 NY3d 863 [2013]). In light of this determination, we need not address the mother's remaining arguments.

Lahtinen, Garry, Rose and Clark, JJ., concur.

ORDERED that the order is reversed, on the law, without costs, and matter remitted to the Family Court of Saratoga County for further proceedings not inconsistent with this Court's decision and, pending said proceedings, the terms of the September 19, 2014 order shall remain in effect on a temporary basis.

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