

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

1503

CAF 16-02054

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, CURRAN, AND TROUTMAN, JJ.

IN THE MATTER OF CLIFFORD E. DRAKE, JR.,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

BELLE R. RILEY, RESPONDENT-APPELLANT.

ROSEMARIE RICHARDS, GILBERTSVILLE, FOR RESPONDENT-APPELLANT.

COLE & VALKENBURGH, P.C., BATH (ASHILEE K. DICKINSON OF COUNSEL), FOR
PETITIONER-RESPONDENT.

SARA E. ROOK, ATTORNEY FOR THE CHILDREN, ROCHESTER.

Appeal from an amended order of the Family Court, Steuben County (Gerard Alonzo, J.H.O.), entered September 14, 2016 in a proceeding pursuant to, inter alia, Family Court Act article 6. The amended order, among other things, awarded petitioner sole custody of the subject children.

It is hereby ORDERED that the amended order so appealed from is unanimously reversed on the law without costs, and the matter is remitted to Family Court, Steuben County, for further proceedings in accordance with the following memorandum: In this proceeding pursuant to, inter alia, Family Court Act article 6, respondent mother appeals from an amended order that, among other things, awarded petitioner father sole custody of the parties' two children. Family Court entered the amended order after holding a joint trial on the mother's Family Court Act article 6 petition for modification of custody and visitation and the father's amended article 8 petition alleging family offenses against the mother. Before the trial commenced, the mother's attorney made a motion for an adjournment based on the mother's absence, and the court denied the motion. On the mother's prior appeal from the order of protection entered on the father's amended article 8 petition, we concluded that the court abused its discretion in denying the mother's motion for an adjournment inasmuch as she had shown good cause for her absence (*Matter of Drake v Riley*, 149 AD3d 1468, 1469 [4th Dept 2017]; see § 836 [a]). Inasmuch as the instant appeal arises out of the same joint trial and motion for an adjournment, we reverse the amended order on appeal for reasons stated in our prior decision (see *Drake*, 149 AD3d at 1469).

In light of our determination, we do not reach the mother's

remaining contentions.

Entered: December 22, 2017

Mark W. Bennett
Clerk of the Court