

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

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CAF 19-01716

PRESENT: SMITH, J.P., PERADOTTO, NEMOYER, CURRAN, AND DEJOSEPH, JJ.

IN THE MATTER OF JOSE A. RODRIGUEZ,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MYRNA RODRIGUEZ, RESPONDENT-RESPONDENT.

IN THE MATTER OF MYRNA RODRIGUEZ,
PETITIONER-RESPONDENT,

V

JOSE A. RODRIGUEZ, RESPONDENT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR PETITIONER-APPELLANT AND RESPONDENT-APPELLANT.

LAW OFFICE OF PETER VASILION, WILLIAMSVILLE (PETER P. VASILION OF COUNSEL), FOR RESPONDENT-RESPONDENT AND PETITIONER-RESPONDENT.

MARY ANNE CONNELL, BUFFALO, ATTORNEY FOR THE CHILD.

WILLIAM D. BRODERICK, JR., ELMA, ATTORNEY FOR THE CHILD.

AUDREY ROSE HERMAN, BUFFALO, ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered June 19, 2019 in proceedings pursuant to Family Court Act article 6. The order, insofar as appealed from, dismissed the petitions of petitioner-respondent.

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

Memorandum: Petitioner-respondent father appeals from an order that effectively granted the motions of respondent-petitioner mother to dismiss his petitions seeking modification of a prior consent order of custody and visitation, and his other petitions alleging that the mother violated that prior consent order. We affirm.

Contrary to the father's contention, Family Court did not err in granting the mother's motions without a hearing. It is well settled that "[o]ne who seeks to modify an existing order of [custody and] visitation is not automatically entitled to a hearing [and] must make

some evidentiary showing sufficient to warrant it" (*Matter of Richard R.G. v Rebecca H.*, 34 AD3d 1312, 1312 [4th Dept 2006], *lv denied* 8 NY3d 804 [2007] [internal quotation marks omitted]; see *Matter of Moreno v Elliott*, 170 AD3d 1610, 1612 [4th Dept 2019]). Here, with respect to his modification petitions, the father failed to make a sufficient evidentiary showing of a change in circumstances to require a hearing (see *Matter of Gworek v Gworek* [appeal No. 1], 158 AD3d 1304, 1304 [4th Dept 2018]; *Matter of Warrior v Beatman*, 70 AD3d 1358, 1359 [4th Dept 2010], *lv denied* 14 NY3d 711 [2010]). With respect to the father's violation petitions, a hearing is required only where the "petitions set forth sufficient allegations 'that, if established at an evidentiary hearing, could support granting the relief sought' " (*Matter of Buck v Buck*, 154 AD3d 1134, 1135 [3d Dept 2017]; see *Matter of Honeyford v Luke*, 186 AD3d 1049, 1052 [4th Dept 2020]), and the father failed to make sufficient allegations here (see *Matter of Fewell v Koons*, 87 AD3d 1405, 1405-1406 [4th Dept 2011]; cf. generally *Buck*, 154 AD3d at 1135).

Entered: May 7, 2021

Mark W. Bennett
Clerk of the Court