

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

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CAF 13-00501

PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, CARNI, AND VALENTINO, JJ.

IN THE MATTER OF CARYN CONSILIO,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

CHRISTOPHER TERRIGINO AND MARY E. DODDS,
RESPONDENTS-RESPONDENTS.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID R. JUERGENS OF
COUNSEL), FOR PETITIONER-APPELLANT.

TREVETT CRISTO SALZER & ANDOLINA P.C., ROCHESTER (ERIC M. DOLAN OF
COUNSEL), FOR RESPONDENT-RESPONDENT CHRISTOPHER TERRIGINO.

TANYA J. CONLEY, ATTORNEY FOR THE CHILD, ROCHESTER.

Appeal from an order of the Family Court, Monroe County (Thomas W. Polito, R.), entered January 29, 2013 in a proceeding pursuant to Family Court Act article 6. The order granted the motion of respondent Christopher Terrigino to dismiss the petition seeking to modify the existing visitation order.

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

Memorandum: Petitioner mother appeals from an order granting respondent father's motion to dismiss her petition seeking to modify the existing visitation order. The mother is not aggrieved by Family Court's failure to amend the order to reflect more accurately the intent of the parties inasmuch as the record indicates that the mother opposed any such amendment to the order during the underlying proceedings (*see generally* CPLR 5511; *Parochial Bus Sys. v Board of Educ. of City of N.Y.*, 60 NY2d 539, 544-545; *Matter of Glazier v Brightly*, 81 AD3d 1197, 1199). Contrary to the mother's further contention, the court properly granted the father's motion to dismiss the petition without a hearing. "A hearing is not automatically required whenever a parent seeks modification of a custody [or visitation] order" (*Matter of Wurmlinger v Freer*, 256 AD2d 1069, 1069) and, here, "the mother failed to 'make a sufficient evidentiary showing of a change in circumstances to require a hearing' " (*Matter of Warrior v Beatman*, 70 AD3d 1358, 1359, *lv denied* 14 NY3d 711).

Entered: February 14, 2014

Frances E. Cafarell
Clerk of the Court