

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

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CAF 13-00240

PRESENT: SMITH, J.P., FAHEY, CARNI, VALENTINO, AND WHALEN, JJ.

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IN THE MATTER OF JODY L. BLY, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

JOHN A. HOFFMAN, RESPONDENT-RESPONDENT.

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WAGNER & HART, LLP, OLEAN (JANINE FODOR OF COUNSEL), FOR  
PETITIONER-APPELLANT.

WENDY G. PETERSON, ATTORNEY FOR THE CHILDREN, OLEAN.

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Appeal from an order of the Family Court, Cattaraugus County (Michael L. Nenno, J.), entered January 4, 2013 in a proceeding pursuant to Family Court Act article 6. The order dismissed the petition.

It is hereby ORDERED that said appeal insofar as it concerns the parties' older child is unanimously dismissed, the order is reversed on the law without costs, the petition is reinstated and the matter is remitted to Family Court, Cattaraugus County, for further proceedings in accordance with the following Memorandum: Petitioner mother appeals from an order dismissing her petition to modify an existing custody order without a hearing. We note at the outset that the appeal is moot with respect to the parties' older child because he reached the age of 18 years during the pendency of this appeal (see *Matter of Woodruff v Adside*, 26 AD3d 866, 866). We agree with petitioner that she was denied the right to counsel when Family Court sua sponte dismissed her petition in the absence of her attorney. "The deprivation of a party's fundamental right to counsel in a custody or visitation proceeding is a denial of due process and requires reversal, without regard to the merits of the unrepresented party's position" (*Matter of Williams v Bentley*, 26 AD3d 441, 442; see Family Ct Act § 262 [a]; *Matter of Dolson v Mitts*, 99 AD3d 1079, 1080; *Matter of Scala v Tefft*, 42 AD3d 689, 691-692). We therefore reverse the order, reinstate the petition and remit the matter to Family Court for further proceedings on the petition. In light of our determination, we need not address petitioner's remaining contention.

Entered: February 14, 2014

Frances E. Cafarell  
Clerk of the Court