

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

Decided and Entered: November 5, 2020

528256

In the Matter of ADAM O.,
Respondent,

v

TRACIE P.,
Appellant.

MEMORANDUM AND ORDER

(And Two Other Related Proceedings.)

Calendar Date: September 15, 2020

Before: Egan Jr., J.P., Mulvey, Aarons, Pritzker and
Colangelo, JJ.

Steven H. Klein & Associates, PC, Poughkeepsie (Steven H. Klein of counsel), for appellant.

Marvin Newberg, Monticello, for respondent.

Pritzker, J.

Appeal from an order of the Family Court of Sullivan County (McGuire, J.), entered November 13, 2018, which, among other things, dismissed petitioner's application, in three proceedings pursuant to Family Ct Act article 6, to modify a prior order of custody and visitation.

Petitioner (hereinafter the father) and respondent (hereinafter the mother) are the parents of one child (born in 2011). The father filed a petition for modification of a prior joint custody order, seeking sole legal and physical custody of

the child. Thereafter, the mother filed a petition for enforcement of the custody order as well as a modification petition seeking, among other things, sole physical custody of the child. A fact-finding hearing ensued on the petitions and, following the mother's testimony, the parties entered into a stipulated agreement on the record. As is relevant to this appeal, the agreement included an acknowledgment of a debt owed by the mother to the father and monthly installments to satisfy that debt, which was subsequently set forth in an order of custody entered on consent. The mother appeals.

The mother's appeal must be dismissed inasmuch as "orders issued upon consent are not appealable" (Matter of Amy TT. v Ryan UU., 176 AD3d 1426, 1427-1428 [2019]; see Matter of Frank CC. v Cecilia BB., 182 AD3d 642, 643 [2020]). Contrary to the mother's contention, the exception to this general rule does not apply because the order does not differ from or exceed the amount and payment plan consented to by the mother (see Matter of Adam V. v Ashli W., 180 AD3d 1205, 1206 [2020]; Matter of Jordan v Horstmeyer, 152 AD3d 1097, 1098 [2017]). Finally, because the mother did not move to vacate the order, she cannot now assert that her consent to the order was not knowingly or voluntarily given (see Matter of Frank CC. v Cecilia BB., 182 AD3d at 643; Matter of Amy TT. v Ryan UU., 176 AD3d at 1428).

Egan Jr., J.P., Mulvey, Aarons and Colangelo, JJ., concur.

ORDERED that the appeal is dismissed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court