

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

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CAF 18-01016

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

IN THE MATTER OF CARLOS M. SANCHEZ,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ALBA M. MERCEDES, RESPONDENT-RESPONDENT.
(APPEAL NO. 2.)

ELISABETH M. ROSSOW, CHEEKTOWAGA, FOR PETITIONER-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR RESPONDENT-RESPONDENT.

JENNIFER PAULINO, BUFFALO, ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Erie County (Deanne M. Tripi, J.), entered April 17, 2018 in a proceeding pursuant to Family Court Act article 6. The order, inter alia, dismissed the petition for a modification of visitation.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by vacating the fourth ordering paragraph and as modified the order is affirmed without costs.

Memorandum: In this Family Court Act article 6 proceeding, petitioner father appeals from an order that, inter alia, dismissed his petition to modify a prior custody and visitation order. We agree with the father that Family Court improperly conditioned his right to file future petitions to modify the governing custody and visitation arrangement upon his completion of anger management treatment, and we therefore modify the order accordingly (*see Matter of Smith v Loyster*, 156 AD3d 1490, 1491 [4th Dept 2017]; *Matter of Vieira v Huff*, 83 AD3d 1520, 1522 [4th Dept 2011]). Given the father's history of frivolous and vexatious filings in this matter, however, the court did not abuse its discretion by prohibiting him from filing any future modification petitions without prior judicial approval (*see Matter of Naclerio v Naclerio*, 132 AD3d 679, 680 [2d Dept 2015]; *see generally Carney v Carney*, 160 AD3d 218, 228 [4th Dept 2018]).

Entered: May 3, 2019

Mark W. Bennett
Clerk of the Court