

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

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CAF 20-00896

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

IN THE MATTER OF LAHNI E. THOMAS,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

GEOFFREY D. THOMAS, RESPONDENT-RESPONDENT.

THOMAS L. PELYCH, HORNELL, FOR PETITIONER-APPELLANT.

ROSEMARIE RICHARDS, GILBERTSVILLE, FOR RESPONDENT-RESPONDENT.

JOAN D. MERRY, HORNELL, ATTORNEY FOR THE CHILDREN.

Appeal from an order of the Family Court, Steuben County (Patrick F. McAllister, A.J.), entered July 7, 2020 in a proceeding pursuant to Family Court Act article 6. The order dismissed the petition.

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

Memorandum: In this Family Court Act article 6 proceeding, petitioner mother appeals from an order that dismissed her petition seeking to modify a prior order of custody and visitation. We reject the mother's contention that Family Court abused its discretion in dismissing the petition without conducting a hearing. "A hearing is not automatically required whenever a parent seeks modification of a custody [or visitation] order" (*Matter of Di Fiore v Scott*, 2 AD3d 1417, 1417 [4th Dept 2003] [internal quotation marks omitted]; see *Matter of Gworek v Gworek* [appeal No. 1], 158 AD3d 1304, 1304 [4th Dept 2018]). Here, we conclude that the mother failed to "make a sufficient evidentiary showing of a change in circumstances to require a hearing" (*Di Fiore*, 2 AD3d at 1417-1418 [internal quotation marks omitted]; see *Matter of Williams v Reid*, 187 AD3d 1593, 1594 [4th Dept 2020]).

Entered: July 16, 2021

Mark W. Bennett
Clerk of the Court