

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**385**

**CAF 09-00402**

PRESENT: CENTRA, J.P., FAHEY, CARNI, GREEN, AND PINE, JJ.

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IN THE MATTER OF LENORA M. PEREZ,  
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

MELISSA PEREZ, JOSHUA KING,  
RESPONDENTS-RESPONDENTS,  
AND LAUREEN POWELL, RESPONDENT-APPELLANT.

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MARY R. HUMPHREY, NEW HARTFORD, FOR RESPONDENT-APPELLANT.

JOHN W. DILLON, NEW HARTFORD, FOR PETITIONER-RESPONDENT.

MONICA R. BARILE, LAW GUARDIAN, NEW HARTFORD, FOR LILI P.

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Appeal from an order of the Family Court, Oneida County (Brian M. Miga, J.H.O.), entered February 6, 2009 in a proceeding pursuant to Family Court Act article 6. The order, inter alia, granted sole custody of the subject child to petitioner.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Respondent paternal grandmother appeals from an order that, inter alia, granted the petition seeking to modify a prior order of custody and visitation by granting sole custody to petitioner maternal grandmother. Contrary to the contention of the paternal grandmother, any defect in the verification of the petition "should be ignored inasmuch as [she] failed to demonstrate that [she] was substantially prejudiced by that alleged defect" (*Case v Cayuga County*, 60 AD3d 1426, 1427, lv dismissed 13 NY3d 770; see CPLR 3026). We reject the paternal grandmother's further contention that the petition is barred by the doctrine of equitable estoppel (see generally *Marilyn C.Y. v Mark N.Y.*, 64 AD3d 645, 646). We conclude that Family Court properly determined that the maternal grandmother established a change of circumstances warranting a modification of the prior order and that it is in the best interests of the child to award the maternal grandmother sole custody (see *Matter of Lewis R.E. v Deloris A.E.*, 37 AD3d 1092).

Entered: March 19, 2010

Patricia L. Morgan  
Clerk of the Court