

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

Decided and Entered: July 3, 2019

526536

In the Matter of BENJAMIN K.,
Appellant,

v

LISKA J.,
Respondent.

MEMORANDUM AND ORDER

Calendar Date: June 5, 2019

Before: Lynch, J.P., Clark, Mulvey, Aarons and Rumsey, JJ.

The Arquette Law Firm, PLLC, Clifton Park (Alexandra J. Buckley of counsel), for appellant.

Elena DeFio Kean, Albany, for respondent.

Peter J. Scagnelli, Albany, attorney for the child.

Lynch, J.P.

Appeal from an order of the Family Court of Albany County (Maney, J.), entered February 6, 2018, which, in a proceeding pursuant to Family Ct Act article 6, granted respondent's motion to dismiss the petition.

Petitioner (hereinafter the father) and respondent (hereinafter the mother) are the parents of a child (born in 2011). Pursuant to a May 2017 custody order, the parents have joint legal custody, with primary physical custody to the mother and parenting time for the father on alternate weekends and one overnight each week. Pertinent here, the order directs the

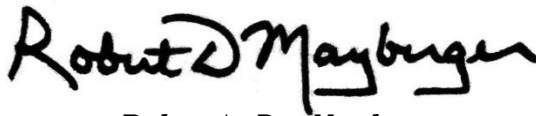
parents to "share holidays and school breaks by agreement." In December 2017, the father filed a petition to modify custody following a dispute over parenting time for the Christmas holiday. Upon the mother's oral motion to dismiss, Family Court dismissed the petition due to the father's failure to state a "change in circumstances." The father appeals.

By separate decision in Matter of Liska J. v Benjamin K. (___ AD3d ___ [decided herewith]), this Court has reversed the underlying May 2017 custody order and remitted the matter to Family Court for a new hearing. As a result, the subject appeal has been rendered moot.

Clark, Mulvey, Aarons and Rumsey, JJ., concur.

ORDERED that the appeal is dismissed, as moot, without costs.

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