

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

1348

CAF 08-01570

PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, CARNI, AND PINE, JJ.

IN THE MATTER OF THOMAS M. BELL,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MARIE CARROL RAYMOND, RESPONDENT-RESPONDENT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (MARY P. DAVISON OF
COUNSEL), FOR PETITIONER-APPELLANT.

DARLENE O'KANE, LAW GUARDIAN, SYRACUSE, FOR SARA M.B.

Appeal from an order of the Family Court, Onondaga County (George M. Raus, Jr., R.), entered June 13, 2008 in a proceeding pursuant to Family Court Act article 6. The order dismissed the petition seeking modification of a custody order.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the petition is reinstated, and the matter is remitted to Family Court, Onondaga County, for a hearing on the petition.

Memorandum: Petitioner father appeals from an order that summarily dismissed his petition seeking modification of an existing custody order, which was based on a written stipulation between the parties. The petition alleged that modification was warranted because respondent mother had been arrested for "DUI (drugs)" and endangering the welfare of a child. We agree with the father that Family Court erred in dismissing the petition without conducting a hearing, inasmuch as the father "made a sufficient evidentiary showing of a change in circumstances to warrant a hearing" (*Matter of Mayer v Londraville*, 26 AD3d 758; *cf. Matter of Di Fiore v Scott*, 2 AD3d 1417, 1417-1418).

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court