

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

1522

CAF 10-00198

PRESENT: SMITH, J.P., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ.

IN THE MATTER OF NORMA WARRIOR,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ROBERT E. BEATMAN, SR., RESPONDENT-RESPONDENT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (ELIZABETH deV. MOELLER OF
COUNSEL), FOR PETITIONER-APPELLANT.

TIMOTHY PATRICK MURPHY, WILLIAMSVILLE, FOR RESPONDENT-RESPONDENT.

STEVEN J. LORD, ATTORNEY FOR THE CHILD, ARCADE, FOR ROBERT B., JR.

Appeal from an order of the Family Court, Cattaraugus County (Michael L. Nenno, J.), entered December 21, 2009 in a proceeding pursuant to Family Court Act article 6. The order dismissed the petition.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the petition is reinstated and the matter is remitted to Family Court, Cattaraugus County, for a hearing on the petition.

Memorandum: Petitioner mother appeals from an order dismissing her petition alleging that respondent father had violated a prior order that, inter alia, awarded custody of the parties' child to the father and established a visitation schedule for the mother. The mother contends that Family Court was biased against her, as evidenced by certain statements made by the court. We reject that contention. The statement of the court that the violation petition in question was the 11th petition filed by the mother during a 7-year period and its observation that the mother's latest modification petition was then pending on appeal does not reflect bias on the part of the court (see generally *Matter of Roystar T.*, 72 AD3d 1569, lv denied 15 NY3d 707). We agree with the mother, however, that the court erred in dismissing the petition without conducting a hearing inasmuch as the petition alleges sufficient factual and legal grounds to establish a violation of the prior order (see *Matter of Lisa B.I. v Carl D.I.*, 46 AD3d 1451). We therefore reverse the order, reinstate the petition and remit the matter to Family Court for a hearing on the petition.

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court