

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

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CAF 17-01448

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

IN THE MATTER OF RENE MONTES, PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

TERINA JOHNSON, RESPONDENT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JANET C. SOMES OF COUNSEL), FOR RESPONDENT-APPELLANT.

MARK D. FUNK, CONFLICT DEFENDER, ROCHESTER (KATHLEEN P. REARDON OF COUNSEL), FOR PETITIONER-RESPONDENT.

TANYA CONLEY, ROCHESTER, ATTORNEY FOR THE CHILD.

Appeal from an amended order of the Family Court, Monroe County (Thomas W. Polito, R.), entered July 10, 2017 in a proceeding pursuant to Family Court Act article 6. The amended order, inter alia, granted primary physical custody of the subject child to petitioner.

It is hereby ORDERED that the amended order so appealed from is unanimously modified on the law by striking from the first ordering paragraph the words "and subject to periods of visitation with the Mother and the Father shall encourage [the child] to visit with her Mother," and as modified the amended order is affirmed without costs, and the matter is remitted to Family Court, Monroe County, for further proceedings in accordance with the following memorandum: Respondent mother appeals from an amended order that, inter alia, granted petitioner father's petition to modify a prior custody order by awarding him primary physical custody of their daughter. We agree with the mother that Family Court erred in failing to set a specific and definitive visitation schedule (*see Matter of Shonyo v Shonyo*, 151 AD3d 1595, 1597-1598 [4th Dept 2017], *lv denied* 30 NY3d 901 [2017]; *Gillis v Gillis*, 113 AD3d 816, 817 [2d Dept 2014]; *Matter of Murray v Parisella*, 41 AD3d 902, 904 [3d Dept 2007]). We therefore modify the amended order by striking from the first ordering paragraph the words "and subject to periods of visitation with the Mother and the Father shall encourage [the child] to visit with her Mother," and we remit the matter to Family Court to fashion a specific and definitive schedule for visitation between the mother and daughter. We have considered and rejected the mother's remaining contentions.

Entered: June 8, 2018

Mark W. Bennett
Clerk of the Court