

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

Decided and Entered: May 30, 2024

535410

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In the Matter of ATTORNEY FOR  
THE CHILD,

Appellant,

v

MEMORANDUM AND ORDER

JOHN J.,

Respondent,  
et al.,  
Respondent.

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Calendar Date: March 26, 2024

Before: Clark, J.P., Aarons, Reynolds Fitzgerald, McShan and Mackey, JJ.

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*Vicki J. Prager*, Northville, attorney for the child, appellant.

*Nichols Law Firm PLLC*, Malone (*Kevin F. Nichols* of counsel), for John J., respondent.

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Aarons, J.

Appeal from an order of the Family Court of Franklin County (Craig P. Carriero, J.), entered April 7, 2022, which dismissed petitioner's application, in a proceeding pursuant to Family Ct Act article 6, for an order of visitation.

Respondent John J. (hereinafter the father) and respondent Kaylalyn I. (hereinafter the mother) are the parents of a child (born in 2012); nonparty Kelly L. is the child's

former foster mother.<sup>1</sup> In August 2015, Family Court of St. Lawrence County (Richards, J.) entered an order on consent granting the father sole legal and primary physical custody of the child and, as relevant here, visitation with the former foster mother. Five years later, in June 2020, the father commenced a proceeding to modify the August 2015 order by terminating the former foster mother's visitation. Following a hearing, Family Court of Franklin County (Main Jr., J.) concluded that there was no legal authority to mandate such contact over the father's objection, and, by order entered in September 2021, terminated the child's visitation with the former foster mother (*Matter of J.W. v K.M.*, 73 Misc 3d 385, 391-392 [Fam Ct, Franklin County 2021]).

No appeal was taken from that order. Then, in March 2022, petitioner, the attorney for the child,<sup>2</sup> commenced this Family Ct Act article 6 proceeding on behalf of the child seeking an order directing visitation with the former foster mother, asserting that the child has an independent, constitutionally protected liberty interest in maintaining contact with her. Family Court (Carriero, J.) dismissed the petition without a hearing. Petitioner appeals.

We affirm. "In seeking to modify the visitation, it was petitioner's initial burden to demonstrate a change in circumstances sufficient to warrant a review of the [child's] best interests since the prior order and, if this burden was met, to next demonstrate that modification was in the [child's] best interests" (*Matter of Attorney for the Children v Barbara N.*, 152 AD3d 903, 903-904 [3d Dept 2017] [citations omitted]). Although petitions seeking modifications of prior orders pursuant to Family Ct Act article 6 generally require a hearing, no hearing is required where the petitioner fails to "make a sufficient evidentiary showing demonstrating a real need for change" (*Matter of Clinton v Backus*, 160 AD3d 1073, 1074 [3d Dept 2018]; *see Matter of Nathan PP. v Angela PP.*, 205 AD3d 1082, 1083-1084 [3d Dept 2022]; *Matter of Sarah OO. v Charles OO.*, 198 AD3d 1151, 1152 [3d Dept 2021]). Here, petitioner failed to allege any change in circumstances since the entry of the September 2021 order; as such, Family Court properly dismissed the petition without a hearing (*see Matter of William O. v John A.*, 148 AD3d 1258, 1259-1260 [3d Dept 2017], *lv denied* 29 NY3d 908 [2017]; *Matter of Clinton v Backus*, 160 AD3d at 1075; *Matter of Chittick v Farver*, 279 AD2d 673, 675-676 [3d Dept 2001]).

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<sup>1</sup> The mother has not filed a brief in this appeal. The former foster mother was not named in the petition.


<sup>2</sup> The child is represented by a different attorney on this appeal.

In light of our conclusion, petitioner's remaining contentions, including petitioner's constitutional challenge, have been rendered academic.

Clark, J.P., Reynolds Fitzgerald, McShan and Mackey, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial 'R' and 'M'.

Robert D. Mayberger  
Clerk of the Court